



# Infrastructure Act 2015

## 2015 CHAPTER 7

### PART 6

#### ENERGY

##### *The community electricity right*

### **38 The community electricity right**

- (1) The Secretary of State may make regulations which give individuals resident in a community or groups connected with a community (or both) the right to buy a stake in a renewable electricity generation facility that is located—
  - (a) in the community (if it is a land-based facility), or
  - (b) adjacent to the community (if it is an offshore facility).
- (2) The Secretary of State may make regulations about—
  - (a) the kind, or kinds, of body which may be a facility operator,
  - (b) ownership of facility operators, and
  - (c) matters relating to the ownership of facility operators (including the rights, duties and powers arising from ownership),if the Secretary of State considers that the regulations are appropriate in connection with the right to buy.
- (3) The Secretary of State may make regulations about the supply of information in connection with the following—
  - (a) the right to buy;
  - (b) ownership of stakes in qualifying facilities (including the transfer of ownership);
  - (c) operation of qualifying facilities;
  - (d) ownership of facility operators (including matters relating to the ownership of facility operators);
  - (e) monitoring and assessing—

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- (i) the operation of the right to buy, and
  - (ii) the ownership of stakes in qualifying facilities.
- (4) The Secretary of State may make regulations about the enforcement of obligations imposed by regulations made under any of subsections (1) to (3); and the regulations about enforcement may include—
- (a) provision for obligations to be enforceable as, or as if they were, generation licence conditions or relevant requirements;
  - (b) a power to impose financial penalties for breach of obligations.
- (5) The Secretary of State may by regulations modify—
- (a) any generation licence condition, or
  - (b) any generation licence exemption,
- if the Secretary of State considers that the modification is appropriate in connection with regulations made under any of subsections (1) to (4) or this subsection.
- (6) Schedule 6 (which describes certain provision that community electricity right regulations can make, including provision about renewable electricity generation facilities, communities, and individuals and groups who may exercise the right to buy) has effect.
- (7) In this section, Schedule 6 and section 39—
- “community electricity right regulations” means regulations under this section;
  - “electricity generation licence” means a licence granted under section 6(1) (a) of the Electricity Act 1989;
  - “facility operator” means a person who generates, or is expected to generate, electricity at a qualifying facility for the purpose of giving a supply to any premises or enabling a supply to be so given;
  - “generation licence condition” means—
    - (a) the conditions of a particular electricity generation licence, or
    - (b) the standard conditions so far as they are incorporated in electricity generation licences by virtue of section 8A of the Electricity Act 1989;
  - “generation licence exemption” means an exemption from section 4(1)(a) of the Electricity Act 1989 granted under section 5(1) of that Act;
  - “land-based facility” means a renewable electricity generation facility that is not an offshore facility;
  - “offshore facility” means a renewable electricity generation facility that is located in waters in or adjacent to Great Britain that are beyond the mean low water mark;
  - “qualifying facility” means a renewable electricity generation facility in relation to which the right to buy is to be, is, or has been, exercisable;
  - “relevant requirement” has the same meaning as in section 25 of the Electricity Act 1989;
  - “renewable electricity generation facility” means a facility using a renewable source of energy to generate electricity (and here “renewable source” has the same meaning as in sections 32 to 32LB of the Electricity Act 1989 — see section 32M of that Act) which is located in—
    - (a) Great Britain,

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- (b) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea adjacent to Great Britain, but do not form part of that territorial sea,
- (c) the territorial sea adjacent to Great Britain, or
- (d) the Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004), except for any part of that Zone which forms part of the territorial sea adjacent to Northern Ireland;

“right to buy” means the right to buy a stake in a renewable electricity generation facility that is given by regulations under subsection (1).

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**Commencement Information**

**II** S. 38 in force at 1.6.2016, see s. 57(7)(a)

### **39 Supplementary provision**

- (1) Community electricity right regulations may confer a function on—
  - (a) the Secretary of State, or
  - (b) any other person, apart from the Scottish Ministers or the Welsh Ministers.
- (2) The functions that may be imposed include—
  - (a) a duty (including a restriction or prohibition);
  - (b) a function involving the exercise of a discretion;
  - (c) a requirement to consult;
  - (d) a requirement to take account of guidance.
- (3) The provisions of section 38, Schedule 6 and this section which specify particular kinds of provision that may be made in community electricity right regulations do not limit the powers conferred by section 38 to make such regulations.
- (4) The duties under Schedule 6 to make particular provision in community electricity right regulations do not apply unless the Secretary of State decides to exercise the power conferred by section 38 to make such regulations.
- (5) Provision which commences community electricity right regulations may be framed so as to secure that the regulations do not apply to a renewable electricity generation facility if development of the facility has reached a stage of advancement specified in the commencement provision.
- (6) A reference in section 38 or Schedule 6 to buying a stake in a renewable electricity generation facility includes a reference to making a loan in relation to a renewable electricity generation facility.
- (7) The Secretary of State must carry out a review of section 38, Schedule 6 and the preceding provisions of this section as soon as reasonably practicable after the end of the period of 5 years beginning with the day on which they come into force.

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**Commencement Information**

**I2** S. 39 in force at 1.6.2016, see s. 57(7)(a)

**Changes to legislation:**

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The community electricity right.