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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2023, Schedule 12. (See end of Document for details)

## SCHEDULES

PROSPECTIVE

### SCHEDULE 12

Section 200(1)

#### GOVERNANCE OF GAS AND ELECTRICITY INDUSTRY CODES: TRANSITIONAL PROVISION

##### *Meaning of “qualifying document”, “qualifying contract” and “qualifying central system”*

- 1 (1) In this Schedule, “qualifying document” means a document that—
- (a) is maintained in accordance with the conditions of a relevant licence, and
  - (b) is designated for the purposes of this Schedule by notice given by the Secretary of State.
- (2) Where at any time after the day on which [this paragraph](#) comes into force the whole or part of the provision made by a qualifying document is incorporated into a different document (“document B”), document B is to be treated for the purposes of this Schedule as if it were a qualifying document even if it is not designated under [sub-paragraph \(1\)\(b\)](#).
- (3) In this Schedule, “qualifying contract” means a contract—
- (a) that constitutes the whole or part of the arrangements under which a qualifying document has effect,
  - (b) that relates to the governance of a qualifying document, or
  - (c) that is a central system contract.
- (4) For the purposes of [sub-paragraph \(3\)\(c\)](#), a contract is a “central system contract” if—
- (a) it relates to the operation of a qualifying central system, and
  - (b) the person responsible for operating or procuring the operation of the central system is a party to the contract.
- (5) In this Schedule, “qualifying central system” means a central system that is designated for the purposes of this Schedule by notice given by the Secretary of State.
- (6) The Secretary of State may revoke a designation under [sub-paragraph \(1\)\(b\)](#) or [\(5\)](#).
- (7) The Secretary of State may not designate a document or central system under [sub-paragraph \(1\)\(b\)](#) or [\(5\)](#), or revoke a designation, except so as to give effect to a recommendation of the GEMA.
- (8) Before making a recommendation to the Secretary of State for the purposes of [sub-paragraph \(7\)](#), the GEMA must consult such persons as it considers appropriate.

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#### Commencement Information

**I1** Sch. 12 para. 1 not in force at Royal Assent, see [s. 334\(1\)](#)

#### *Purposes for which powers under this Schedule may be exercised*

- 2 (1) The GEMA may exercise a power conferred on it by [paragraph 4](#), [6](#), [7](#), [8](#) or [11](#) only if the GEMA considers it appropriate to exercise the power—
- (a) for the purposes of or in connection with establishing the role of code manager in respect of a document that is expected to become a designated document,
  - (b) in preparation for the granting of a code manager licence to a person in respect of a designated document,
  - (c) for the purposes of facilitating the carrying out by the GEMA of its functions under this Part,
  - (d) for the purposes of promoting the efficient governance of arrangements under one or more qualifying documents (subject to sub-paragraph (2)), or
  - (e) for the purposes of harmonising the governance of particular qualifying documents or of qualifying documents in general.
- (2) Sub-paragraph (1)(d) does not apply to the exercise of the power conferred by paragraph [6](#) in relation to a qualifying contract within paragraph [1\(3\)\(b\)](#) or [\(c\)](#).

#### Commencement Information

**I2** Sch. 12 para. 2 not in force at Royal Assent, see [s. 334\(1\)](#)

#### *Expiry of powers under this Schedule*

- 3 The powers conferred on the GEMA by [paragraphs 4](#), [6](#), [7](#), [8](#) and [11](#) in relation to a particular qualifying document expire—
- (a) when the document becomes a designated document, or
  - (b) if earlier, at the end of the period of 7 years after the day on which this Act is passed.

#### Commencement Information

**I3** Sch. 12 para. 3 not in force at Royal Assent, see [s. 334\(1\)](#)

#### *Modification of qualifying documents and relevant licences*

- 4 (1) The GEMA may modify—
- (a) a qualifying document;
  - (b) the conditions of a particular relevant licence;
  - (c) the standard conditions of relevant licences of a particular type.
- (2) Before making a modification under [sub-paragraph \(1\)](#), the GEMA must—
- (a) publish a notice about the proposed modification,
  - (b) send a copy of the notice to the persons listed in [sub-paragraph \(3\)](#), and

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- (c) consider any representations made within the period specified in the notice about the proposed modification or the date from which it would take effect.
- (3) The persons mentioned in [sub-paragraph \(2\)\(b\)](#) are—
- (a) the Secretary of State;
  - (b) each relevant licence holder;
  - (c) the National Association of Citizens Advice Bureaux;
  - (d) the Scottish Association of Citizens Advice Bureaux;
  - (e) Consumer Scotland;
  - (f) where the proposed modification relates to a licence for the purposes of section 5 of the Gas Act 1986, the Health and Safety Executive;
  - (g) such other persons as the GEMA considers appropriate.
- (4) A notice under [sub-paragraph \(2\)](#) must—
- (a) state that the GEMA proposes to make a modification;
  - (b) set out the proposed modification and its effect;
  - (c) specify the date from which the GEMA proposes that the modification will have effect;
  - (d) state the reasons why the GEMA proposes to make the modification.
- (5) If, after complying with [sub-paragraphs \(2\) to \(4\)](#) in relation to a modification, the GEMA decides to make a modification, it must publish a notice about the decision.
- (6) A notice under [sub-paragraph \(5\)](#) must—
- (a) state that the GEMA has decided to make the modification;
  - (b) set out the modification and its effect;
  - (c) specify the date from which the modification has effect;
  - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under [sub-paragraph \(2\)](#);
  - (e) state the reason for any differences between the modification set out in the notice and the proposed modification.
- (7) A notice under this paragraph about a modification or decision must be published in such manner as the GEMA considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification or decision.
- (8) In this paragraph, “relevant licence holder”—
- (a) in relation to the modification of a qualifying document, means the holder of a relevant licence in accordance with the conditions of which the document is maintained;
  - (b) in relation to the modification of standard conditions of relevant licences of any type, means the holder of a relevant licence of that type—
    - (i) that is to be modified by the inclusion of any new standard condition, or
    - (ii) that includes any standard conditions to which the modifications relate which are in effect during the period specified by virtue of [sub-paragraph \(2\)\(c\)](#);
  - (c) in relation to the modification of a condition of a particular relevant licence (other than a standard condition), means the holder of that particular relevant licence.

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- (9) For the purposes of [this paragraph](#), “modification”, in relation to a qualifying document, includes the incorporation of the whole or part of the provision made by the document into another document.

**Commencement Information**

**I4** Sch. 12 para. 4 not in force at Royal Assent, see [s. 334\(1\)](#)

- 5 (1) [Sub-paragraphs \(2\) and \(3\)](#) apply where at any time the GEMA modifies the conditions of licences of any type under [paragraph 4](#).
- (2) If the conditions modified are standard conditions, the GEMA must—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.
- (3) The GEMA may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.
- (4) The modification of part of a standard condition of a particular licence under [paragraph 4](#) does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Electricity Act 1989 (in the case of a licence under section 6(1) of that Act) or Part 1 of the Gas Act 1986 (in the case of a licence under section 7, 7ZA, 7A or 7AB of that Act).

**Commencement Information**

**I5** Sch. 12 para. 5 not in force at Royal Assent, see [s. 334\(1\)](#)

**Commencement Information**

**I4** Sch. 12 para. 4 not in force at Royal Assent, see [s. 334\(1\)](#)

**I5** Sch. 12 para. 5 not in force at Royal Assent, see [s. 334\(1\)](#)

*Amendment or termination of qualifying contracts*

- 6 (1) The GEMA may amend a qualifying contract.
- (2) Before making an amendment under [sub-paragraph \(1\)](#), the GEMA must—
- (a) send a notice about the proposed amendment to the persons listed in [sub-paragraph \(4\)](#), and
  - (b) consider any representations made within the period specified in the notice about the proposed amendment or the date from which it would take effect.
- (3) A notice under [sub-paragraph \(2\)](#) must—
- (a) state that the GEMA proposes to make an amendment;
  - (b) set out the proposed amendment and its effect;

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- (c) specify the date from which the GEMA proposes that the amendment will have effect;
  - (d) state the reasons why the GEMA proposes to make the amendment.
- (4) The persons mentioned in [sub-paragraph \(2\)\(a\)](#) are—
- (a) each person who is a party to the contract to which the proposed amendment relates;
  - (b) any person liable by virtue of [paragraph 12](#) to make a payment by way of compensation as a result of the proposed amendment;
  - (c) such other persons as the GEMA considers appropriate.
- (5) If, after complying with [sub-paragraphs \(2\) to \(4\)](#) in relation to an amendment, the GEMA decides to make an amendment, it must send a notice to the persons listed in [sub-paragraph \(4\)](#) about the decision.
- (6) A notice under [sub-paragraph \(5\)](#) must—
- (a) state that the GEMA has decided to make the amendment;
  - (b) set out the amendment and its effect;
  - (c) specify the date from which the amendment has effect;
  - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under [sub-paragraph \(2\)](#);
  - (e) state the reason for any differences between the amendment set out in the notice and the proposed amendment.
- (7) In this paragraph, “amend”, in relation to a contract, includes terminate.

#### Commencement Information

**I6** Sch. 12 para. 6 not in force at Royal Assent, see [s. 334\(1\)](#)

#### *Arrangements in connection with code consolidation*

- 7
- (1) The GEMA may, in connection with the consolidation of one or more qualifying documents, make a scheme for the purpose of securing the continued effect of rights or liabilities under a contract that is a qualifying contract within [paragraph 1\(3\)\(a\)](#).
  - (2) “Consolidation”, in relation to a qualifying document, means the incorporation of the whole or part of the provision made by the document into another document.
  - (3) A scheme under this paragraph may make incidental, supplementary or consequential provision (including provision amending the qualifying contract).

#### Commencement Information

**I7** Sch. 12 para. 7 not in force at Royal Assent, see [s. 334\(1\)](#)

#### *Transfer schemes*

- 8
- (1) The GEMA may make one or more schemes for the transfer of designated property, rights or liabilities from one person (“the transferor”) to another person (“the transferee”) where the condition in [sub-paragraph \(2\)](#) is met.

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- (2) The condition is that the designated property, rights or liabilities—
- (a) relate to the operation of the provisions of a qualifying document, and
  - (b) are reasonably required by the transferee for the purposes of its obligations under a code manager licence (whether or not the licence has yet been granted to the transferee).
- (3) On the transfer date, the designated property, rights and liabilities are transferred and vest in accordance with the scheme.
- (4) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.
- (5) A certificate by the GEMA that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact.
- (6) A scheme may make provision—
- (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
  - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;
  - (c) about the continuation of legal proceedings;
  - (d) for transferring property, rights or liabilities that could not otherwise be transferred or assigned;
  - (e) for transferring property, rights and liabilities irrespective of any requirement for consent that would otherwise apply;
  - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
  - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
  - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
  - (i) for apportioning property, rights or liabilities;
  - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
  - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (7) **Sub-paragraph (6)(b)** does not apply to references in—
- (a) primary legislation, or
  - (b) an instrument made under primary legislation.
- (8) A scheme may—
- (a) include incidental, supplementary or consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different purposes;
  - (d) make provision subject to exceptions.
- (9) In this paragraph—

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“designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;

“primary legislation” means—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) an Act or Measure of Senedd Cymru, or
- (d) Northern Ireland legislation;

“property” includes interests of any description;

“the transfer date” means a date specified by a scheme as the date on which the transfer is to have effect.

#### Commencement Information

**I8** Sch. 12 para. 8 not in force at Royal Assent, see [s. 334\(1\)](#)

- 9 (1) Before making a scheme under paragraph 8, the GEMA must consult—
- (a) the transferor;
  - (b) the transferee;
  - (c) such other persons as the GEMA considers appropriate.
- (2) The approval of the Secretary of State is required for the making of a scheme under paragraph 8.

#### Commencement Information

**I9** Sch. 12 para. 9 not in force at Royal Assent, see [s. 334\(1\)](#)

- 10 (1) The GEMA may modify a scheme under paragraph 8.
- (2) The power under [sub-paragraph \(1\)](#) is not exercisable in relation to a scheme after the end of the period of 12 months beginning with the day on which the scheme takes effect.
- (3) [Paragraphs 8](#) and [9](#) apply in relation to the modification of a scheme as they apply in relation to the making of the scheme.

#### Commencement Information

**I10** Sch. 12 para. 10 not in force at Royal Assent, see [s. 334\(1\)](#)

#### Commencement Information

**I8** Sch. 12 para. 8 not in force at Royal Assent, see [s. 334\(1\)](#)

**I9** Sch. 12 para. 9 not in force at Royal Assent, see [s. 334\(1\)](#)

**I10** Sch. 12 para. 10 not in force at Royal Assent, see [s. 334\(1\)](#)

#### Information

- 11 (1) The GEMA may direct a person who holds information reasonably required by the GEMA—

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- (a) in preparation for the granting of a code manager licence, or
  - (b) for the purposes of or in connection with the exercise of any of the other functions of the GEMA under [this Schedule](#),
- to provide the information to the GEMA.
- (2) A person to whom a direction is given under [sub-paragraph \(1\)](#) must, so far as reasonably practicable, provide the GEMA with the information—
- (a) within the period specified in the direction, and
  - (b) in the form and manner so specified.
- (3) A direction given to a person under [sub-paragraph \(1\)](#) is enforceable by the GEMA in civil proceedings—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

#### Commencement Information

**111** Sch. 12 para. 11 not in force at Royal Assent, see [s. 334\(1\)](#)

#### Compensation

- 12 (1) The relevant code manager must make a payment to a person within [sub-paragraph \(2\)](#) in compensation for financial loss suffered by the person in consequence of the exercise by the GEMA of—
- (a) the power under [paragraph 6](#) in relation to a qualifying contract within [paragraph 1\(3\)\(b\)](#) or [\(c\)](#), or
  - (b) the power under [paragraph 8](#) (transfer schemes).
- (2) The persons within this sub-paragraph are—
- (a) a person who is a party to a contract that is amended or terminated under [paragraph 6](#);
  - (b) the transferor in relation to a scheme under [paragraph 8](#);
  - (c) a person, other than the transferor or transferee in relation to a scheme under [paragraph 8](#), who has a right in relation to anything transferred by the scheme.
- (3) The amount of a payment under [sub-paragraph \(1\)](#) is to be—
- (a) in a case relating to the exercise of the power under [paragraph 6](#), such amount as the GEMA considers to be just;
  - (b) in a case relating to the exercise of the power under [paragraph 8](#), an amount specified in or determined in accordance with provision made in the scheme in question.
- (4) In this paragraph, “the relevant code manager” means—
- (a) in relation to the exercise of the power under [paragraph 6](#), the person who holds a code manager licence in relation to the document to which the qualifying contract in question relates;
  - (b) in relation to the exercise of the power under [paragraph 8](#), the person who is the transferee in relation to the scheme in question.

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- (5) The GEMA may in a particular case direct—
- (a) which person is the relevant code manager for the purposes of this paragraph;
  - (b) that two or more persons are jointly to be the relevant code manager for those purposes.
- (6) The Secretary of State may in a particular case direct that the duty under [sub-paragraph \(1\)](#) is to be discharged by a person specified in the direction (instead of by the relevant code manager).

**Commencement Information**

**I12** Sch. 12 para. 12 not in force at Royal Assent, see [s. 334\(1\)](#)

*Other*

- 13 Any requirement imposed by this Schedule to carry out consultation may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).

**Commencement Information**

**I13** Sch. 12 para. 13 not in force at Royal Assent, see [s. 334\(1\)](#)

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