

SCHEDULE 9

Article 35

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these arbitration rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the arbitrator is appointed pursuant to article 35 of this Order.

(2) The arbitration will be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Commencement Information

I1 Sch. 9 para. 1 in force at 19.6.2020, see [art. 1](#)

Time periods

2.—(1) All time periods in these arbitration rules will be measured in days and this will include weekends, but not bank or public holidays.

(2) Time periods will be calculated from the day after the arbitrator is appointed which is either—

- (a) the date the arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the arbitrator is appointed by the Secretary of State.

Commencement Information

I2 Sch. 9 para. 2 in force at 19.6.2020, see [art. 1](#)

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs to below unless amended in accordance with paragraph .

(2) Within 14 days of the arbitrator being appointed, the Claimant will provide both the Respondent and the arbitrator with—

- (a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant's contentions as to those issues, the amount of its claim and/or the remedy it is seeking;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 14 days of receipt of the Claimant's statements under sub-paragraph by the arbitrator and Respondent, the Respondent will provide the Claimant and the arbitrator with—

- (a) a written Statement of Defence responding to the Claimant's Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant's claim, its acceptance of any element(s) of the Claimant's claim, its contentions as to those elements of the Claimant's claim it does not accept;

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- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
 - (c) any objections it wishes to make to the Claimant's statements, comments on the Claimant's expert report(s) (if submitted by the Claimant) and explanations of the objections.
- (4) Within 7 days of the Respondent serving its statements under sub-paragraph , the Claimant may make a Statement of Reply by providing both the Respondent and the arbitrator with—
- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
 - (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
 - (c) any expert report in response to the Respondent's submissions;
 - (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent;
 - (e) its written submissions in response to the legal and factual issues involved.

Commencement Information

I3 Sch. 9 para. 3 in force at 19.6.2020, see [art. 1](#)

Procedure

4.—(1) The parties' pleadings, witness statements and expert reports (if any) will be concise. No single pleading will exceed 30 single-sided A4 pages using 10pt Arial font.

(2) The arbitrator will make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the arbitrator decides that a hearing is necessary to explain or resolve any matters.

(3) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(4) Within 7 days of receiving the last submission, the arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(5) Within 10 days of the arbitrator advising the parties that he/she will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the arbitrator is to direct a date and venue which he/she considers is fair and reasonable in all the circumstances. The date for the hearing must not be less than 35 days from the date of the arbitrator's direction confirming the date and venue of the hearing.

(6) A decision will be made by the arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the arbitrator, then any expert(s) attending the hearing may be asked questions by the arbitrator.

(7) There will be no process of examination and cross-examination of experts, but the arbitrator must invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) at least 28 days before a hearing, the arbitrator will provide a list of issues to be addressed by the expert(s);

- (b) if more than one expert is called, they will jointly confer and produce a joint report or reports within 14 days of the issues being provided; and
- (c) the form and content of a joint report must be as directed by the arbitrator and must be provided at least 7 days before the hearing.

(8) Within 14 days of a hearing or a decision by the arbitrator that no hearing is to be held, the parties may by way of exchange provide the arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The arbitrator must take these submissions into account in the award.

(9) The arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which he/she is appointed, unless both parties otherwise agree to an extension to the date for the award.

(10) If a party fails to comply with the timetable, procedure or any other direction then the arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(11) The arbitrator's award must include reasons. The parties must accept that the extent to which reasons are given must be proportionate to the issues in dispute and the time available to the arbitrator to deliver the award.

Commencement Information

I4 Sch. 9 para. 4 in force at 19.6.2020, see [art. 1](#)

Arbitrator's powers

5.—(1) The arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these Rules in this Schedule.

(2) There must be no discovery or disclosure, except that the arbitrator is to have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the arbitrator. In the absence of agreement, the arbitrator may vary the timescales and/or procedure—

- (a) if the arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the arbitrator's fees and expenses.

Commencement Information

I5 Sch. 9 para. 5 in force at 19.6.2020, see [art. 1](#)

Changes to legislation: There are currently no known outstanding effects for the The Cleve Hill Solar Park Order 2020, SCHEDULE 9. (See end of Document for details)

Costs

6.—(1) The costs of the arbitration must include the fees and expenses of the arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the arbitration.

(2) Where the difference involves connected/interrelated issues, the arbitrator will consider the relevant costs collectively.

(3) The final award must fix the costs of the arbitration and decide which of the parties are to bear them or in what proportion they are to be borne by the parties.

(4) The arbitrator will award recoverable costs on the general principle that each party should bear its own costs, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.

Commencement Information

I6 Sch. 9 para. 6 in force at 19.6.2020, see [art. 1](#)

Confidentiality

7.—(1) The parties agree that any hearings in this arbitration are to take place in private.

(2) The parties and arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and must not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.

Commencement Information

I7 Sch. 9 para. 7 in force at 19.6.2020, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Cleve Hill Solar Park Order 2020, SCHEDULE 9.