

# **ENERGY ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Chapter 1: Electricity Trading and Transmission***

##### ***Section 133: “New trading and transmission arrangements”***

343. **Section 133** sets out what is meant by “new trading and transmission arrangements”. This phrase is used principally in sections 134, 137 and 139 of the Act in order to limit the powers given to the Secretary of State.

##### ***Section 134: Power to modify licence conditions***

344. **Section 134** gives the Secretary of State the ability to modify the conditions of electricity licences in GB in order to implement the new trading and transmission arrangements. The new arrangements will have most impact on transmission licensees but there will also be necessary changes to other types of electricity licences.

##### ***Section 135: Alteration of transmission activities requiring licence***

345. **Section 135** amends section 4 of the Electricity Act by replacing the prohibition on unlicensed transmission with a prohibition on unlicensed participation in transmission. Participation in transmission is described as either of two separate transmission activities. These activities are: (1) co-ordinating and directing the flow of electricity onto the transmission system e.g. balancing the demand and supply of electricity close to real time (done under the new arrangements by a system operator); or (2) making available for use for the purposes of such a transmission system anything that forms part of it. This is to reflect the separation of roles between the transmission system operator and the transmission asset owners under BETTA.

##### ***Section 136: Transmission licences***

346. **Section 136** makes changes to sections 6 and 7 of the Electricity Act in the following ways:
- it amends the power of GEMA to grant a transmission licence to that of granting a licence to participate in transmission, reflecting the change to the prohibition explained above;
  - it removes the restriction stopping GEMA from granting more than one transmission licence in any given geographical area;
  - it allows GEMA to alter, with the consent of the licence holder, the geographical scope of a licence;
  - it allows for licence conditions that can restrict the activities of a transmission licence holder and/or restrict the area within which authorised activities can be undertaken.

347. In particular subsection (3) amends section 7 of the Electricity Act and thereby extends the scope of conditions that may be included in a transmission licence. It allows a licence condition to restrict the holder from carrying on an activity otherwise authorised by the grant of the licence or restrict the carrying on of that activity to a specific geographic area. This change is necessary because each licence will simply be a licence to participate in transmission. It is the conditions imposed in the licence that will determine which transmission activities can be undertaken by the licensee.

### ***Section 137: New standard conditions for transmission licences***

348. Subsection (1) of section 137 gives the Secretary of State power to determine a whole new set of standard conditions for transmission licences, whilst subsection (2) requires the publication of such conditions. This power is required because it is expected that a new set of standard conditions for transmission licence holders will be required for BETTA and the power in section 134 only allows for the modification of individual conditions, not the wholesale replacement of a set of standard conditions. Subsection (4), following the approach in section 33(2) of the Utilities Act, permits the inclusion of conditions which make provision in respect of the operation of other standard conditions, in particular for other conditions not to be brought into operation, or to be re-activated or suspended in the circumstances specified in the condition, i.e. for conditions to be switched on and off as appropriate during the implementation of BETTA. Subsections (5) and (6) ensure that section 8A of the Electricity Act operates, in the case of transmission licences, by reference to the standard conditions determined under subsection (1). Subsection (7) restricts the time during which the Secretary of State may use this power to eighteen months after subsection (1) comes into force (or if earlier, once subsections (5) and (6) come into force, by which time the power should have been exercised).

### ***Section 138 and Schedule 17: Conversion of existing transmission licences***

349. This section gives Schedule 17 effect. Schedule 17 provides for a licensing scheme or schemes to be made by the Secretary of State. The scheme or schemes will be used to transform each existing transmission licence into a licence to participate in transmission. This is necessary to ensure that the existing licence holders will not be in breach of the prohibition in section 4 of the Electricity Act when the amendments made under section 135 of this Act come into force. It also allows for the new set of standard transmission licence conditions to be incorporated into each transmission licence. The Secretary of State is also given the power to make incidental, supplemental and consequential modifications to the licences and make appropriate transitional provision. The Schedule places an obligation on the Secretary of State to publish the text of each amended licence as soon as possible after the making of a new scheme. It also allows the Secretary of State, by statutory instrument subject to annulment, to make appropriate modifications to the licensing scheme after implementation.

### ***Section 139: Grant of transmission licences***

350. **Section 139** gives the Secretary of State power to direct GEMA to grant or refuse a new licence to participate in transmission. Subsection (2) requires the Secretary of State to consult GEMA before issuing such directions, whilst subsections (3) to (6) draw the boundaries for when and how the Secretary of State may make such directions.

### ***Section 141 and Schedule 18: Property arrangements scheme***

351. **Section 141** gives Schedule 18 effect. Schedule 18 provides the mechanism for GEMA to make a scheme or schemes for the transfer of property, rights or liabilities from a transmission licence holder to the system operator (who will also be a transmission licence holder) or for the creation of rights in favour of the system operator over property, rights or liabilities of a transmission licence holder. This facility is required to ensure that the new trading and transmission arrangements are implemented in

a timely and efficient manner and that the system operator has access to and use of all the property and equipment required to do its job effectively before the new trading and transmission arrangements can commence operation. In particular, GEMA has the power to determine disputes between the transmission licence holders. Only transmission licence holders may apply for the Authority to make a scheme under this Schedule. GEMA will then determine any point of dispute using the criteria set out in the Schedule and will also be able to override a third party's consent where it would otherwise be required.

352. **Schedule 18** also allows for an appeal against GEMA's decision. Aggrieved parties can appeal to the Competition Appeal Tribunal within seven days of the decision being made. The Tribunal has, among other things, the power to overturn, or amend GEMA's determination of any disputed point. Schedule 18 also provides for the Tribunal to have the power to make interim arrangements whilst the Tribunal is assessing the case.

***Section 143 and Schedule 19: Amendments consequential on Chapter 1 of Part 3***

353. Subsection (1) brings Schedule 19 into effect, whilst subsection (2) provides that a transmission licence holder retains his powers under Schedule 4 of the Electricity Act in relation to any geographic area that is no longer part of the area covered by his licence as a result of modifications under section 134 or the making of a licensing scheme under Schedule 17.