

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, SCHEDULE 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 44

PROPERTY SCHEMES

Commencement Information

II Sch. 2 in force at 20.5.2009 by S.I. 2009/1270, art. 2

“SCHEDULE 2A

SECTION 6E

PROPERTY SCHEMES

Scheme-making power

- 1 (1) This paragraph applies where—
 - (a) a tender exercise is held in relation to an offshore transmission licence,
 - (b) any transmission assets have been transferred to the successful bidder or, for operational purposes, it is necessary for any transmission assets to be so transferred, and
 - (c) those assets were not constructed or installed by the successful bidder.
- (2) The Authority may, on an application under paragraph 3, make a scheme (“a property scheme”) providing for—
 - (a) the transfer to the successful bidder of, or
 - (b) the creation in favour of the successful bidder of rights in relation to, property, rights or liabilities.
- (3) In sub-paragraph (1)—
 - (a) “transmission assets” means the transmission system in respect of which the offshore transmission licence is (or is to be) granted or anything which forms part of that system, and
 - (b) the reference to the successful bidder in paragraph (c) includes, if the successful bidder is a body corporate, a reference to any body corporate which was associated with the successful bidder at the time the transmission assets were constructed or installed.
- (4) Until such time as section 180 of the Energy Act 2004 (meaning of “high voltage line”) comes into force, “transmission system” in sub-paragraph (3)(a) includes a system which, if that section were in force, would be a transmission system.

Further provision about the content of a scheme

- 2 (1) A property scheme may also contain—

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- (a) provision for the creation, in relation to property which the scheme transfers, of an interest in or right over the property in favour of the asset owner;
 - (b) provision for the creation of any rights or liabilities as between the asset owner and the successful bidder;
 - (c) provision for imposing on the asset owner or the successful bidder an obligation to enter into a written agreement with, or to execute an instrument of another kind in favour of, the other;
 - (d) provision requiring the successful bidder to pay the asset owner compensation;
 - (e) provision requiring the asset owner to pay the successful bidder compensation;
 - (f) supplemental, incidental and consequential provision.
- (2) The property, rights and liabilities which may be transferred by a property scheme include property, rights or liabilities which would not otherwise be capable of being transferred.
- (3) If a property scheme provides for the division of an estate or interest in land and any rent is—
- (a) payable in respect of the estate or interest under a lease, or
 - (b) charged on the estate or interest,
- the scheme may contain provision for apportionment or division so that one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.
- (4) A property scheme which contains provision which affects a third party may also contain provision requiring the successful bidder or the asset owner to pay the third party compensation.

Applications for schemes

- 3 (1) An application for a property scheme may be made by—
- (a) the preferred bidder,
 - (b) the successful bidder, or
 - (c) a person who owns the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme.
- (2) An application must specify—
- (a) the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme,
 - (b) the name and address of the non-applicant party, and
 - (c) the name and address of each third party whom the applicant considers would be affected by a provision of the proposed property scheme.
- (3) All property, rights and liabilities specified in an application in accordance with subparagraph (2)(a) must belong to the same person.
- (4) A person may make more than one application under this paragraph.

Timing of applications

- 4 An application for a property scheme, in relation to a tender exercise, may only be made at a time when—

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- (a) a notice identifying the preferred bidder has been published under paragraph 35(2) (and not withdrawn), or
 - (b) a notice has been published under paragraph 36 identifying the successful bidder.
- 5 (1) No application may be made for a property scheme after the end of the transitional period.
- (2) Subject to sub-paragraph (3), “the transitional period” means the period of 4 years beginning with the day on which section 92 of the Energy Act 2004 (competitive tenders for offshore transmission licences) comes into force.
- (3) Before the end of the transitional period, the Secretary of State may, by order, extend that period by a period specified in the order.
- (4) An order under sub-paragraph (3) may relate to a particular case, or to cases of a particular description, only.
- (5) The total transitional period in any case must not exceed 7 years.
- (6) Before making an order under sub-paragraph (3), the Secretary of State must give notice of the proposal to extend the transitional period.
- (7) The notice must—
 - (a) state that the Secretary of State proposes to make an order extending the transitional period and set out the terms of the proposed order,
 - (b) state the reasons why the Secretary of State proposes to make the order, and
 - (c) specify the time (not being less than 28 days from the date of publication of the notice under sub-paragraph (8)(b)) within which representations with respect to the proposals may be made.
- (8) The notice must be given—
 - (a) by serving a copy of it on the Authority, and
 - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
 - (i) the owner of any property, right or liability who may have an interest in the making of the proposed order, and
 - (ii) if the order relates to a case where a tender exercise has begun, any person who has submitted an application for the offshore transmission licence to which the exercise relates.

Notifying the non-applicant party

- 6 (1) On receipt of an application for a property scheme, the Authority must serve on the non-applicant party a notice which—
 - (a) invites the non-applicant party to make representations to the Authority about the application within the period specified in the notice (being not less than 21 days) beginning with the day on which the notice is served, and
 - (b) describes the effect of paragraphs 9 and 11.
- (2) A notice under sub-paragraph (1) must be accompanied by—
 - (a) a copy of the application, and
 - (b) a notice under paragraph 16 which complies with the requirements of sub-paragraph (3).

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- (3) The notice under paragraph 16 must require the non-applicant party to provide the Authority, within the period specified in the notice (being not less than 7 days) beginning with the day on which the notice is served, with—
- (a) the name and address of each person to whom sub-paragraph (4) applies, or
 - (b) if the non-applicant party does not consider that there is any person to whom that sub-paragraph applies, a statement to that effect.
- (4) This sub-paragraph applies to a person—
- (a) whom the non-applicant party considers is a third party who would be affected by a provision of the proposed property scheme, and
 - (b) whose name and address were not specified in the application under paragraph 3(2)(c).

Notifying third parties

- 7 (1) As soon as reasonably practicable after receiving the information required by a notice within paragraph 6(2)(b), the Authority must serve on each person within sub-paragraph (2)—
- (a) a copy of the application, and
 - (b) a notice inviting that person to make representations to the Authority about the application within the period specified in the notice (being not less than 21 days) beginning with the day on which the notice is served.
- (2) A person is within this sub-paragraph if the person's name and address were—
- (a) specified in the application in accordance with paragraph 3(2)(c), or
 - (b) provided to the Authority in response to a notice within paragraph 6(2)(b).

Publishing the application

- 8 As soon as reasonably practicable after an application is made for a property scheme, the Authority must publish a notice which—
- (a) states that an application for a property scheme has been made,
 - (b) states the names of the applicant and the non-applicant party, and
 - (c) contains a general description of the property scheme to which the application relates.

Supplementing the application

- 9 (1) The non-applicant party may, by notice served on the Authority during the period mentioned in paragraph 6(1)(a), modify the application so as to specify additional property, rights or liabilities of the asset owner in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme.
- (2) Where an application is modified by a notice under sub-paragraph (1) (a “modification notice”), this Schedule has effect from that time as if any additional property, rights or liabilities specified in the notice had been specified in the application in accordance with paragraph 3(2)(a).
- (3) A modification notice must specify the name and address of each person—

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- (a) whom the non-applicant party considers to be a third party who would be affected by a provision of the proposed property scheme as modified by the notice, and
 - (b) who is not within paragraph 7(2).
- (4) On receipt of a modification notice, the Authority must serve on the applicant a notice (a “warning notice”) which invites the applicant to make representations to the Authority about the modification notice within the period specified in the warning notice (being a period of not less than 21 days) beginning with the day on which the warning notice is served.
- (5) A warning notice must be accompanied by—
 - (a) a copy of the modification notice,
 - (b) a notice under paragraph 16 which complies with the requirements of sub-paragraph (6), and
 - (c) a copy of any information provided by the non-applicant to the Authority in response to a notice within paragraph 6(2)(b).
- (6) The notice under paragraph 16 must require the applicant to provide the Authority, within the period specified in the notice (being not less than 7 days) beginning with the day on which the notice is served, with—
 - (a) the name and address of each person to whom sub-paragraph (7) applies, or
 - (b) if the applicant does not consider that there is any person to whom that sub-paragraph applies, a statement to that effect.
- (7) This sub-paragraph applies to a person—
 - (a) whom the applicant considers is a third party who would be affected by a provision of the proposed property scheme as modified by the modification notice, and
 - (b) whose name and address were not—
 - (i) specified in the application in accordance with paragraph 3(2)(c),
 - (ii) provided to the Authority in response to a notice within paragraph 6(2)(b), or
 - (iii) specified in the modification notice under sub-paragraph (3).
- (8) As soon as reasonably practicable after receiving the information required by a notice within sub-paragraph (5)(b), the Authority must serve on each person within sub-paragraph (9) a notice inviting that person to make representations to the Authority about the modification notice within the period specified in the notice (being a period of not less than 21 days) beginning with the day on which the notice is served.
- (9) A person is within this sub-paragraph if the person's name and address were—
 - (a) specified in the application in accordance with paragraph 3(2)(c),
 - (b) provided to the Authority in response to a notice within paragraph 6(2)(b) or sub-paragraph (5)(b) of this paragraph, or
 - (c) specified in the modification notice.
- (10) A notice under sub-paragraph (8) must be accompanied by—
 - (a) a copy of the modification notice, and
 - (b) if a copy of the application has not previously been served on the person under paragraph 7(1), a copy of the application.

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- 10 As soon as reasonably practicable after the Authority receives a modification notice, the Authority must publish a notice which—
- (a) states that a modification notice has been served on the Authority in relation to an application,
 - (b) states the names of the applicant and the non-applicant party in relation to the application, and
 - (c) contains a general description of the modifications made to the application by the modification notice.

Restricting or withdrawing the application

- 11 (1) Where an application for a property scheme has been made, the applicant and the non-applicant party may, by a notice served by them jointly on the Authority—
- (a) restrict the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed, or
 - (b) withdraw the application.
- (2) Where a notice is served under sub-paragraph (1) the Authority must serve a copy of the notice on any person served with a notice in relation to the application under paragraph 7(1) or 9(8).
- (3) A notice may be served under sub-paragraph (1) at any time before a property scheme is made in response to the application.
- (4) If, at any time, a notice specifying the preferred bidder, in relation to a tender exercise, is withdrawn under paragraph 35, any application for a property scheme previously made, in relation to that exercise, by the preferred bidder or by the asset owner (unless previously withdrawn under sub-paragraph (1)) is treated as withdrawn at that time.
- (5) Where an application is withdrawn by virtue of sub-paragraph (4), the Authority must serve notice to that effect on—
- (a) the asset owner, and
 - (b) any person served with a notice in relation to the application under paragraph 7(1) or 9(8).
- (6) If a notice is served under sub-paragraph (1) or an application is withdrawn by virtue of sub-paragraph (4), the Authority may direct the applicant or the non-applicant party (or both) to make a payment to a person within sub-paragraph (7) in respect of the costs incurred by such a person in connection with the application.
- (7) Those persons are—
- (a) the Authority;
 - (b) any third party affected by a provision of the proposed property scheme.
- (8) A determination under sub-paragraph (6) must be made on the basis of what is just in all the circumstances of the case.
- (9) The Authority must serve notice of a direction given under sub-paragraph (6) on—
- (a) the applicant (if not the recipient of the direction),
 - (b) the non-applicant party (if not the recipient of the direction), and
 - (c) any person served with a notice in relation to the application under paragraph 7(1) or 9(8).

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- (10) Any sums received by the Authority under sub-paragraph (6) are to be paid into the Consolidated Fund.

The Authority's functions in relation to applications

- 12 (1) On an application for the making of a property scheme, the Authority must determine whether the proposed provision in relation to any property, right or liability specified in the application in accordance with paragraph 3(2)(a) is necessary or expedient for operational purposes.
- (2) Sub-paragraph (1) does not apply, in relation to any property, right or liability specified in the application, if the successful bidder and the asset owner agree that the proposed provision, in relation to that property, right or liability, is necessary or expedient for operational purposes.
- (3) If the Authority determines under sub-paragraph (1) that the proposed provision, in relation to any property, right or liability specified in the application, is not necessary or expedient for operational purposes—
- (a) it must refuse the application in relation to the property, right or liability, but
 - (b) it may serve on the applicant and the non-applicant party a notice proposing, in relation to the property, right or liability, alternative provision of a kind mentioned in paragraph 1(2).
- (4) A notice under sub-paragraph (3)(b) must—
- (a) invite the recipient to make representations to the Authority about the proposed alternative provision within the period specified in the notice (being not less than 21 days) beginning with the day on which the notice is served, and
 - (b) be accompanied by a notice under paragraph 16 which complies with the requirements of sub-paragraph (5).
- (5) The notice under paragraph 16 must require the recipient of the notice to provide the Authority, within the period specified in the notice (being not less than 7 days) beginning with the day on which the notice is served, with—
- (a) the name and address of each person to whom sub-paragraph (6) applies, or
 - (b) if the recipient does not consider that there is any such person, a statement to that effect.
- (6) This sub-paragraph applies to a person—
- (a) whom the recipient of the notice considers is a third party who would be affected by the Authority's proposed alternative provision, and
 - (b) whose name and address were not—
 - (i) specified in the application in accordance with paragraph 3(2)(c) or in a modification notice under paragraph 9(3), or
 - (ii) provided to the Authority in response to a notice within paragraph 6(2)(b) or 9(5)(b).
- (7) As soon as reasonably practicable after receiving the information required by a notice within sub-paragraph (4)(b), the Authority must serve on each person within sub-paragraph (8)—
- (a) if a copy of the application has not previously been served on the person under paragraph 7(1) or 9(8), a copy of the application,

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- (b) if a copy of any modification notice has not previously been served on the person under paragraph 9(8), a copy of the notice,
 - (c) a copy of the notice served under sub-paragraph (3)(b), and
 - (d) a notice inviting that person to make representations to the Authority about the proposed alternative provision within the period specified in the notice beginning with the day on which the notice is served.
- (8) A person is within this sub-paragraph if the person's name and address were—
- (a) specified in the application in accordance with paragraph 3(2)(c) or in a modification notice under paragraph 9(3),
 - (b) provided to the Authority in response to a notice within sub-paragraph (4)(b) or paragraph 6(2)(b) or 9(5)(b).
- (9) The period specified under sub-paragraph (7)(d) must be not less than—
- (a) in the case of a person whose name and address were provided to the Authority in response to a notice within sub-paragraph (4)(b), 21 days, and
 - (b) in any other case, 14 days.
- (10) Having considered any representations made in accordance with sub-paragraph (4)(a) or (7)(d), the Authority must determine whether the proposed alternative provision is necessary or expedient for operational purposes.
- (11) If—
- (a) the Authority determines under sub-paragraph (1) that the proposed provision, in relation to any property, right or liability specified in the application, is necessary or expedient for operational purposes,
 - (b) the successful bidder and the asset owner agree that that is the case, or
 - (c) the Authority determines under sub-paragraph (10) that the proposed alternative provision, in relation to any property, right or liability, is necessary or expedient for operational purposes,
- the Authority must, subject to paragraphs 13 and 14(4), make a property scheme in relation to that property, right or liability.
- (12) In this paragraph “the proposed provision”, in relation to any property, right or liability, means the provision of a kind mentioned in paragraph 1(2) which the application proposes is made in relation to that property, right or liability (having regard to any modification under paragraph 9 or restriction under paragraph 11).
- 13 (1) On an application for a property scheme, no scheme may be made until—
- (a) the offshore transmission licence has been issued to the successful bidder, and
 - (b) the relevant co-ordination licence holder has given the Authority, in accordance with the co-ordination licence, a completion notice in relation to the transmission system to which the property scheme relates.
- (2) For this purpose—
- (a) a “completion notice”, in relation to a transmission system, is a notice which states that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system;
 - (b) a property scheme relates to a transmission system if the property, rights and liabilities in respect of which the scheme makes provision of a kind mentioned in paragraph 1(2) are relevant to the performance by the successful bidder of its licensed functions in relation to that system.

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- (3) Until such time as section 180 of the Energy Act 2004 (meaning of “high voltage line”) comes into force—
- (a) the references in sub-paragraphs (1) and (2) to a transmission system include a system which, if that section were in force, would be a transmission system (“an offshore 132 kilovolt system”), and
 - (b) that section is to be treated as if it were in force for the purposes of determining under sub-paragraph (2)(a) whether it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use an offshore 132 kilovolt system.
- (4) In this paragraph—
- “licensed functions” means—
- (a) functions under the offshore transmission licence to which the tender exercise relates, and
 - (b) functions which the successful bidder has, in the capacity of holder of that licence, under or by virtue of any enactment;

“relevant co-ordination licence holder” means—

 - (a) the holder of a co-ordination licence to whom a person has applied (in accordance with any provision made by that licence) for an offer of connection to and use of a transmission system for the purposes of which the tender exercise is held, or
 - (b) where the tender exercise is held for the purposes of a connection request within the meaning of section 6D(3)(b), the holder of a co-ordination licence to whom a connection request within the meaning of section 6D(3)(a) would have been made if section 180 of the Energy Act 2004 had been in force and, accordingly, the tender exercise had been held for the purposes of such a request.

Terms of a property scheme

- 14 (1) Where the Authority is required to make a property scheme, the terms of the scheme must be such as the successful bidder and the asset owner may agree or, if they fail to agree, as the Authority may determine.
- This is subject to sub-paragraphs (2) to (9).
- (2) A property scheme must not provide for any provision to come into operation before the end of the period of 21 days beginning with the day on which the scheme is made.
 - (3) In determining the terms of a scheme under sub-paragraph (1), the Authority must, in particular, determine whether the scheme should include provision for compensation to be paid—
 - (a) by the successful bidder to the asset owner, or
 - (b) by the asset owner to the successful bidder,and, if so, what that provision should be.
 - (4) The Authority may not include in a property scheme provision which would adversely affect a third party unless it determines that it is necessary or expedient for operational purposes for the provision to be made.

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- (5) Where the Authority includes in a property scheme provision which would adversely affect a third party, the Authority must determine whether the scheme should include provision for compensation and, if so, what that provision should be.
- (6) The Authority may include in a property scheme provision for payments to be made by the successful bidder or the asset owner (or both) in respect of costs incurred in connection with the scheme (including the application for the scheme) by—
- (a) the Authority,
 - (b) the successful bidder,
 - (c) the asset owner, or
 - (d) a third party affected by a provision of the property scheme.
- (7) For the purposes of making a determination under sub-paragraph (6), the Authority may have regard to the conduct of the parties mentioned in sub-paragraph (6)(a) to (d).
- (8) Any sums received by the Authority under sub-paragraph (6) are to be paid into the Consolidated Fund.
- (9) For the purposes of this paragraph, a provision of a property scheme adversely affects a third party if that party—
- (a) is affected by the provision (see paragraph 38(2)), and
 - (b) does not consent to the making of the provision by means of the scheme.
- 15 (1) A determination under paragraph 14, so far as relating to any financial matter, must be made on the basis of what is just in all the circumstances of the case.
- (2) A determination under paragraph 14, so far as relating to any other matter, must be made on the basis of what appears to the Authority to be appropriate in all the circumstances of the case having regard, in particular, to what is necessary or expedient for operational purposes.

Additional powers of the Authority

- 16 (1) The Authority may, by notice, require any of the following persons to provide information or assistance in connection with the performance by the Authority of its functions under this Schedule—
- (a) the preferred bidder in relation to a tender exercise;
 - (b) the successful bidder in relation to a tender exercise;
 - (c) the asset owner in relation to a property scheme or an application for such a scheme;
 - (d) the holder of a co-ordination licence;
 - (e) any third party who is or may be affected by a provision of a property scheme or a proposed property scheme.
- (2) If the Authority considers that any other person may be able to provide it with information in respect of any provision of a property scheme or proposed property scheme, it may, by notice, require the person to provide it with such information.
- (3) A notice under this paragraph may specify the period within which the information or assistance is to be provided.

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- (4) If at any time it appears to the Authority that a person has failed to comply with a requirement under sub-paragraph (1) or (2), the Authority may make an application to the court under this paragraph.
- (5) If, on an application under this paragraph, the court decides that the person has failed to comply with the requirement, it may order the person to take such steps as the court directs for securing that the requirement is complied with.
- (6) In this paragraph “the court” means—
- (a) in the case of an application made in England and Wales, the High Court, and
 - (b) in the case of an application made in Scotland, the Court of Session.
- 17 The Authority may engage consultants for the purpose of advising it in relation to the making of a determination under this Schedule.

Notification of property scheme

- 18 (1) This paragraph applies where the Authority makes a property scheme.
- (2) The Authority must, as soon as reasonably practicable, serve a copy of the scheme on—
- (a) the successful bidder,
 - (b) the asset owner, and
 - (c) each third party affected by the scheme whose name and address was—
 - (i) specified in the application for the scheme in accordance with paragraph 3(2)(c) or in a modification notice in relation to that application in accordance with paragraph 9(3), or
 - (ii) provided to the Authority in response to a notice within paragraph 6(2)(b), 9(5)(b) or 12(4)(b).
- (3) The Authority must, as soon as reasonably practicable, publish a notice which—
- (a) states that a property scheme has been made,
 - (b) states the names of the successful bidder and the asset owner in relation to the scheme, and
 - (c) contains a general description of the provision made by the scheme.

Refusal of application or part of application

- 19 (1) This paragraph applies where the Authority—
- (a) determines to refuse an application for a property scheme so far as it relates to any property, right or liability specified in the application in accordance with paragraph 3(2)(a), or
 - (b) determines not to make any alternative provision proposed under paragraph 12(3)(b) in relation to any such property, right or liability.
- (2) The Authority must, as soon as reasonably practicable, serve a notice giving details of the determination on each person mentioned in paragraph 18(2)(a) to (c).
- (3) The Authority may direct the successful bidder or the asset owner to make a payment in respect of the costs incurred in connection with the application by—
- (a) the Authority,
 - (b) the successful bidder,
 - (c) the asset owner, or

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- (d) a third party affected by a provision of the proposed property scheme or any alternative provision proposed under paragraph 12(3)(b).
- (4) The Authority must serve notice of a direction given under sub-paragraph (3) on—
- (a) the successful bidder (if not the recipient of the direction),
 - (b) the asset owner (if not the recipient of the direction), and
 - (c) any person served with a notice in relation to the application under paragraph 7(1), 9(8) or 12(7).
- (5) A determination under sub-paragraph (3) must be made on the basis of what is just in all the circumstances of the case.
- (6) Any sums received by the Authority under sub-paragraph (3) are to be paid into the Consolidated Fund.

Effect of property scheme

- 20 A property scheme, by virtue of this paragraph, has effect according to its terms.
- 21 (1) A transaction of any description effected by or under a property scheme has effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register.
- (2) Subject to that, a transaction of any description effected by or under a property scheme is binding on all persons, despite the fact that it would, apart from this provision, have required the consent or concurrence of any person.
- (3) In this paragraph “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.
- 22 Where—
- (a) an amount of compensation is owed to a person in accordance with a property scheme, or
 - (b) an amount in respect of costs is owed to a person in accordance with such a scheme or with a direction under paragraph 11(6) or 19(3),
- the amount may be recovered by that person.

Review of determinations

- 23 (1) Any person affected by a determination of the Authority under this Schedule may apply to the Competition Appeal Tribunal for a review of the determination.
- (2) An application under sub-paragraph (1) may be made—
- (a) during the relevant appeal period, or
 - (b) with the permission of the Competition Appeal Tribunal, at a later time.
- (3) The relevant appeal period means—
- (a) where the application is in respect of a determination relating to a property scheme which has been made by the Authority, 21 days beginning with the day on which a notice in respect of the scheme is published under paragraph 18(3);
 - (b) in any other case, 21 days beginning with the day on which the determination was made.
- (4) On an application under sub-paragraph (1), the Competition Appeal Tribunal may by order—

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- (a) dismiss the application, or
 - (b) make such other determination as it considers appropriate.
- 24 (1) This paragraph applies where—
 - (a) the Competition Appeal Tribunal makes an order under paragraph 23(4)(b), and
 - (b) the Authority has not made a property scheme in relation to the property, rights or liabilities concerned.
- (2) The Tribunal may include in the order provision requiring the Authority to make a property scheme in relation to that property, or those rights and liabilities.
- (3) Where paragraph 14 applies because of provision under this paragraph, anything the Tribunal has determined is to be treated for the purposes of that paragraph as determined by the Authority.
- 25 (1) This paragraph applies where—
 - (a) the Competition Appeal Tribunal makes an order under paragraph 23(4)(b),
 - (b) the Authority has made a property scheme in relation to the property, rights or liabilities concerned, and
 - (c) the scheme has not come into operation.
- (2) Where the Tribunal's determination is that provision of a kind mentioned in paragraph 1(2) is not, in relation to the property, rights or liabilities concerned, necessary or expedient for operational purposes, it may include in the order provision quashing the scheme.
- (3) In any other case, the Tribunal may include in the order—
 - (a) provision for the scheme to have effect with such amendments with respect to any matter dealt with by the Authority's determination as it thinks fit, and
 - (b) to the extent that the Authority's determination dealt with any financial matter, provision requiring the Authority to redetermine the matter in accordance with the order and to amend the scheme accordingly.
- 26 (1) This paragraph applies where—
 - (a) the Competition Appeal Tribunal makes an order under paragraph 23(4)(b),
 - (b) the Authority has made a property scheme in relation to the property, rights or liabilities concerned, and
 - (c) the scheme has come into operation.
- (2) The Tribunal may include in the order such provision as it thinks fit for the purpose of doing justice between—
 - (a) the successful bidder,
 - (b) the person who was the asset owner immediately before the scheme came into operation, and
 - (c) any third party affected by the scheme,in the light of its determination.
- (3) Without prejudice to the generality of sub-paragraph (2), the Tribunal may include in the order—
 - (a) provision for the transfer of anything transferred by the scheme;
 - (b) provision for the surrender or extinction of rights;

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- (c) provision for the payment of compensation to the successful bidder or the person who was the asset owner immediately before the scheme came into operation;
 - (d) provision for the payment of compensation to a third party affected by the scheme;
 - (e) provision about the payment of costs of the kind mentioned in paragraph 14(6).
- (4) Any sums received by the Authority by virtue of sub-paragraph (3)(e) are to be paid into the Consolidated Fund.
- 27 (1) An order under paragraph 23(4)(b) may include provision for the award of interest at such rate and for such period as the Competition Appeal Tribunal thinks fit.
- (2) Where the application made under paragraph 23(1) is for a review of a determination under paragraph 11(6) or 19(3), the Tribunal may include in an order under paragraph 23(4)(b) one or both of the following—
- (a) provision amending or revoking any direction made as a result of the determination;
 - (b) provision equivalent to any direction which could have been made by the Authority under paragraph 11(6) or 19(3).

Interim arrangements pending review of determination

- 28 (1) This paragraph applies where—
- (a) a person makes an application under paragraph 23(1) for the review of a determination, and
 - (b) the Authority has not made a property scheme in relation to the property, rights or liabilities to which the determination relates.
- (2) The Competition Appeal Tribunal may, at any time before an order is made under paragraph 23(4), on application by the successful bidder or the asset owner make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.
- (3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power to make provision for the successful bidder to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the Tribunal thinks fit.
- 29 (1) This paragraph applies where—
- (a) a person makes an application under paragraph 23(1) for the review of a determination, and
 - (b) the Authority has made a property scheme in relation to the property, rights or liabilities to which the determination relates.
- (2) The Competition Appeal Tribunal may, at any time before an order is made under paragraph 23(4), on application by—
- (a) the successful bidder,
 - (b) if the scheme has not come into operation, the asset owner,
 - (c) if the scheme has come into operation, the person who was the asset owner immediately before it did so, or
 - (d) a third party who is affected by any provision of the property scheme,

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make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.

- (3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power—
- (a) to make provision postponing or suspending the operation of any provision of the scheme for such period, and on such terms, as the Tribunal thinks fit;
 - (b) to make provision for the successful bidder, or an applicant within sub-paragraph (2)(c), to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period and on such terms as the Tribunal thinks fit.
- 30 In exercising its powers under paragraph 28 or 29, the Competition Appeal Tribunal must have regard, in particular, to what is necessary or expedient for operational purposes.
- 31 Paragraphs 28 or 29 are without prejudice to any powers of the Competition Appeal Tribunal to make orders on an interim basis under rules under section 15 of the Enterprise Act 2002 (c. 40).
- 32 (1) If an order under paragraph 28 or 29 is registered in England and Wales in accordance with rules of court or any practice direction, it is enforceable as an order of the High Court.
- (2) An order under paragraph 28 or 29 may be recorded for execution in the Books of Council and Session and is to be enforceable accordingly.
- (3) Subject to rules of court or any practice direction, an order under paragraph 28 or 29 may be registered or recorded for execution by a person entitled to any right under the interim arrangements for which the order makes provision.
- (4) Sub-paragraphs (1) to (3) apply to an order on an interim basis made under rules under section 15 of the Enterprise Act 2002 in connection with an application under paragraph 23(1) as they apply to an order under paragraph 28 or 29.

Appeal on a point of law

- 33 (1) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this Schedule to the appropriate court.
- (2) An appeal under this paragraph requires the permission of the Tribunal or of the appropriate court.
- (3) In this paragraph “the appropriate court” means—
- (a) in the case of Tribunal proceedings in England and Wales, the Court of Appeal, and
 - (b) in the case of Tribunal proceedings in Scotland, the Court of Session.

Change of asset owner during application process

- 34 (1) Where any property, rights or liabilities specified in an application in accordance with paragraph 3(2)(a) are transferred by the asset owner to another person (“the new asset owner”) after the application is made, this Schedule has effect as if—
- (a) references to the asset owner included the new asset owner, and

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- (b) anything done by or in relation to the asset owner had been done by or in relation to the new asset owner.
- (2) In the case of property, rights or liabilities treated as specified in an application by virtue of paragraph 9(2), sub-paragraph (1) applies as if for “the application is made” there were substituted “ the modification notice is served on the Authority ”.

The preferred bidder

- 35 (1) The preferred bidder, in relation to a tender exercise, is the person whose name and address is specified in a notice which has been published under sub-paragraph (2) (and has not been withdrawn under sub-paragraph (4)).
- (2) Where a tender exercise is held, as soon as the Authority is satisfied that it will grant the offshore transmission licence to a particular person if certain matters are resolved to the Authority's satisfaction, it must publish a notice to that effect.
- (3) The notice must—
- (a) specify the name and address of the person, and
 - (b) describe, in general terms, those matters.
- (4) The Authority may withdraw a notice under sub-paragraph (2) by publishing a notice to that effect.
- (5) A notice published under sub-paragraph (2) must be withdrawn before a subsequent notice may be published under that sub-paragraph in relation to the same tender exercise.

The successful bidder

- 36 (1) The successful bidder, in relation to a tender exercise, is the person to whom, as a result of that exercise, the offshore transmission licence has been or is to be granted.
- (2) Where a tender exercise is held, as soon as the Authority determines to grant the offshore transmission licence to a person, it must publish a notice to that effect.
- (3) The notice must specify the name and address of the successful bidder.

Associated bodies corporate

- 37 (1) For the purposes of this Schedule, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them, and sub-paragraphs (2) to (6) set out the circumstances in which one body corporate (“A”) controls another (“B”).
- (2) Where B is a company, A controls B if A possesses or is entitled to acquire—
- (a) one half or more of the issued share capital of B,
 - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
 - (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or

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- (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A controls B if A—
- (a) holds a majority of the voting rights in B,
 - (b) is a member of B and has a right to appoint or remove a majority of other members, or
 - (c) is a member of B and controls alone or pursuant to an agreement with other members, a majority of the voting rights in B.
- (4) In sub-paragraph (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.
- (6) In determining whether, by virtue of sub-paragraphs (2) to (5), A controls B, A is to be taken to possess—
- (a) any rights and powers possessed by a person as nominee for it, and
 - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this sub-paragraph).

Interpretation

38 (1) In this Schedule—

“the asset owner”—

- (a) in relation to an application for a property scheme, means the owner of the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme;
- (b) in relation to a property scheme, means the owner of the property, rights and liabilities in relation to which provision of such a kind is included in the scheme;

“co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place and the whole or a part of which is at a relevant place;

“functions” includes powers and duties;

“modification notice” is to be construed in accordance with paragraph 9;

“non-applicant party” means—

- (a) in the case of an application made by the preferred bidder or the successful bidder, the asset owner, and
- (b) in the case of an application made by the asset owner, the successful bidder or, if a notice has not yet been published under paragraph 36, the preferred bidder;

“operational purposes” means the purposes of performing any functions which the successful bidder has, or may in future have—

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- (a) under or by virtue of the offshore transmission licence which has been, or is to be, granted as a result of the tender exercise, or
- (b) under or by virtue of any enactment, in the successful bidder's capacity as holder of the licence;

“preferred bidder”, in relation to a tender exercise, is to be construed in accordance with paragraph 35;

“property scheme” is to be construed in accordance with paragraph 1;

“relevant place” means a place in Great Britain, in the territorial sea adjacent to Great Britain or in a Renewable Energy Zone;

“successful bidder”, in relation to a tender exercise, is to be construed in accordance with paragraph 36;

“tender exercise” has the same meaning as in section 6D;

“third party”, in relation to a property scheme or proposed property scheme in connection with a tender exercise, means a person other than the preferred bidder, the successful bidder, or the asset owner.

- (2) For the purposes of this Schedule, a provision of a property scheme affects a third party if that party's consent or concurrence would be required to the making of the provision otherwise than by means of the scheme.”

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