



# Energy Act 2010

## 2010 CHAPTER 27

### PART 3

#### REGULATION OF GAS AND ELECTRICITY MARKETS

VALID FROM 16/07/2012

#### *Exploitation of electricity trading and transmission arrangements*

#### **18 Power to make modifications**

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 6(1)(a) of the Electricity Act 1989 (generation licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of limiting or eliminating the circumstances in which, or the extent to which, a licence holder may obtain an excessive benefit from electricity generation in a particular period (“the relevant period”).
- (3) The licence holder obtains an excessive benefit from electricity generation in the relevant period if—
  - (a) the licence holder and the transmission system operator enter into arrangements (“the relevant arrangements”) (whether or not under the electricity trading and transmission arrangements), and
  - (b) one or more of the following conditions is met.
- (4) Condition 1 is that—

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- (a) the licence holder fails to notify electricity generation for the relevant period that would be economic to carry out, and
  - (b) under the relevant arrangements, the licence holder may be, or is to be, paid an excessive amount by the transmission system operator in connection with an increase in electricity generation in the relevant period.
- (5) Condition 2 is that, under the relevant arrangements—
- (a) the licence holder may, or is to, pay the transmission system operator an excessively low amount, or
  - (b) the transmission system operator may, or is to, pay the licence holder an excessively high amount,
- in connection with a reduction in electricity generation in the relevant period.
- (6) Condition 3 is that, under the relevant arrangements, the transmission system operator may, or is to, pay the licence holder an excessively high amount in connection with the licence holder preparing for the possible cessation of generation of electricity by particular generating plant in the relevant period.
- (7) Condition 4 is that—
- (a) the relevant arrangements relate to an increase or reduction in electricity generation in the relevant period, and
  - (b) under the arrangements, the licence holder may, or is to, obtain an excessive benefit.
- (8) Modifications made under subsection (1) may include provision relating to one or more of the following—
- (a) the operation of generating stations by the licence holder (including the amount of electricity generated and offers to generate electricity);
  - (b) amounts payable by, or to, the licence holder or any other person;
  - (c) offers by the licence holder or any other person to pay amounts.
- (9) Before making modifications under subsection (1), the Secretary of State must consult—
- (a) holders of licences under section 6(1)(a) of the Electricity Act 1989,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.
- (10) Subsection (9) may be satisfied by consultation before, as well as by consultation after, this Act comes into force.
- (11) In this section—
- (a) a reference to a licence holder notifying electricity generation for a period is a reference to the licence holder notifying the transmission system operator before the start of the period, in accordance with the electricity trading and transmission arrangements, of the electricity generation which the licence holder proposes to undertake in that period;
  - (b) a reference to a licence holder's notified electricity generation for a period is to be construed accordingly.
- (12) In this section, a reference to an increase or reduction in electricity generation in the relevant period—
- (a) is a reference to an increase or reduction in comparison to the notified electricity generation for that period; and

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- (b) includes an increase or reduction in generation of electricity by particular generating plant, whether or not there is an overall increase or reduction in electricity generation in that period.
- (13) In subsection (3)(a), the reference to the licence holder and the transmission system operator entering into arrangements includes a reference to one of them making a bid or offer to the other; and references in this section to the relevant arrangements are to be construed accordingly.
- (14) In this section—
  - “electricity trading and transmission arrangements” means arrangements relating to the trading and transmission of electricity in Great Britain that are in place under Chapter 1 of Part 3 of the Energy Act 2004;
  - “transmission system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in the Electricity Act 1989 — see section 4(4) of that Act).

## **19 The Authority's interpretation and enforcement of modifications**

- (1) The Authority must publish a document setting out advice and information on the Authority's intended approach to the interpretation and enforcement of modifications.
- (2) Before publishing a document under this section, the Authority must consult—
  - (a) the holder of any licence under section 6(1)(a) of the Electricity Act 1989,
  - (b) the Secretary of State, and
  - (c) such other persons as the Authority think it is appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, this section comes into force.
- (4) In this section “modification” means a modification under section 18(1).

## **20 Final and provisional orders: appeals**

- (1) This section applies in relation to any final or provisional order under section 25 of the Electricity Act 1989 which relates to a relevant condition (within the meaning of that section) that has effect by virtue of the exercise of the power in section 18(1).
- (2) The licence holder to whom the order relates may appeal to the Tribunal against the order.
- (3) On an appeal under this section, the Tribunal may do either or both of the following—
  - (a) redetermine the appealed matter, in whole or in part;
  - (b) remit the appealed matter, in whole or in part, to the Authority.
- (4) If the Tribunal redetermines the appealed matter, the Tribunal may do one or more of the following—
  - (a) uphold the order, in whole or in part;
  - (b) set aside the order, in whole or in part;
  - (c) substitute for the order, in whole or in part, the Tribunal's own final or provisional order.

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- (5) Unless the Tribunal orders otherwise, an obligation of a person to comply with the order is not affected by the making of an appeal under this section against the order.
- (6) Subsections (2) to (5) do not restrict the power to make Tribunal rules; and those subsections are subject to Tribunal rules.
- (7) Except as provided by this section, the validity of the order may not be questioned by any legal proceedings whatever.
- (8) A decision of the Tribunal on an appeal under this section has the same effect as, and may be enforced in the same manner as, a decision of the Authority.
- (9) In this section—
  - “appealed matter” means the matter to which the order relates;
  - “Tribunal” means the Competition Appeal Tribunal;
  - “Tribunal rules” means rules under section 15 of the Enterprise Act 2002.

## **21 Penalties: appeals**

- (1) This section applies in relation to any penalty under section 27A of the Electricity Act 1989 which relates to a relevant condition (within the meaning of that section) that has effect by virtue of the exercise of the power in section 18(1).
- (2) The licence holder upon whom the penalty is imposed may appeal to the Tribunal against—
  - (a) the imposition of the penalty,
  - (b) the amount of the penalty, or
  - (c) any date by which the penalty, or any part of it, is required to be paid.
- (3) On an appeal under this section, the Tribunal may do any of the following—
  - (a) uphold the penalty;
  - (b) set aside the penalty;
  - (c) substitute for the penalty a penalty of an amount decided by the Tribunal;
  - (d) vary any date by which the penalty, or any part of it, is required to be paid.
- (4) If an appeal is made under this section, the penalty is not required to be paid until the appeal has been determined.
- (5) Subsections (2) to (4) do not restrict the power to make Tribunal rules; and those subsections are subject to Tribunal rules.
- (6) Except as provided by this section, the validity of the penalty may not be questioned by any legal proceedings whatever.
- (7) In the case of an appeal under this section—
  - (a) a decision of the Tribunal has the same effect as, and may be enforced in the same manner as, a decision of the Authority;
  - (b) section 27A(10) of the Electricity Act 1989 (payment into the Consolidated Fund) applies to penalties which the Tribunal substitutes under subsection (3)(c) above as it applies to penalties imposed by the Authority.
- (8) In this section—
  - “Tribunal” means the Competition Appeal Tribunal;

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“Tribunal rules” means rules under section 15 of the Enterprise Act 2002.

## **22 Further appeals**

- (1) An appeal lies to the appropriate court—
  - (a) on a point of law arising from any decision of the Tribunal under section 20;
  - (b) from a decision of the Tribunal under section 21(3)(a), (b) or (c); and
  - (c) on a point of law arising from any other decision of the Tribunal under section 21.
- (2) An appeal under this section—
  - (a) may be brought by a party to the proceedings before the Tribunal; and
  - (b) requires the permission of the Tribunal or the appropriate court.
- (3) In this section—
  - “appropriate court” means—
    - (a) the Court of Appeal, or
    - (b) in the case of an appeal from Tribunal proceedings in Scotland, the Court of Session;
  - “Tribunal” means the Competition Appeal Tribunal.

## **23 Expiry of power**

- (1) The power in section 18(1) may not be exercised after—
  - (a) the end of the period of 5 years beginning with the commencement day, or
  - (b) such longer period (if any) as is specified in an order under subsection (2).
- (2) The Secretary of State may by order specify for the purposes of this section a period of—
  - (a) more than 5 years, but
  - (b) not more than 7 years,beginning with the commencement day.
- (3) No order may be made under subsection (2) after the end of the period of 5 years beginning with the commencement day.
- (4) Before making an order under subsection (2), the Secretary of State must consult—
  - (a) holders of licences under section 6(1)(a) of the Electricity Act 1989,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.
- (5) All modifications cease to have effect after the expiry day.
- (6) But that does not—
  - (a) affect the previous operation of a modification,
  - (b) prevent the exercise of any function, power or right of any person in respect of the previous operation of a modification, or
  - (c) affect any penalty, order or other enforcement action in respect of the previous operation of a modification.
- (7) The Secretary of State may make such provision modifying a regulatory instrument as he or she considers appropriate in consequence of subsections (1) and (5).

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- (8) Before making a modification under subsection (7), the Secretary of State must consult—
- (a) holders of licences under section 6(1)(a) of the Electricity Act 1989,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.
- (9) In this section—
- “commencement day” means the day on which section 18 comes into force;
  - “expiry day” means the day on which the power in section 18(1) ceases to be exercisable by virtue of this section;
  - “modification” means a modification under section 18(1);
  - “regulatory instrument” means a licence, standard conditions, or a document or agreement, as mentioned in section 18(1).

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