



# Energy Act 2013

## 2013 CHAPTER 32

### PART 2

#### ELECTRICITY MARKET REFORM

### CHAPTER 9

#### MISCELLANEOUS

#### **63 Exemption from liability in damages**

- (1) The Secretary of State may include in regulations under section 6 or 27, or under paragraph 6 of Schedule 2, provision that—
- (a) the national system operator,
  - (b) any director of the national system operator, or
  - (c) any employee, officer or agent of the national system operator,
- is not liable in damages for anything done or omitted in the exercise or purported exercise of a relevant function specified in the regulations.
- (2) A relevant function is a function conferred by or by virtue of Chapter 2, 3 or 4.
- (3) Provision made by virtue of subsection (1) may not exempt a person from liability for an act or omission which—
- (a) is shown to be in bad faith;
  - (b) is unlawful by virtue of section 6(1) of the Human Rights Act 1998 (public authorities not to act incompatibly with convention rights);
  - (c) is a breach of a duty owed by virtue of section 27(4) of EA 1989 (compliance with final or provisional order under that Act).
- (4) Whenever—
- (a) the Secretary of State makes or revokes regulations of a kind mentioned in subsection (1) or exercises a modification power under section 26 or 37 or paragraph 19 of Schedule 2, and

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(b) provision is not in force under subsection (1) in respect of a relevant function, the Secretary of State must publish a statement of the reasons why no such provision is in force.

(5) In this section “national 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 EA 1989 - see section 4(4) of that Act).

#### **64 Licence modifications: general**

- (1) This section applies in relation to a power to make modifications conferred by—
  - (a) section 26, 37, 45, 49 or 50, or
  - (b) paragraph 19 of Schedule 2.
- (2) Before making modifications under a power to which this section applies (“a relevant power”) the Secretary of State must lay a draft of the modifications before Parliament.
- (3) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (4) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (5) Subsection (3) does not prevent a new draft of proposed modifications being laid before Parliament.
- (6) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (7) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (8) A relevant power—
  - (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently in different cases or circumstances;
  - (c) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (9) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a relevant power—
  - (a) may make different provision for different cases;
  - (b) need not relate to the activities authorised by the licence;
  - (c) may do any of the things authorised for licences of that type by section 7(2A), (3), (4) or (6A) of EA 1989.
- (10) The Secretary of State must publish details of any modifications made under a relevant power as soon as reasonably practicable after they are made.

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- (11) If under a relevant power the Secretary of State makes modifications of the standard conditions of a licence, the Authority must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (12) A modification made under a relevant power of part of a standard condition of a licence 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 EA 1989.
- (13) The power conferred by a relevant power to “modify” (in relation to licence conditions or a document) includes a power to amend, add to or remove, and references to modifications are to be construed accordingly.

## **65 Consequential amendments**

- (1) In section 3A of EA 1989 (principal objective and general duties), in subsection (2) (b) for “or sections 26 to 29 of the Energy Act 2010” substitute “, sections 26 to 29 of the Energy Act 2010 or Part 2 of the Energy Act 2013”.
- (2) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences)—
  - (a) after paragraph (e) omit “or”;
  - (b) after paragraph (f) insert “or  
(g) under the Energy Act 2013.”.
- (3) In section 137(3) of the Energy Act 2004 (standard conditions of transmission licences)—
  - (a) after paragraph (d) omit “or”;
  - (b) after paragraph (e) insert “, or  
(f) under the Energy Act 2013.”.
- (4) In section 146(5) of the Energy Act 2004 (standard conditions for electricity interconnectors), for “or under section 98 of the Energy Act 2011” substitute “, under section 98 of the Energy Act 2011 or under section 37 or 45 of the Energy Act 2013.”.

## **66 Review of certain provisions of Part 2**

- (1) As soon as reasonably practicable after the end of the period of 5 years beginning with the day on which this Act is passed, the Secretary of State must carry out a review of the provisions of the following Chapters of this Part—
  - (a) Chapter 2 (contracts for difference);
  - (b) Chapter 3 (capacity market);
  - (c) Chapter 5 (conflicts of interest and contingency arrangements);
  - (d) Chapter 6 (access to markets);
  - (e) Chapter 7 (the renewables obligation: transitional arrangements);
  - (f) Chapter 8 (emissions performance standard).
- (2) The Secretary of State must set out the conclusions of the review in a report.
- (3) The report must, in particular—
  - (a) set out the objectives of the provisions of each Chapter subject to review,

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- (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.
- (4) The Secretary of State must lay the report before Parliament.

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