



Energy Act 2013

2013 CHAPTER 32

PART 2

ELECTRICITY MARKET REFORM

CHAPTER 5

CONFLICT OF INTEREST AND CONTINGENCY ARRANGEMENTS

45 Modifications of transmission and other licences: business separation

- (1) The Secretary of State may modify—
 - (a) a condition of a particular licence under section 6(1)(a) to (e) of EA 1989 (generation, transmission, distribution, supply and interconnector licences);
 - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
 - (c) a document maintained in accordance with the conditions of licences under section 6(1)(a) to (e) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of imposing measures for or in connection with securing an appropriate degree of business separation between the carrying on of—
 - (a) system operation functions (or any particular such function), and
 - (b) any other functions (including, in a case where a measure relates to a particular system operation function, other system operation functions).
- (3) “System operation functions” are—
 - (a) functions authorised under a transmission licence of co-ordinating and directing the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, and
 - (b) EMR functions.

Status: This is the original version (as it was originally enacted).

- (4) A degree of business separation is “appropriate” for the purposes of subsection (2) if the Secretary of State determines it to be necessary or desirable as a consequence of the conferral of EMR functions.
- (5) In making that determination, the Secretary of State must have regard to the extent to which a measure of the kind mentioned in subsection (2) may affect the efficient and effective carrying on of system operation functions and other functions authorised under a transmission licence.
- (6) The measures referred to in subsection (2) include, in particular, measures for or in connection with securing any of the following—
- (a) the body corporate that carries on EMR functions does not carry on other functions;
 - (b) limitations are in place in respect of the control or influence that may be exercised over that body by another group undertaking (within the meaning of the Companies Acts - see section 1161 of the Companies Act 2006);
 - (c) separations are in place between—
 - (i) the locations where system operation functions, and other functions, are carried on;
 - (ii) the information technology systems used for the purposes of the carrying on of system operation functions and other functions;
 - (d) the accounting arrangements in relation to system operation functions are separate from those in relation to other functions;
 - (e) persons who participate in the carrying on of system operation functions do not participate in the carrying on of other functions;
 - (f) persons with access to information obtained in the carrying on of system operation functions do not have access to information obtained in the carrying on of other functions.
- (7) The power conferred by subsection (1) may be exercised so as to impose a requirement on a person holding a transmission licence—
- (a) to prepare annual reports about how measures within subsection (2) have been put in place for the year in question, and
 - (b) to submit such reports to either or both of the Secretary of State and the Authority.
- (8) Before making a modification under subsection (1), the Secretary of State must consult—
- (a) the holder of any licence being modified,
 - (b) the Authority, and
 - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (9) Subsection (8) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (10) In this section—
- “EMR functions” means functions conferred by or by virtue of Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts);
 - “transmission”, “transmission licence” and “transmission system” have the same meaning as in Part 1 of EA 1989.