

ENERGY ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 3: Special Administration Regime for Energy Licensees

Section 159 and Schedules 20 and 21: Conduct of energy administration, transfer schemes etc

386. This section gives effect to Schedules 20 and 21 and applies the rule making power in section 411 of the [Insolvency Act 1986 \(c.45\)](#) for the purpose of giving effect to this Chapter.
387. [Schedule 20](#) provides for certain provisions of Schedule B1 of the 1986 Insolvency Act (introduced by section 248 and Schedule 16 of the [Enterprise Act 2002 \(c.40\)](#)) to have effect in relation to energy administration. A version of Schedule B1 to the 1986 Act as amended to apply to energy administration is available on the DTI website¹. The Schedule also grants the Secretary of State a power to make modifications to the provisions of insolvency law having effect in the case of unregistered companies in relation to energy administration (paragraph 33). This power is subject to the negative resolution procedure. It also grants the Secretary of State the power to make such modifications to primary legislation relating to insolvency including the Energy Act as he considers appropriate in relation to energy administration (paragraph 46). This power is subject to the affirmative resolution procedure.
388. [Schedule 21](#) covers the content and effect of transfer schemes which can be made as described in section 155(3) i.e. transfers to another company or companies as a going concern of so much of the protected energy company's assets as are necessary to ensure that the objective of the energy administration is met. The transfer may include assets other than the network system (vehicles, for example) but must include enough assets to constitute a going concern as a transportation, transmission or distribution company. It may be the case that all of the protected energy company's assets will be transferred to one company but the protected energy company may also be separated into several going concerns; for example in the case of an electricity distribution company it might be possible to separate the assets on geographical lines creating several smaller regional distribution networks. All transfers are subject to veto or amendment by the Secretary of State.
389. [Paragraphs 1 to 4](#) of Schedule 21 enable a protected energy company (through its energy administrator) to make a scheme or schemes for the transfer of property, rights and liabilities to a new company subject to the approval of the Secretary of State, who in turn must consult GEMA. Paragraph 5 provides that all or part of a licence can be included in a transfer scheme, whilst paragraph 6 provides that powers and duties which fall to the old energy company (i.e. the protected energy company in respect of which the energy administration order was made) under statutory provisions can be transferred to the extent that they are exercisable or required by the new energy company given the extent of the transfer of the business to it. The Secretary of State is given the power

¹ www.dti.gov.uk/energy/leg_and_reg/acts/index.shtml

to modify the scheme before giving approval although he will require the consent of the old energy company and the new energy company to the modifications (paragraph 3). Similarly he may modify it subsequently with the consent of those parties and after consulting GEMA (paragraph 9).

390. [Paragraph 7](#) of Schedule 21 deals with a number of matters which provide for the smooth transition of property, rights etc from the protected energy company to the new energy company.
391. [Paragraphs 10 to 11](#) of Schedule 21 provide for cases where the energy company is a foreign company or foreign property, rights and liabilities are being transferred.