



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.

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- (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.

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46 Power to transfer EMR functions

- (1) The Secretary of State may by order provide that EMR functions carried out by the national system operator are instead to be carried out by an alternative delivery body.
- (2) An order under subsection (1) may be made only if—
 - (a) the national system operator has requested the making of the order,
 - (b) an energy administration order is in force in relation to the national system operator,
 - (c) the unsatisfactory performance condition is met (see subsection (3)),
 - (d) it appears to the Secretary of State necessary or desirable to make the order as a result of a change, occurring after the coming into force of this section, in the persons having control of the national system operator (see subsection (4)), or
 - (e) it otherwise appears to the Secretary of State necessary or desirable to make the order in connection with furthering the purposes of—
 - (i) encouraging low carbon electricity generation (within the meaning of Chapter 2), or
 - (ii) providing capacity to meet the demands of consumers for the supply of electricity in Great Britain.
- (3) The unsatisfactory performance condition is met if—
 - (a) it appears to the Secretary of State that the national system operator has been failing to carry out its EMR functions in an efficient and effective manner,
 - (b) the Secretary of State has given notice in writing to the national system operator providing particulars of the failure,
 - (c) a period of at least 6 months has passed since the giving of the notice, and
 - (d) it appears to the Secretary of State that the failure so specified is continuing.
- (4) “Control”, in relation to the national system operator, means the power of a person to secure—
 - (a) by means of the holding of shares or the possession of voting power in relation to the national system operator or any other body corporate, or
 - (b) as a result of any powers conferred by the articles of association or other document regulating the national system operator or any other body corporate,that the affairs of the national system operator are conducted in accordance with the person's wishes.
- (5) The Secretary of State must, subject to subsection (6), consult the national system operator before making an order under subsection (1) on the grounds mentioned in subsection (2)(e).
- (6) Subsection (5) does not apply where the Secretary of State considers the urgency of the case makes it inexpedient to consult the national system operator before making the order.
- (7) Where an EMR function has previously been transferred from the national system operator to an alternative delivery body by an order under subsection (1), the Secretary of State may by a further order provide that the function is instead to be carried out by—
 - (a) a different alternative delivery body, or
 - (b) the national system operator.

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- (8) “Alternative delivery body”, in relation to an order under subsection (1) or (7), means such person as may be specified in the order.
- (9) An order under subsection (1) or (7) that specifies as the alternative delivery body a person other than the Secretary of State requires the consent of that person.
- (10) An order under subsection (7) providing for EMR functions to be carried out by the national system operator requires the consent of the national system operator.
- (11) In this section—
 - “EMR functions” means functions conferred on the national system operator by or by virtue of Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts);
 - “energy administration order” has the same meaning as in Chapter 3 of Part 3 of the Energy Act 2004 (see section 154(1) of that Act);
 - “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).

47 Orders under section 46: fees and other supplementary provision

- (1) A transfer of functions order may provide for an alternative delivery body to require fees to be paid for, or in connection with, the performance of any EMR functions conferred on the body by virtue of the order.
- (2) The amount of any such fee is the amount specified in, or determined by or in accordance with, the order.
- (3) A transfer of functions order may relate—
 - (a) to all EMR functions that the national system operator or the alternative delivery body is carrying out, or
 - (b) only to such of those functions as are specified in the order.
- (4) A transfer of functions order may—
 - (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision and savings;
 - (c) make different provision for different cases or circumstances or for different purposes.
- (5) Consequential provision made under subsection (4)(a) may amend, repeal or revoke any provision made by or under an Act, whenever passed or made (including this Act).
- (6) A transfer of functions order is to be made by statutory instrument.
- (7) A statutory instrument containing a transfer of functions order is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Schedule 3 (which confers power on the Secretary of State to make transfer schemes in connection with the making of transfer of functions orders) has effect.
- (9) If the Secretary of State makes a transfer of functions order under which any EMR functions of the national system operator are transferred to an alternative delivery body, the Secretary of State must consider the extent to which (if at all) a licence

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modification power should be exercised as a consequence of the national system operator ceasing to carry out the functions that are transferred.

- (10) In subsection (9) “licence modification power” means a power conferred by section 26, 37 or 45 to modify—
- (a) a condition of a transmission licence granted to the national system operator under section 6(1)(b) of EA 1989,
 - (b) the standard conditions incorporated in such licences under section 8A of that Act, or
 - (c) a document maintained in accordance with the conditions of such licences, or an agreement that gives effect to a document so maintained.
- (11) In this section—
- “alternative delivery body”, “EMR functions” and “national system operator” have the same meaning as in section 46;
 - “transfer of functions order” means an order under section 46(1) or (7).

48 Energy administration orders

- (1) The Energy Act 2004 is amended as follows.
- (2) In section 154 (energy administration orders), in subsection (3) for “section 155” substitute “—
- (a) section 155(1), and
 - (b) section 155(9) (if and to the extent that section 155(9) applies in relation to the company).”
- (3) In section 155 (objective of an energy administration), after subsection (7) insert—
- “(8) Subsection (9) applies if the company in relation to which an energy administration order is made has functions conferred by or by virtue of—
- (a) Chapter 2, 3 or 4 of Part 2 of the Energy Act 2013, or
 - (b) an order made under section 46 of that Act (power of Secretary of State to transfer certain functions).
- (9) The objective of an energy administration (in addition to the objective mentioned in subsection (1)) is to secure—
- (a) that those functions are and continue to be carried out in an efficient and effective manner; and
 - (b) that it becomes unnecessary, by one or both of the means mentioned in subsection (2), for the energy administration order to remain in force for that purpose.
- (10) The duty under section 154(3), so far as it relates to the objective mentioned in subsection (9)—
- (a) applies only to the extent that securing that objective is not inconsistent with securing the objective mentioned in subsection (1);
 - (b) ceases to apply in respect of any function of a company if an order is made under section 46 of the Energy Act 2013 as a result of which the function is transferred from that company to another person.”

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 68(4) inserted by [2023 c. 52 s. 302\(4\)](#)