

SCHEDULES

SCHEDULE 2

INVESTMENT CONTRACTS

PART 1

INTRODUCTORY

Meaning of “investment contract”

- 1 (1) In this Schedule an “investment contract” means a contract with an electricity generator which—
- (a) is entered into by the Secretary of State, whether before or after this Schedule comes into force, on or before the earlier of 31st December 2015 and the date on which a definition of an “eligible generator” first comes into force by virtue of section 10(3),
 - (b) if it relates to an electricity generating station in Northern Ireland, is entered into with the consent of the Department of Enterprise, Trade and Investment,
 - (c) includes an obligation for the parties to make payments under the contract based on the difference between a strike price and a reference price in relation to electricity generated, and
 - (d) is laid before Parliament in accordance with sub-paragraph (5).
- (2) If the contract is entered into before the coming into force of this Schedule, the obligation referred to in sub-paragraph (1)(c) must be conditional on the being in force of this Schedule.
- (3) In sub-paragraph (1)—
- “electricity generator”, in relation to an investment contract, means—
 - (a) a person who at the time the contract is entered into intends to establish an electricity generating station or alter an existing station;
 - (b) a person who at that time intends to operate or participate in the operation of an electricity generating station that is to be established or altered;
 - (c) a person who at that time has an interest in a company falling within paragraph (a) or (b);
 - “reference price” means the sum that is specified in, or determined under, the contract as the reference price in respect of electricity generated in the period specified in, or determined under, the contract;
 - “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland;
 - “strike price” means the sum that is specified in, or determined under, the contract as the strike price in respect of electricity generated in the period specified in, or determined under, the contract.

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- (4) In the case of a contract entered into with more than one person, the reference in sub-paragraph (1)(c) to the parties is a reference to the Secretary of State and any of those persons who is an electricity generator.
- (5) A contract is laid before Parliament in accordance with this sub-paragraph if it is laid by the Secretary of State at any time after the introduction into Parliament of the Bill that becomes this Act—
 - (a) with a statement falling within sub-paragraph (6), and
 - (b) after the Secretary of State has excluded from the contract any confidential information (see paragraph 3).
- (6) A statement falls within this sub-paragraph if it is a statement—
 - (a) that the Secretary of State considers that payments falling within sub-paragraph (1)(c) which would be made under the contract would encourage low carbon electricity generation,
 - (b) that the Secretary of State considers that without the contract there is a significant risk that the electricity generation to which the contract relates will not occur or will be significantly delayed, and
 - (c) summarising the regard that the Secretary of State has had, in deciding to enter the contract, to the matters set out in subsection (2) of section 5.
- (7) In sub-paragraph (6) “low carbon electricity generation” means electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases; and “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.
- (8) The Secretary of State must publish an investment contract in the form in which it was laid before Parliament as soon as reasonably practicable after it is laid.

Varied investment contract

- 2 (1) An investment contract is a “varied investment contract” for the purposes of this paragraph if the variation—
 - (a) is agreed at any time before or after this Schedule comes into force, and
 - (b) will, in the opinion of the Secretary of State, materially increase the likely cost to consumers of electricity.
- (2) A varied investment contract is an “investment contract” for the purposes of this Schedule only if it is laid before Parliament (at any time after the introduction into Parliament of the Bill that becomes this Act)—
 - (a) with a statement of why, having regard to the likely cost to consumers of electricity, the Secretary of State believes that the variation is appropriate, and
 - (b) after the Secretary of State has excluded from it any confidential information (see paragraph 3).
- (3) The Secretary of State must publish a varied investment contract in the form in which it was laid before Parliament as soon as reasonably practicable after it is laid.
- (4) This paragraph does not apply in respect of a variation which is made in accordance with the terms of an investment contract.

Confidential information

- 3 (1) For the purposes of paragraphs 1 and 2, “confidential information” means specified information to which sub-paragraph (3) applies and in relation to which it is an initial term of the contract that it should not be disclosed.
- (2) For the purposes of sub-paragraph (1)—
- (a) a term is an initial term if it is agreed at the time the investment contract is entered into or, in relation to a varied investment contract, at the time the variation is agreed;
 - (b) “specified” means specified in the initial term.
- (3) This sub-paragraph applies to information if it is—
- (a) not the strike price or the reference price;
 - (b) information which, in the opinion of the Secretary of State at the time the initial term is agreed, constitutes a trade secret;
 - (c) information the disclosure of which, in the opinion of the Secretary of State at that time, would or would be likely to prejudice the commercial interests of any person;
 - (d) information the disclosure of which would, in the opinion of the Secretary of State at that time, constitute a breach of confidence actionable by any person.

Interpretation for the purposes of this Schedule

- 4 (1) In this Schedule—
- “CFD” is to be construed in accordance with section 6(2);
 - “CFD counterparty” is to be construed in accordance with section 7(2);
 - “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
 - (a) section 6(1)(d) of EA 1989, or
 - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
 - “investment contract counterparty” is to be construed in accordance with paragraph 5;
 - “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);
 - “regulations” means regulations made under paragraph 6.
- (2) References in this Schedule to a CFD counterparty (apart from the references in paragraphs 9(1)(c) and (d) and 16) are to a CFD counterparty acting as a counterparty in relation to an investment contract (where any property, rights or liabilities under the contract have been transferred to the CFD counterparty by a scheme under paragraph 16).

Investment contract counterparty

- 5 (1) The Secretary of State may by order made by statutory instrument designate an eligible person to be a counterparty for investment contracts.
- (2) A person is eligible if the person is—
- (a) a company formed and registered under the Companies Act 2006, or

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- (b) a public authority, including any person any of whose functions are of a public nature.
- (3) A designation may be made only with the consent of the person designated.
- (4) The Secretary of State may exercise the power to designate so that more than one designation has effect under this paragraph, but only if the Secretary of State considers it necessary for the purpose of ensuring that—
 - (a) liabilities under an investment contract are met,
 - (b) arrangements entered into for purposes connected to an investment contract continue to operate, or
 - (c) directions given to an investment contract counterparty continue to have effect.
- (5) A designation ceases to have effect if—
 - (a) the Secretary of State by order made by statutory instrument revokes the designation, or
 - (b) the person withdraws consent to the designation by giving not less than 3 months' notice in writing to the Secretary of State.
- (6) As soon as reasonably practicable after a designation ceases to have effect the Secretary of State must make a transfer scheme under paragraph 16 to ensure the transfer of all rights and liabilities under any investment contract to which the person who has ceased to be an investment contract counterparty was a party.
- (7) If necessary for the purposes of a transfer scheme required to be made by virtue of sub-paragraph (6), the Secretary of State must, so far as reasonably practicable, exercise the power to designate so as to ensure that at least one designation has effect under this paragraph.
- (8) Regulations may include provision about the period of time for which, and the circumstances in which, a person who has ceased to be an investment contract counterparty is to continue to be treated as an investment contract counterparty for the purposes of the regulations.