

DRAFT STATUTORY INSTRUMENTS

2015 No. 0000

ELECTRICITY

**The Contracts for Difference (Allocation) (Amendment)
Regulations 2015**

Made - - - - 2015

Coming into force in accordance with regulation 1(1)

The Secretary of State has before making these Regulations—

- (a) consulted the persons listed in section 24(1)(a) to (g) of the Energy Act 2013^(a) and such other persons as the Secretary of State considered it appropriate to consult; and
- (b) had regard to the matters in section 5(2) of that Act.

In accordance with section 6(8) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 6(1) and (6), 12(1) to (3), 13(1) to (3), 16 and 19 of the Energy Act 2013, makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contracts for Difference (Allocation) (Amendment) Regulations 2015 and come into force on the day after the date on which they are made.

(2) These Regulations do not extend to Northern Ireland.

Amendment

2. These Regulations amend the Contracts for Difference (Allocation) Regulations 2014^(b) (“the Allocation Regulations 2014”).

New definitions

3. In regulation 2 (interpretation) of the Allocation Regulations 2014, insert at the appropriate place—

(a) 2013 c. 32.
(b) S.I. 2014/2011.

““associated” has the same meaning as it has in paragraph 37 of Schedule 2A to the Electricity Act 1989(a);”;

““excluded site” has the meaning given by regulation 14A(6);”;

““exclusion period” has the meaning given by regulation 14A(6);”;

““exemption certificate” has the meaning given by regulation 14C(9);”;

““exemptions request notice” has the meaning given by regulation 14C(2);”;

““a non-delivery case” has the meaning given by regulation 14A(1)(b);”;

““a non-signature case” has the meaning given by regulation 14A(1)(a);”;

““offer lapsed” in relation to the offer of a CFD is to be construed in accordance with regulation 11(1) of the Standard Terms Regulations 2014;”;

““offer of a CFD” has the meaning given in regulation 10(1) of the Standard Terms Regulations 2014;”;

““the Standard Terms Regulations 2014” means the Contracts for Difference (Standard Terms) Regulations 2014(b);”;

““temporary site exclusion” has the meaning given by regulation 14A(2) and (3);”.

Amendment of regulation 4

4.—(1) Regulation 4 (establishing allocation rounds) of the Allocation Regulations 2014 is amended as follows.

(2) In paragraph (1), for “Subject to paragraphs (2) to (4)” substitute “Subject to paragraphs (2) to (4) and (6)”.

(3) After paragraph (5) insert—

“(6) Where an exemptions request notice is given, an allocation round notice which establishes a round which immediately follows the exemptions request notice must not state a commencement date which is earlier than 25 working days after the closing date stated in the exemptions request notice.”.

Further excluded applications

5. After regulation 14 (excluded applications) of the Allocation Regulations 2014 insert—

“Temporary site exclusions and exemption certificates

14A.—(1) This regulation and regulations 14B to 14D apply where—

(a) the offer lapsed in respect of a successful application (“a non-signature case”); or

(b) a CFD was entered into and—

(i) the CFD was terminated on a date which is earlier than 13 months after the date on which the CFD notification was given in respect of the CFD; and

(ii) the reason for the termination was that the eligible generator failed to achieve the stages for delivery of the generating station which were required under the CFD (“a non-delivery case”).

(2) Subject to paragraphs (4) and (5), an eligible generator may not make an application in respect of a CFD unit where—

(a) the site of the main generating structures of the eligible generating station to which the application relates is the same as, or includes any part of, an excluded site; and

(a) 1989 c. 29. Schedule 2A was inserted by section 44(4) of, and Schedule 2 to, the Energy Act 2008 (c. 32). An amendment has been made to Schedule 2A which is not relevant to this provision.

(b) S.I. 2014/2012.

- (b) the application is made in an allocation round where the commencement date of the round occurs during the exclusion period which applies to the excluded site.
- (3) The exclusion described in paragraph (2) is a “temporary site exclusion”.
- (4) An eligible generator may in an allocation round make an application to which a temporary site exclusion applies, if the eligible generator—
 - (a) holds an exemption certificate in respect of the application; and
 - (b) provides that certificate to the delivery body with the application.
- (5) An eligible generator may in an allocation round make an application to which a temporary site exclusion applies where—
 - (a) no exemptions request notice is published in respect of the allocation round; or
 - (b) an exemptions request notice is published in respect of the allocation round and the date on which the temporary site exclusion is published in accordance with regulation 14D occurs—
 - (i) 5 or fewer working days before; or
 - (ii) on or after,
 the closing date stated in the exemptions request notice.
- (6) In this regulation—
 - “excluded site” means the site of the main generating structures of the eligible generating station described in the successful application in respect of which—
 - (a) the offer lapsed; or
 - (b) the CFD was entered into;
 - “exclusion period” means, where a site is an excluded site by reason of—
 - (a) a non-signature case, the period of 13 months which commences with the date on which the CFD notification was given; or
 - (b) a non-delivery case, the period which—
 - (i) commences with the date on which the CFD was terminated; and
 - (ii) ends on the date which is 13 months after the date on which the CFD notification was given in respect of the CFD.

Grounds for granting exemption certificates

14B.—(1) Where a request is made in accordance with regulation 14C(6), the Secretary of State may give an exemption certificate to an eligible generator (“E”) who intends to make an application to which a temporary site exclusion applies.

(2) No exemption certificate may be given unless the Secretary of State is satisfied that at least one of the following grounds applies in respect of the intended application.

- (3) Ground 1 is that—
 - (a) the area of site A is less than 51% of the area of the excluded site; and
 - (b) the area of the excluded site is less than 51% of the area of site A.
- (4) Ground 2 is that—
 - (a) E holds a relevant property interest in all of site B;
 - (b) the interest was held by E before 14th October 2014;
 - (c) E is not the person (“P1”) who, as appropriate, did not accept the offer of a CFD before the offer lapsed or was a party to the CFD which was terminated; and
 - (d) where E is a body corporate or a limited liability partnership and E is not P1, E is not associated with P1.
- (5) Ground 3 is that—

- (a) E holds a relevant property interest in all of site B;
 - (b) the interest did not exist before 14th October 2014;
 - (c) E acquired that interest from a person (“P2”) who held a relevant property interest in all of site B before 14th October 2014;
 - (d) E is not the person (“P3”) who, as appropriate, did not accept the offer of a CFD before the offer lapsed or was a party to the CFD which was terminated;
 - (e) P2 is not P3 and where P2 is a body corporate or a limited liability partnership and P2 is not P3, P2 is not associated with P3; and
 - (f) where E is a body corporate or a limited liability partnership and E is not P3, E is not associated with P3.
- (6) Ground 4 (which applies only where a temporary site exclusion arises by reason of a non-signature case) is that—
- (a) relevant court proceedings were commenced or concluded after the last date on which the successful application could have been withdrawn from the allocation round; and
 - (b) the applicant’s ability to comply with the terms of the CFD which was offered would have been subject to a “Material Adverse Effect” (as that term was defined in the CFD) by reason of—
 - (i) those proceedings being commenced; or
 - (ii) the result of the concluded proceedings.
- (7) Ground 5 (which applies only where a temporary site exclusion arises by reason of a non-delivery case) is that the CFD was terminated by reason of a “Qualifying Change in Law” or “Relevant Construction Event” (as those terms were defined in the CFD).
- (8) In this regulation—
- “relevant court proceedings” means—
- (a) court proceedings made against the applicant who made the successful application; or
 - (b) a judicial review or a statutory appeal in relation to any applicable planning consents provided in compliance with regulation 23 in respect of the successful application;
- “relevant property interest” means any of the following—
- (a) an agreement for lease;
 - (b) an option for lease;
 - (c) a freehold;
 - (d) a leasehold;
- “site A” means the site of the main generating structures of the generating station to be described in the intended application;
- “site B” means site A to the extent to which it coincides with the excluded site.

Requests for exemption certificates

14C.—(1) Paragraph (2) applies where Secretary of State is minded to establish an allocation round (“a prospective round”).

(2) Where this paragraph applies, subject to paragraph (3), by no later than 50 working days before the date (“the prospective commencement date”) which the Secretary of State is minded to set as the commencement date of a prospective round, the Secretary of State must publish a notice (“an exemptions request notice”).

(3) An exemptions request notice is not required where, by the date at which a notice would otherwise be required under paragraph (2), no temporary site exclusion applies at that date in respect of the prospective round.

(4) An exemptions request notice must apply to each prospective round which is to have the same prospective commencement date.

(5) An exemptions request notice must—

- (a) state the prospective commencement date;
- (b) identify each prospective round to which the notice applies;
- (c) describe the types of eligible generator and eligible generating station to which each prospective allocation round is likely to apply;
- (d) state the delivery years which are likely to apply to each prospective round; and
- (e) state the date by which a request for an exemption certificate must be made to the Secretary of State (“the closing date”), which must be no earlier than 15 working days after the date of the notice.

(6) A request for an exemption certificate must—

- (a) only be made by an eligible generator;
- (b) be in the form and manner required by the Secretary of State;
- (c) include details of the application (“the intended application”) which the eligible generator intends to make;
- (d) specify the prospective round in which the intended application is to be made;
- (e) include the plan (“the site plan”) contained in, or referred to by, the applicable planning consents which are to accompany the intended application which identifies the site of the main generating structures of the generating station;
- (f) state each ground of exemption relied upon and include the information necessary to enable the Secretary of State to determine whether or not each such ground applies; and
- (g) be made by the closing date.

(7) By no later than 25 working days after the closing date, the Secretary of State must give the eligible generator who has made the request—

- (a) an exemption certificate; or
- (b) a notice (“an exemption refusal notice”) stating that the request has been refused and giving reasons for the refusal.

(8) The Secretary of State must as soon as practicable give a copy of each exemption certificate and exemption refusal notice to—

- (a) the CFD counterparty; and
- (b) the delivery body.

(9) In this regulation—

“exemption certificate” means a document which—

- (a) includes a summary of the intended application and the site plan and includes (or refers) to a plan which identifies the excluded site; and
- (b) states—
 - (i) each ground of exemption which the Secretary of State has determined applies to the intended application; and
 - (ii) that the Secretary of State has determined that the eligible generator named in the document may make the intended application in the prospective round identified in the document;

“ground of exemption” means any of the grounds 1 to 5 described in regulation 14B.

Register of sites to which a temporary site exclusion applies

14D.—(1) The CFD counterparty must establish and maintain a register of each excluded site to which a temporary site exclusion applies and the register must contain—

- (a) the grid reference co-ordinates and such other information, including a plan to a suitable scale, which enables each such site to be readily identified;
- (b) the exclusion period applicable to each such site;
- (c) in a non-signature case, the name of the eligible generator who made the successful application in respect of which the offer lapsed; and
- (d) in a non-delivery case, the name of the eligible generator who was a party to the CFD which was terminated.

(2) The register must be made publicly available.”.

Amendment of regulation 51

6. In regulation 51 (successful applications determined by the Authority) of the Allocation Regulations 2014, in paragraph (8) for “regulation 43(2)” substitute “regulation 42(2)”.

Date	<i>Name</i> [Minister][Secretary] of State Department of Energy and Climate Change
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made further to the powers contained in Chapter 2 (contracts for difference) of Part 2 (electricity market reform) of the Energy Act 2013 (c. 32). They make amendments to the Contracts for Difference (Allocation) Regulations 2014 (S.I. 2014/2011) (“the 2014 Regulations”).

Regulation 3 inserts new definitions into regulation 3 of the 2014 Regulations in relation to new regulations 14A to 14D.

Regulation 4 amends regulation 4 of the 2014 Regulations to provide for a minimum period to expire before an allocation round may commence where an exemptions request notice is given under regulation 14C.

Regulation 5 inserts regulations 14A to 14D into the 2014 Regulations. Those regulations make provision for a further type of application which is excluded from an allocation round—

- (a) *regulation 14A* provides that where a CFD is offered but the offer lapses or where a CFD is terminated in certain cases earlier than 13 months after the date of the CFD notification in respect of the CFD, the site of the main structures of the eligible generating station is an excluded site during an exclusion period. During the exclusion period, no application may be made in respect of a CFD unit where the site of the main structures of the eligible generating station under that application is the same as, or includes any part of, the excluded site (“a temporary site exclusion”), unless an exemption certificate, given by the Secretary of State, is held by the applicant or the circumstances in paragraph (5) of the regulation apply;
- (b) *regulation 14B* provides for the grounds on which the Secretary of State may give an exemption certificate;

- (c) *regulation 14C* sets out the process which the Secretary of State must follow before an allocation round is established in order to allow a person to request an exemption certificate in respect of that round and sets out the process in relation to such a request;
- (d) *regulation 14D* requires the CFD counterparty to maintain a register, to be made publicly available, of each excluded site to which a temporary site exclusion applies.

Regulation 6 corrects a cross-reference error in regulation 51(8) of the 2014 Regulations.

A full impact assessment of the effect that the CFD regime will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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