

*Draft Regulations laid before Parliament under sections 57(9) and 331(3) of the Energy Act 2023,
for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2023 No. XXX

ENERGY

**The Hydrogen Production Revenue Support (Directions,
Eligibility and Counterparty) Regulations 2023**

Made - - - - *******
Coming into force - - *******

Before making these Regulations, the Secretary of State has in accordance with section 85 of the Energy Act 2023(1) consulted the persons listed in section 85(2).

In accordance with sections 57(9) and 331(3) of that Act, a draft of these Regulations has been approved by resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 57, 58(2), 58(3), 66(2), 66(3), 66(4), 66(5) and 83(1) of that Act, makes the following Regulations—

Citation, commencement, extent, interpretation and application

1.—(1) These Regulations may be cited as the Hydrogen Production Revenue Support (Directions, Eligibility and Counterparty) Regulations 2023 and come into force on the day after the day on which they are made (“the commencement date”).

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) References to a numbered section are to that section as numbered in the Energy Act 2023.

(4) These Regulations apply for the purposes of a hydrogen production revenue support contract(2) entered into pursuant to a direction made by the Secretary of State under section 66(1).

Meaning of “eligible low carbon hydrogen producer”

2.—(1) In this regulation—

“standard compliant hydrogen” means hydrogen produced in accordance with the low carbon hydrogen standard;

(1) 2023 c. 52.

(2) A “hydrogen production revenue support contract” is defined by section 65(2) of the Energy Act 2023 which for the purposes of these Regulations means a contract entered into by a hydrogen production counterparty pursuant to a direction made by the Secretary of State under section 66(1).

“the low carbon hydrogen standard” means the document published by the Secretary of State in April 2023 entitled “UK Low Carbon Hydrogen Standard - Version 2” or such standard as may be from time to time published for the purposes of these Regulations by the Secretary of State⁽³⁾.

(2) Where, pursuant to regulation 2(1) (low carbon hydrogen standard), the Secretary of State publishes a new or revised low carbon hydrogen standard for the purposes of these Regulations, the publication of the new or revised standard must include, or be accompanied by, a statement in writing that it is published to replace the previous version of the standard.

(3) A low carbon hydrogen producer is, for the purposes of Chapter 1 of Part 2 of the Energy Act 2023, an “eligible low carbon hydrogen producer”⁽⁴⁾ in relation to proposals it makes for the production of standard compliant hydrogen where—

- (a) the Secretary of State issues an invitation to low carbon hydrogen producers to apply for financial support (in the form of a hydrogen production revenue support contract) in the carrying out of proposals they make for the production of standard compliant hydrogen;
- (b) in response to that invitation, the low carbon hydrogen producer, in accordance with the requirements of the invitation, applies for such financial support in the carrying out of its proposals; and
- (c) the Secretary of State assesses that if the proposals are carried out, hydrogen produced as a result would be standard compliant hydrogen.

(4) A low carbon hydrogen producer is also an “eligible low carbon hydrogen producer” in respect of proposals made by it for the production of hydrogen, where—

- (a) before the commencement date, the Secretary of State issued an invitation to hydrogen producers to apply for financial support in the carrying out of proposals made by them for the production of hydrogen;
- (b) before the commencement date, the low carbon hydrogen producer applied in accordance with the terms of the invitation for financial support; and
- (c) the Secretary of State assessed before or after the commencement date that the proposals made by the low carbon hydrogen producer are capable of meeting the first version of the UK Low Carbon Hydrogen Standard published in July 2022.

(5) But a low carbon hydrogen producer is not to be regarded as an eligible low carbon hydrogen producer if its proposal to produce standard compliant hydrogen involves the use of existing facilities without the carrying out of works to increase the capacity of those facilities to produce such hydrogen.

(6) A person who is an eligible low carbon hydrogen producer is not subsequently rendered ineligible merely on account of the publication of a new version of the low carbon hydrogen standard, but a direction issued by the Secretary of State pursuant to section 66(1) may require a hydrogen production revenue support contract to be offered on terms that require compliance with a later version of the standard.

Directions pursuant to section 66(1) of the Energy Act 2023

3.—(1) A direction given by the Secretary of State to a hydrogen production counterparty⁽⁵⁾ pursuant to section 66(1), must—

-
- (3) Paper copies of the UK Low Carbon Hydrogen Standard are available from the Department for Energy Security and Net Zero.
 - (4) The expression “low carbon hydrogen producer” is defined by section 65(7) of the Energy Act 2023 as “a person who carries on (or is to carry on) in the United Kingdom activities of producing hydrogen which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases”; “greenhouse gas” has the same meaning as section 92(1) of the Climate Change Act 2008.
 - (5) The expression “hydrogen production counterparty” means a person designated under section 65(1) of the Energy Act 2023 to be a counterparty for hydrogen production revenue support contracts – see section 65(3).

- (a) be in writing;
 - (b) specify the date on which it is given;
 - (c) specify the name of the eligible low carbon hydrogen producer (and its registered number if it is a company) with whom the counterparty is required to offer to contract;
 - (d) specify the terms that must be included in the hydrogen production revenue support contract to be offered by the hydrogen production counterparty to the eligible low carbon hydrogen producer;
 - (e) prohibit the hydrogen production counterparty from modifying those terms (whether by making additions, omissions, amendments, substitutions or otherwise) when offering to contract except with the prior written consent of the Secretary of State;
 - (f) specify the date by the end of which the hydrogen production counterparty must comply with the direction; and
 - (g) specify the length of time for which the offer must be open for acceptance by the eligible low carbon hydrogen producer.
- (2) The date specified for the purposes of paragraph (1)(f), must—
- (a) in the case of a direction given on a working day, be no earlier than the twentieth working day beginning with the day on which the direction is given;
 - (b) in the case of a direction given on a day that is not a working day, be no earlier than the twentieth working day beginning with the first working day following the day on which the direction is given.
- (3) The Secretary of State must send a copy of the direction to the eligible low carbon hydrogen producer specified in it by the end of the fifth working day following the day on which the direction is given.
- (4) For the purposes of this regulation, “working day” means any day except a Saturday, a Sunday, Christmas day, Good Friday or a bank holiday within the meaning of the Banking and Financial Dealings Act 1971 in England and Wales.

Directions ceasing to have effect

- 4.—(1) A direction given to a hydrogen production counterparty under section 66(1) ceases to have effect (and any offer made by the hydrogen production counterparty pursuant to it lapses), if—
- (a) the hydrogen production counterparty receives from the eligible low carbon hydrogen producer to whom the offer is made, a notice in writing rejecting the offer (which includes any case where a counter-offer is made by the eligible low carbon hydrogen producer);
 - (b) no written acceptance of the offer is received by the hydrogen production counterparty from the eligible low carbon hydrogen producer to whom the offer is made, by the end of the period within which the hydrogen production counterparty requires acceptance of the offer to be received by it; or
 - (c) the direction is revoked by the Secretary of State pursuant to regulation 5 (Revocation of a direction by the Secretary of State).
- (2) Where an offer lapses in the circumstances referred to in paragraph (1), the hydrogen production counterparty must forthwith notify the eligible low carbon hydrogen producer of that fact.

Revocation of a direction by the Secretary of State

- 5.—(1) The Secretary of State may by notice in writing revoke a direction given pursuant to section 66(1) provided that, where an offer has been made pursuant to that direction, that offer has not been accepted in writing by the eligible low carbon hydrogen producer to which it is made.

(2) A notice given under paragraph (1) is of no effect unless it is delivered to the eligible low carbon hydrogen producer named in that direction and the hydrogen production counterparty.

(3) A notice given under paragraph (1) must specify the date on which it is made and identify the direction to which it relates.

Publication of hydrogen production revenue support contracts

6.—(1) A hydrogen production counterparty must, subject to any redaction required by virtue of paragraph (2), publish each hydrogen production revenue support contract to which it is a party as soon as reasonably practicable.

(2) The hydrogen production counterparty must redact from a hydrogen production revenue support contract required to be published by virtue of paragraph (1), any parts of that contract which—

- (a) a term of that contract provides should be redacted from the contract as published;
- (b) the Secretary of State by notice in writing requires the hydrogen production counterparty to redact; or
- (c) contain personal data.

(3) Paragraph (2) does not apply to the low carbon hydrogen strike price (as defined in paragraph 8 of the Schedule).

(4) The Secretary of State may only give the hydrogen production counterparty a notice in writing under paragraph (2)(b), where the Secretary of State considers that those parts of the contract that the Secretary of State requires to be redacted contain information which—

- (a) constitutes a trade secret; or
- (b) if disclosed, would—
 - (i) be likely to be harmful to the commercial interests of any person; or
 - (ii) give rise to an actionable breach of confidence.

(5) Nothing in this regulation prevents the inclusion on the register established and maintained under regulation 7(2) of information that the hydrogen production counterparty is required to enter onto that register.

Register of hydrogen production revenue support contracts

7.—(1) A hydrogen production counterparty must, as soon as is reasonably practicable, assign a unique identifier to any hydrogen production revenue support contract to which it is a party.

(2) A hydrogen production counterparty must establish and maintain a register in accordance with the requirements of the Schedule to these Regulations.

(3) The hydrogen production counterparty must make arrangements for access to the register to be made available online.

(4) The hydrogen production counterparty must make such arrangements as are reasonable in the circumstances, to make the register available for inspection at its premises by any person who requests such access in writing.

Estimate of storage and transport costs to be provided by the Secretary of State

8.—(1) This regulation applies where the costs to be taken into account in calculating sums payable under a hydrogen production revenue support contract include the costs of infrastructure to be used for either or both of the following activities—

- (a) the storage of hydrogen produced pursuant to that contract;

(b) the transport of hydrogen produced pursuant to that contract.

(2) Where this regulation applies, the Secretary of State must provide the hydrogen production counterparty to that contract with separate estimates in relation to the costs referred to in paragraph (1)(a) and paragraph (1)(b), as applicable.

(3) The estimates must be expressed in pounds sterling per megawatt hour of hydrogen produced.

Hydrogen production counterparties - notification of defaults

9.—(1) A hydrogen production counterparty must promptly notify the Secretary of State if it is, or considers that it is likely to be, unable to perform a function conferred on it under or by virtue of—

(a) the Energy Act 2023;

(b) subordinate legislation made under that Act; or

(c) a contract it has entered into in pursuance of that Act or that subordinate legislation.

(2) The hydrogen production counterparty must provide such assistance as the Secretary of State may require with a view to securing the performance of that function, including the provision of such information as the Secretary of State may require.

Date

Name
Parliamentary Under Secretary of State
Department for Energy Security and Net Zero

SCHEDULE

Regulation7(2)

REGISTER OF HYDROGEN PRODUCTION REVENUE SUPPORT CONTRACTS

PART 1

DUTIES OF A HYDROGEN PRODUCTION COUNTERPARTY

1. A hydrogen production counterparty must maintain the register required to be kept by virtue of regulation 7 in accordance with the requirements set out in this Schedule.
2. The hydrogen production counterparty must create an entry on the register in respect of each hydrogen production revenue support contract to which it is a party.
3. The hydrogen production counterparty may, in addition to any information that it is required to enter onto the register, enter onto the register any other information which it considers would facilitate the administration of hydrogen production revenue support contracts.

PART 2

INFORMATION IDENTIFYING THE CONTRACT AND
THE ELIGIBLE LOW CARBON HYDROGEN PRODUCER

The unique identifier

4. The hydrogen production counterparty must enter onto the register the unique identifier assigned to each hydrogen production revenue support contract pursuant to regulation 7(1).

Information regarding the low carbon hydrogen producer

5. The hydrogen production counterparty must enter onto the register in respect of each hydrogen production revenue support contract that it is party to—
 - (a) the name of the eligible low carbon hydrogen producer who is a party to that contract;
 - (b) the address for correspondence with the eligible low carbon hydrogen producer; and
 - (c) any unique identifier (for example, a company registration number) assigned to the eligible low carbon hydrogen producer by a public authority in the United Kingdom.

PART 3

INFORMATION REGARDING THE FACILITIES WHERE
THE LOW CARBON HYDROGEN IS PRODUCED

6. The hydrogen production counterparty must, in relation to each hydrogen production revenue support contract to which it is a party, enter onto the register—
 - (a) the name of the facility where the eligible low carbon hydrogen producer is to produce, or producing, the hydrogen in pursuance of that hydrogen production revenue support contract;
 - (b) such map grid references as are reasonably necessary to identify the location of the facility where hydrogen is, or is to be, produced pursuant to that hydrogen production revenue support contract;

- (c) a brief description of the technology used or to be used to produce the hydrogen, including any feedstock used in the production of the hydrogen (for example natural gas);
- (d) the identity of any carbon dioxide transport and storage operator being used or to be used by the eligible low carbon hydrogen producer;
- (e) the initial estimated capacity of the facility to be used to produce hydrogen agreed pursuant to the hydrogen production revenue support contract; and
- (f) the final installed capacity of the facility used, or to be used, to produce hydrogen agreed pursuant to the hydrogen production revenue support contract.

PART 4

INFORMATION ABOUT THE COMMENCEMENT AND DURATION OF ACTIVITIES PURSUANT TO THE CONTRACT ETC.

7.—(1) A hydrogen production counterparty must, in relation to each hydrogen production revenue support contract to which it is a party, enter the following information onto the register—

- (a) the date agreed pursuant to that contract on which it is intended to start producing hydrogen(6);
- (b) the dates of the beginning and end of any period agreed, pursuant to the hydrogen production revenue support contract, within which it is intended to start producing hydrogen(7);
- (c) the date the eligible low carbon hydrogen producer notifies pursuant to that contract that it expects to be the date on which it will be eligible to receive payments, updated quarterly(8);
- (d) the date notified by the eligible low carbon hydrogen producer as the date on which it has met the necessary conditions under that contract entitling it to receive payments under the contract(9);
- (e) the last day of any period agreed between the eligible low carbon hydrogen producer and the hydrogen production counterparty by which the facility must be fully operational(10); and
- (f) the date on which the contract expires or, in the event of the earlier termination of the contract, the date on which the contract terminated(11).

(2) But the hydrogen production counterparty must omit from the register the information required by sub-paragraph (1)(c) where—

- (a) the eligible low carbon hydrogen producer requests this in writing; and
- (b) the hydrogen production counterparty considers that if the information were the subject of a request for disclosure under the Freedom of Information Act 2000(12), or the Environmental Information Regulations 2004(13), the hydrogen production counterparty would be entitled to withhold the information from disclosure.

(6) Referred to in draft contracts prepared in anticipation of the coming into force of these Regulations as the “target commissioning date”.

(7) Referred to in draft contracts prepared in anticipation of the coming into force of these Regulations as the “target commissioning window”.

(8) Referred to in draft contracts prepared in anticipation of the coming into force of these Regulations as the “expected start date”.

(9) Referred to in draft contracts prepared in anticipation of the coming into force of these Regulations as the “start date”.

(10) Referred to in draft contracts prepared in anticipation of the coming into force of these Regulations as the “longstop date”.

(11) Referred to in draft contracts prepared in anticipation of the coming into force of these Regulations as the “specified expiry date”.

(12) 2000 c. 36.

(13) S.I. 2004/3391.

PART 5

THE LOW CARBON HYDROGEN STRIKE PRICE

Meaning of “low carbon hydrogen strike price”

8.—(1) In this Part “low carbon hydrogen strike price” means the price determined under a hydrogen production revenue support contract expressed in pounds sterling per megawatt hour, so as to ascertain the amount, if any, which is payable under the contract by the hydrogen production counterparty or the eligible low carbon hydrogen producer in respect of hydrogen produced by the eligible low carbon hydrogen producer.

(2) The hydrogen production counterparty must enter onto the register—

- (a) the low carbon hydrogen strike price determined on the coming into existence of the contract (or, where this is not available, the formula used to calculate it); and
- (b) as soon as reasonably practicable after the last day of each calendar month, the low carbon hydrogen strike price prevailing on that day.

9.—(1) This paragraph only applies in a case where, pursuant to a hydrogen production revenue support contract, the facility producing the hydrogen involves the capture and storage of carbon dioxide.

(2) The hydrogen production counterparty must enter onto the register—

- (a) the gas reference price (or the source of the gas reference price);
- (b) the natural gas multiplier; and
- (c) the non-gas strike price.

(3) In this paragraph—

“gas reference price” means the price of feedstock used in the calculation of the low carbon hydrogen strike price as set by, or determined pursuant to, the hydrogen production revenue support contract;

“natural gas multiplier” means the multiplier as set by, or determined pursuant to, the hydrogen production revenue support contract which is to be applied to the gas reference price in the process of calculating the low carbon hydrogen strike price; and

“non-gas strike price” is the price arrived at by deducting from the low carbon hydrogen strike price the product of the calculation of the gas reference price multiplied by the natural gas multiplier.

Storage and transport costs

10. The hydrogen production counterparty must, where applicable, enter onto the register in respect of each hydrogen production revenue support contract—

- (a) the estimate of the cost of storage infrastructure provided to the counterparty by the Secretary of State under regulation 8(2) (estimate of storage and transport costs to be provided by the Secretary of State); and
- (b) the estimate of the cost of transport infrastructure provided to the counterparty by the Secretary of State under regulation 8(2).

Sales cap in respect of the production of hydrogen under a hydrogen production revenue support contract

11. The hydrogen production counterparty must, in respect of each hydrogen production revenue support contract, enter onto the register the maximum hydrogen production for the term of the hydrogen production revenue support contract agreed pursuant to the terms of that contract together with any subsequent adjustment.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the offering by a hydrogen production counterparty designated under section 65 of the Energy Act 2023 of contracts for the production of hydrogen by eligible low carbon hydrogen producers (referred to in the Act as “hydrogen production revenue support contracts”). Such contracts must be offered following a direction from the Secretary of State pursuant to section 66(1) of the 2023 Act. A direction may only be made in favour of an “eligible low carbon hydrogen producer”.

Section 66(4) of the Act provides that the Secretary of State must make regulations which define the meaning of “eligible”. This is achieved by regulation 2. This provides that a low carbon hydrogen producer is “an eligible low carbon hydrogen producer” if—

- (a) the Secretary of State invites applications from low carbon hydrogen producers for the provision of financial support (in the form of a hydrogen production revenue support contracts) for the carrying out of proposals made by them for the production of hydrogen in accordance with the low carbon hydrogen standard (defined as the document published by the Secretary of State in April 2023 entitled “UK Low Carbon Hydrogen Standard – version 2” and hydrogen meeting the requirements of the standard being referred to in the Regulations as “standard compliant hydrogen”);
- (b) in response to that invitation from the Secretary of State, the low carbon hydrogen producer makes an application for financial support for the carrying out of its proposals to produce standard compliant hydrogen; and
- (c) the Secretary of State assesses that the proposals made by the low carbon hydrogen producer are capable of producing standard compliant hydrogen.

Regulation 2(1) provides that the Secretary of State may publish revised versions of the low carbon hydrogen standard from time to time. The Secretary of State must be satisfied that a proposal for the production of standard compliant hydrogen would be able to meet the version of the low carbon hydrogen standard published for the purposes of these Regulations which is current at the time the proposal is made. This avoids a low carbon hydrogen producer becoming ineligible if there is an intervening change in the low carbon hydrogen standard. However, the Secretary of State may still direct the hydrogen production counterparty to offer to contract on terms that require compliance with a later version of the standard. Regulation 2(5) provides that a low carbon hydrogen producer is not eligible in relation to a proposal that involves the use of existing facilities unless the proposals involve an increase in the capacity of those facilities to produce standard compliant hydrogen. Regulation 2(4) makes provision in relation to the eligibility of low carbon hydrogen producers who have made proposals before the date these Regulations came into force.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Hydrogen Production Revenue Support (Directions, Eligibility and Counterparty) Regulations 2023 No. 1419

Regulation 3 makes provision as to the form and contents of directions made by the Secretary of State pursuant to section 66 of the Energy Act 2023. Regulation 4 makes provision as to when a direction ceases to have effect. Regulation 5 confers a power on the Secretary of State to revoke directions and sets out the procedure to be followed in such a case.

Regulation 6 contains requirements regarding the publication of contracts entered into pursuant to a direction made by the Secretary of State. Regulation 7 and the Schedule make provision for the creation and maintenance of a register of contracts entered into following a direction made by the Secretary of State. Regulation 8 makes provision requiring the Secretary of State to provide the hydrogen production counterparty with estimates of the costs of hydrogen transport and storage infrastructure associated with the production of low carbon hydrogen. Regulation 9 contains requirements for a counterparty to notify the Secretary of State if it is, or is likely to be, unable to perform its obligations under or by virtue of the 2023 Act, regulations made under the Act or a hydrogen production revenue support contract.

An impact assessment was prepared for the Energy Act 2023 in relation to hydrogen and industrial carbon capture business models.