
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) (“the Act”). Parts 2 to 9 provide for the circumstances under which CFD notifications (defined in section 12(1) of the Act) may be given in respect of a contract for difference (defined in section 6(2) of the Act and referred to in Chapter 2 of Part 2 of the Act and these Regulations as a “CFD”). Part 10 provides for the circumstances in which the Secretary of State may direct a CFD counterparty (see section 7 of the Act) to offer to contract with a person in respect of a CFD. Except for Part 10, these Regulations do not extend to Northern Ireland.

Part 1

Regulation 2 contains definitions used in these Regulations. There are terms used in these Regulations which are defined in the Contracts for Difference (Definition of Eligible Generator) Regulations 2014, in particular the term “eligible generator”.

Part 2

Regulation 3 provides for notices under this Part to be made publicly available. Regulation 4 provides that by notice, the Secretary of State may establish an allocation round (defined in section 13(2)(b) of the Act) and provides for the content of the notice, including the period of an allocation round. The notice must also state the date by which applications for a CFD in the allocation round need to be given to the delivery body (defined in regulation 2) and the person responsible for administering applications for CFDs under these Regulations (other than under Part 10). By regulation 5, the Secretary of State may by notice vary the period of an allocation round or terminate a round before CFD notifications are made.

By regulation 6, the Secretary of State must ensure that an allocation framework (defined in section 13(2)(a) of the Act) applies to each allocation round. This regulation requires the Secretary of State to ensure that an allocation framework must set out the allocation process (defined in regulation 2) which applies to each type of application for a CFD which may be made in an allocation round and the method of calculation of the value of an application.

Regulation 7 requires the Secretary of State to identify in a notice the allocation framework which applies to an allocation round and provides for the persons to whom the notice must be given and when it must be given.

Regulation 8 provides that the Secretary of State may by notice amend or add to an allocation framework or may remove the application of a framework to an allocation round, so long as another allocation framework is applied unless the allocation round is terminated. This regulation provides for the persons to whom the notice must be given and when it must be given.

By regulation 9 provides that an allocation framework must be made publicly available and when publication must be made.

Part 3

Regulation 10 states that Part 3 applies where an allocation round has been established and requires that notices made under Part 3 must be made publicly available.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

By regulation 11, the Secretary of State must by notice specify for the allocation round, the overall budget (defined in regulation 2 and which may be expressed in monetary terms or as an amount of capacity of electricity generation) and the administrative strike prices (defined in regulation 2) applicable to applications for CFDs. The notice may also specify budgets (“minima”) which are available only for certain types of applications and maximum budgets (“maxima”) which apply to descriptions of application specified in the notice. The notice may also specify a division of the overall budget (“a pot”) applicable to specified types of application. Where the overall budget is expressed in monetary terms but not at current prices, the notice must include a factor which adjusts the budget to current prices. This regulation provides for the notice to be given to the delivery body and when it must be given.

Regulation 12 provides that the Secretary of State may by notice amend or add to a notice made under regulation 11 and sets out restrictions on the amendments and additions which may be made. Regulation 13 provides for the notice to be given to the delivery body and when it must be given.

Part 4

Regulation 14 provides for the types of applications for CFDs which an eligible generator may not make under Part 4. The allocation framework for the allocation round may exclude additional types of application.

Regulation 15 provides that Chapters 2 to 4 of Part 4 apply where an allocation round has commenced further to a notice establishing the round.

Regulation 16 provides for the applications which may be made for CFDs and when applications may be withdrawn. Further provision concerning the withdrawal of applications in relation to an allocation round may be included in the allocation framework for that round.

By regulation 17, the delivery body must determine which applications qualify to take part in the allocation process for the allocation round. An application which does so qualify is a “qualifying application”. This regulation provides for the matters on which the delivery body must be satisfied in order to determine an application as a qualifying application, including that the general qualification requirements (see Chapter 3 of Part 4, regulations 23 to 25) and the additional qualification requirements (see Chapter 4 of Part 4, regulations 26 to 28) have been met. This regulation also provides for the information which must be provided with an application, including information which needs to be included in a CFD notification, which set of standard terms (the terms and conditions applicable to CFDs) applies in respect of the application and whether or not a modification agreement (defined in section 15(2) of the Act) applies to the relevant standard terms.

Regulation 18 gives a power to the delivery body to require the Authority (defined in section 152(1) of the Act as the Gas and Electricity Markets Authority, more commonly referred to as “Ofgem”) to provide the delivery body with information in relation to the accreditation (defined in regulation 2) of generating stations which are the subject of applications for CFDs.

Regulation 19 requires the delivery body by notice to inform an applicant whether or not the applicant is a qualifying applicant in relation to an application that person has made. Where the applicant is not a qualifying applicant, the delivery body makes a “non-qualification determination”. This regulation provides for when a notice must be given and that in respect of an allocation round, the allocation framework for that round may vary the time to give a notice.

By regulation 20, an applicant who is given a non-qualification determination may request the delivery body to review that determination. This regulation sets out by when such a request needs to be made and the information which must be contained with such a request. This regulation also requires the delivery body by notice to inform the applicant whether or not a non-qualification determination is upheld and provides for when such notice must be given. In respect of an allocation round, the allocation framework for that round may vary the time limits in this regulation.

Regulation 21 contains provisions which prevent more than one application being made in respect of the same generating station.

Regulation 22 makes provision concerning the form in which applications must be made, the information required to be provided with applications (see Schedule 1) and by when applications must be made. The delivery body must give a notice to each applicant stating the date of receipt of that person's application.

Regulation 23 requires applicants to provide copies of planning consents which are relevant to the application. In respect of an allocation round, the allocation framework for that round may vary the requirements in this regulation. Regulation 24 lists the planning consents which may apply to applications.

Regulation 25 requires applicants to provide copies of those agreements which enable a connection to be made to the national transmission system for Great Britain or the distribution system (transmission system and distribution system are defined in section 4(4) of the Electricity Act 1989 (c. 29)). In respect of an allocation round, the allocation framework for that round may vary the requirements in this regulation.

Regulation 26 provides that for an application in respect of generating station with a capacity of electricity generation of 300 megawatts or more, the applicant may be required to provide with the application a statement from the Secretary of State under regulation 12 of the Electricity Market Reform (General) Regulations 2014 in relation to supply chains referred to in that regulation.

Regulation 27 provides for requirements which apply in relation to offshore generating stations (defined in regulation 2).

By regulation 28, in respect of an allocation round, the allocation framework for that round may provide for additional requirements which an applicant may need to satisfy.

Part 5

Regulation 29 requires that the delivery body makes valuations in respect of applications and provides how those valuations are to be determined by reference to matters in the allocation framework for the allocation round. This regulation requires that the valuations, and such other information in relation to the valuations as set out in the allocation framework, must be made available to the Secretary of State.

Regulation 30 provides for the matters which an allocation process must achieve, including not exceeding the overall budget for the allocation round, how any minima and maxima set for the round are to be applied and when a competitive process is to be applied to determine which qualifying applications are those in respect of which a CFD notification is to be made ("successful applications").

Regulation 31 provides for dates as listed in the regulation to be set out in the allocation framework for the allocation round. Those dates are applied in regulation 32.

Regulation 32 provides for notices to be given by the delivery body to the Secretary of State which set out how many (if any) requests for a review of a non-qualification determination have been made and for notices by the Authority to the Secretary of State setting out how many (if any) appeals against non-qualification determinations ("qualification appeals") have been made and the progress made in determining those appeals.

Regulation 33 provides when an allocation process may be commenced by the delivery body, including when the process must not be commenced by reason of outstanding qualification appeals of which notice is given under regulation 32 and when the Secretary of State may direct that the allocation process commences.

By regulation 34, where commencement of the allocation process is delayed by more than 5 months after the application closing date (defined in regulation 2), the Secretary of State may give a notice

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

to the delivery body to require it to allow applicants to revise the target dates made with their applications and, where provided, to substitute those dates in the allocation process.

Regulation 35 provides that the delivery body must inform the Secretary of State and the CFD counterparty when it has completed the allocation process for the allocation round.

Regulation 36 provides for the delivery body to obtain an independent audit of calculations made during an allocation process and for a report to be provided. Where an allocation process included bids of strike prices, restrictions are imposed in respect of information about those bids being included in the report. This regulation also provides for publication of the audit report and exclusion from publication of information which is commercially confidential.

Regulation 37 requires the delivery body to provide the audit report to the Secretary of State and to give notice to the Secretary of State stating whether the delivery body intends to proceed to give CFD notifications or to re-run the allocation process or part of it.

By regulation 38, the Secretary of State may direct an allocation process to be re-run or direct the allocation round to be halted or to proceed, and that a notice must be given to terminate the allocation round if the round is halted.

Regulation 39 requires the delivery body to comply with a direction given under regulation 38.

Regulations 38 and 39 are subject to regulation 40 which provides that where a delay period has expired (being a period of more than 5 months since the application closing date or such other period for the allocation round as set out in the allocation framework), the allocation process must be re-run.

Part 6

Regulation 41 provides that Part 6 applies where, further to Part 5, the allocation round is to proceed.

Regulation 42 requires the delivery body to give CFD notifications in respect of those applications which were successful in the allocation process and to inform those applicants whose applications were not successful of that fact.

Part 7

Regulation 43 provides for appeals against non-qualification determinations to the Authority. Regulation 44 sets out the requirements for such appeals.

By regulation 45, the delivery body must be informed of an appeal and may provide a reply to the appeal. Regulation 46 provides for the determinations which may be made by the Authority and to whom notice of the determination must be given and by when.

Regulation 47 provides for appeals to the High Court or Court of Session by an applicant against determinations of the Authority.

Regulation 48 provides for a register to be established and maintained by the delivery body in relation to appeals.

Part 8

Regulation 49 provides for the application of Part 8 where an applicant has made an appeal to the Authority in respect of an application (“a pending application”) and that appeal is not determined when an allocation process commences.

By regulation 50, where the allocation framework for the allocation round provides for bids of strike prices, and such bids are made in the allocation process in respect of applications equivalent to the pending application, the applicant may in respect of the pending application also make such bids. Further provision is made concerning when the delivery body can become aware of the content of such bids and when it must destroy them.

Regulation 51 provides that where a pending application is determined by the Authority as a qualifying application after an allocation process has completed but is to be re-run, the pending application must be included in the re-run process. Where Part 6 of these Regulations applies after a pending application is determined by the Authority as a qualifying application, the delivery body must determine whether or not the pending application would have been a successful application and, if so, the final strike price applicable to the application. This regulation also provides for when an applicant in respect of a pending application may substitute target dates for those given in the application and when bids made by an applicant in respect of a pending application are to be taken into account in determining whether or not the application is a successful application. Where a pending application is a successful application, a CFD notification must be given in respect of that application.

Regulation 52 provides for the remedies which the High Court or the Court of Session may apply where an appeal is made on a point of law from the Authority to the court and that appeal is upheld.

Regulation 53 provides for notices to an applicant where under Part 8 a pending application is not found to be a qualifying application or a successful application.

Part 9

Regulation 54 requires the delivery body to make available to the Secretary of State the information referred to in the regulation in respect of an allocation round.

Regulation 55 provides for enforcement by the Authority in respect of the requirements imposed on the delivery body under these Regulations. Regulation 56 provides for the form of and the giving of documents under these Regulations, except in respect of Part 10.

Part 10

Part 10 applies where the Secretary of State makes a direction under section 10(1) of the Act, requiring the CFD counterparty to whom a direction is given to offer to contract with a person specified in the direction, on terms specified in the direction.

Regulation 57 sets out requirements as to the form and content of such a direction. Regulation 58 provides that a copy of the direction must be given to the person with whom the CFD counterparty has been directed to contract.

Regulation 59 makes provision about the circumstances in which a direction may cease to have effect, and the requirement for an offer made in compliance with that direction to be withdrawn.

Regulation 60 provides for the publication of contracts by a CFD counterparty. In a direction made under section 10(1) of the Act, the Secretary of State may specify contract terms which identify particular information and require it not to be disclosed. A CFD counterparty must remove such information from a contract before publishing it in accordance with this regulation.

Regulation 61 includes definitions only applicable to Part 10.

Schedule 1

This schedule lists the information which applicants must provide in support of their applications. Additional information may be required in an allocation round if provided in the allocation framework for that round.

Schedule 2

This schedule provides that documents mentioned in these Regulations must be in writing and dated and provides for the methods by which a person may give a document to another person.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

A full impact assessment of the effect that this instrument 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.