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STATUTORY INSTRUMENTS

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**2014 No. 2014**

**The Contracts for Difference (Electricity  
Supplier Obligations) Regulations 2014**

**PART 4**

Miscellaneous

**CHAPTER 9**

Enforcement and disputes

**Enforcement of requirements**

**25.**—(1) Any requirement of an electricity supplier under these Regulations is enforceable by the Authority as if any such requirement was a relevant requirement on a regulated person for the purposes of section 25 of the Electricity Act 1989<sup>(1)</sup>.

(2) Where the CFD counterparty determines that an electricity supplier has not complied with any requirement to pay an amount required under these Regulations it may issue a notice to that supplier setting out—

- (a) the amount which the CFD counterparty determines that supplier should have paid;
- (b) the basis on which the CFD counterparty determined the amount;
- (c) the date on which the amount should have been paid;
- (d) the rate, if any, of interest which applies to the amount; and
- (e) any amount of interest which has accrued as at the date of the notice.

(3) Where the CFD counterparty determines that an electricity supplier has not complied with a requirement to ensure that the CFD counterparty holds sufficient collateral to meet the supplier's collateral requirement under regulation 19(2) it may issue a notice to that supplier setting out—

- (a) the amount of collateral which the CFD counterparty determines the supplier should have provided;
- (b) the date on which the amount should have been provided;
- (c) the rate of interest which the supplier is required to pay, under paragraph (5), on the amount it is required to pay under paragraph (4).

(4) Where the CFD counterparty has issued a notice to a supplier under paragraph (3) that supplier is required to pay the amount specified in the notice to the CFD counterparty in cash by the next working day after the notice has been issued.

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(1) 1989 c.29. The definitions of “regulated person” and “relevant requirement” in section 25(8) of EA 1989 were amended by S.I. 2011/2704. Other amendments to section 25 of EA 1989 were made by section 54(3) of, and Schedule 10 to, the Competition Act 1998 (c.41); sections 3(2), 60 and 108 of, and Schedule 6 to, the Utilities Act 2000 (c.27); section 63(1) of, and Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c.17); section 51(5) of, and Schedule 14 to, the Enterprise and Regulatory Reform Act 2013 (c.24); and S.I. 2011/2704.

(5) Where the CFD counterparty has issued a notice to a supplier under paragraph (3) and that supplier is required to make a payment under paragraph (4), that supplier must pay the CFD counterparty simple interest on any unpaid amount of that payment at the rate specified in regulation 35(1) from the second working day after the day on which the notice was issued.

(6) Where an electricity supplier makes a payment under paragraph (4) the amount of that payment constitutes collateral held by the CFD counterparty for the purposes of regulation 19.

(7) Where the CFD counterparty issues a notice to a supplier under paragraph (2) or (3)—

- (a) it must also provide a copy of that notice to the Authority; and
- (b) it may publish a copy of that notice, or a summary of that notice.

### **Dispute notices**

**26.**—(1) An electricity supplier may dispute any determination made by the CFD counterparty under these Regulations, other than a determination made under or by virtue of regulation 27, by giving a notice to the CFD counterparty setting out—

- (a) the determination the supplier is disputing; and
- (b) the basis on which the supplier disputes the determination.

(2) For the purposes of paragraph (1), a dispute about a determination made by the CFD counterparty includes a dispute about the failure of the CFD counterparty to make a determination.

(3) A notice under paragraph (1) must be given by an electricity supplier before the later of—

- (a) the 28th day after the day on which the determination was made by the CFD counterparty;
- (b) in the case of a determination in respect of which the CFD counterparty must issue a notice, the 28th day after the day on which that notice was issued;
- (c) in the case of a dispute about the failure of the CFD counterparty to make a determination, the 28th day after the day on which the CFD counterparty should have made the relevant determination which is in dispute.

(4) An electricity supplier may not dispute a determination if and to the extent that the dispute is about a determination, made by the BSCCo, of an amount of electricity supplied (whether by that supplier or any other supplier).

(5) Where an electricity supplier has given a notice under paragraph (1) in respect of a determination, that determination still has effect notwithstanding the giving of that notice.

### **Determination of disputes**

**27.**—(1) Where the CFD counterparty receives a notice under regulation 26(1) (“a dispute notice”) about a determination (or a failure to make a determination) under any provision of these Regulations (“a relevant provision”) it must, by the 28th day after the day on which it receives that notice either—

- (a) reject the notice; or
- (b) accept the notice (in full or in part) and make such determination under that provision as it thinks is necessary in consequence.

(2) Whether the CFD counterparty rejects or accepts a dispute notice, it must, on the same day, issue a notice (“a decision notice”) to the person who gave that dispute notice, setting out its decision and the reasons for it.

(3) Where the CFD counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) it must, on the same day, issue to each electricity supplier who may be affected by the making of that determination a notice which sets out that determination.

(4) Where the CFD counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) and—

- (a) that provision requires the determination to be made by a particular time which has passed, that determination has effect notwithstanding that requirement;
- (b) that provision requires something to be done by it by a particular time which has passed, that thing must be done as soon as reasonably practicable after the determination.

(5) Where the CFD counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) and that provision requires an electricity supplier to make a payment, that payment must be made (notwithstanding what that provision says about the time by which a payment must be made) by the date specified by the CFD counterparty in the notice issued under paragraph (3) to that supplier, that date being no earlier than—

- (a) the date by which, in the opinion of the CFD counterparty, it would be reasonably practicable for that electricity supplier to make that payment; or
- (b) the earliest date by which that supplier would have had to have made that payment if the determination had been made at the time the determination which is the subject of the dispute notice was or (in the case where the CFD counterparty failed to make a determination) should have been made.

(6) Where an electricity supplier has paid an amount to the CFD counterparty, or the CFD counterparty has paid an amount to that electricity supplier, and a determination made under a relevant provision by virtue of paragraph (1)(b) means that that amount should not have been paid, that amount must be returned to the person who paid it by—

- (a) the 5th working day after the day on which the notice issued in respect of that determination was issued under paragraph (3);
- (b) where the CFD counterparty is of the opinion that it would not be reasonably practicable for that amount to be returned by that date, such later date as the CFD counterparty specifies in the notice issued under paragraph (3) to that supplier in respect of that determination.

#### **Duties of the CFD counterparty to enforce and notify**

**28.**—(1) The CFD counterparty must exercise its functions in the manner best calculated to ensure the collection of all amounts which are required to be paid or provided by electricity suppliers under these Regulations.

(2) In paragraph (1) “functions” includes—

- (a) any function conferred under these Regulations; and
- (b) the recovery of any sum as a civil debt by virtue of section 9 of the Act.

(3) The CFD counterparty must take such steps as it considers necessary to ensure that electricity suppliers are—

- (a) informed of their liabilities under these Regulations; and
- (b) provided with information about liabilities which they may incur under these Regulations.

(4) Where the CFD counterparty writes-off any debt owed to it by an electricity supplier, it must issue a notice of that fact to every electricity supplier who was required to make a payment under regulation 17(5) in relation to that debt.

**Notices and publications**

**29.**—(1) Where the CFD counterparty is permitted or required to issue a notice (including a copy of a notice) to a person, that notice must be in writing and is issued if it has been sent (by or on behalf of the CFD counterparty) by post or electronic means to that person’s proper address.

(2) In paragraph (1), “proper address” means—

(a) in the case of a body corporate—

- (i) the registered or principal office of that person, or
- (ii) an email address provided by that person;

(b) in the case of a partnership—

- (i) the principal office of the partnership, or
- (ii) an email address provided by—

(aa) that partnership,

(bb) a partner, or

(cc) a person having control or management of the partnership business;

(c) in the case of any other person, that person’s last known address, which includes an email address (where that email address was provided by that person).

(3) So as to enable the CFD counterparty to discharge its functions under these Regulations, an electricity supplier must, within 2 working days of first making an electricity supply after 1st January 2015, provide an email address to the CFD counterparty at which it can be contacted, and if that supplier subsequently changes that email address it must notify the CFD counterparty of that change.

(4) Where the CFD counterparty issues a notice to an electricity supplier under regulation 6(3)(a) or (b) it must set out an address and an email address for correspondence in that notice.

(5) An electricity supplier may give a notice to the CFD counterparty by sending it by post or electronic means to the address or email address contained in the most recent notice issued to that supplier under regulation 6(3)(a) or (b).

(6) Where the CFD counterparty is required to publish any information under these Regulations the CFD counterparty must publish that information in such manner as the CFD counterparty considers appropriate for the purpose of bringing it to the attention of persons who may be affected by that information.

**CHAPTER 10****Effect of payment and interest****Set-off of payments by the CFD counterparty**

**30.**—(1) This regulation applies where—

- (a) the CFD counterparty is liable to make a payment (“a relevant payment”) to an electricity supplier under these Regulations by a date (“the relevant date”); and
- (b) the amount it is liable to pay is equal to or less than the sum of all determined payments which that supplier is liable to pay at that date.

(2) Where this regulation applies the CFD counterparty may retain all or part of the relevant payment.

(3) Where the CFD counterparty does so, the amount retained is to be treated as if it was a payment made to it by the supplier on the relevant date.

(4) Where the CFD counterparty has retained all or part of a relevant payment under paragraph (2), it must, by the relevant date, issue a notice to the supplier stating the amount which has been retained.

(5) For the purposes of paragraph (1), a determined payment is a payment—

- (a) which a supplier must make to the CFD counterparty by virtue of these Regulations;
- (b) which the supplier has not yet made; and
- (c) the amount of which has been determined.

(6) The amount of a payment which a supplier must make by virtue of these Regulations has been determined if—

- (a) in the case of a payment which is calculated by reference to an amount of electricity determined by the BSCCo on the basis of a BSC volume allocation run, the BSCCo has carried out that BSC volume allocation run;
- (b) in the case of a payment where the amount of that payment must be determined by the CFD counterparty in accordance with these Regulations, the CFD counterparty has determined the amount of that payment;
- (c) in the case of a requirement to pay an amount of interest, the day by which that interest must be paid has passed.

(7) For the purposes of this regulation and regulation 31 a requirement to provide collateral under regulation 19(2) is not a requirement to make a payment by virtue of these Regulations.

### **Discharge of obligations by payment**

**31.**—(1) This regulation applies where an electricity supplier makes a payment to the CFD counterparty for the purpose of discharging its relevant obligations but that payment is insufficient to do so.

(2) The CFD counterparty must use the payment—

- (a) first, to discharge (in whole or in part) any relevant obligation of the supplier arising under regulation 23(1);
- (b) where part of the payment remains, secondly, to discharge any relevant obligation of the supplier which is not one arising under regulation 23(1); and
- (c) where part of the payment still remains, thirdly, to discharge any obligation of the supplier to make a payment of interest.

(3) Where more than one relevant obligation falls within a sub-paragraph of paragraph (2), the CFD counterparty must determine the order in which those obligations are to be discharged.

(4) On the day on which the CFD counterparty uses the payment it must issue a notice to the supplier which sets out the details of—

- (a) any relevant obligation which has been wholly discharged;
- (b) any relevant obligation which has been partially discharged, and the extent to which it has been discharged; and
- (c) any relevant obligation which has not been discharged.

(5) For the purposes of this regulation, any amount treated as a payment by an electricity supplier to the CFD counterparty by virtue of regulation 21(4) or (5) or regulation 30(3) is to be treated as a payment made by that supplier to the CFD counterparty for the purpose of discharging its relevant obligations.

(6) In this regulation—

“payment of interest” means a payment of interest which is required to be made by virtue of regulation 8(6), 9(7), 11(2), 14(8), 16(5), 17(6), 23(6) or 25(5);

“relevant obligation”, in relation to an electricity supplier, means any obligation of that supplier to make a payment under these Regulations where the date by which that payment should have been made has passed.

### Use of payments

**32.**—(1) Where the CFD counterparty receives a payment from an electricity supplier under regulation 23(1) or by virtue of regulation 23(6), the CFD counterparty may only use that payment for the purposes of meeting its costs.

(2) Where the CFD counterparty receives a payment from an electricity supplier under any regulation, other than regulation 23(1), the CFD counterparty may only use that payment for the purposes of making CFD counterparty payments or making payments to electricity suppliers under these Regulations.

(3) In this regulation, “costs” means any costs incurred by the CFD counterparty in connection with the performance by it of any function conferred on it by or by virtue of Chapter 2 of Part 2 of the Act.

### Apportioning sums to CFDs

**33.**—(1) This regulation applies where the CFD counterparty is unable fully to meet its liabilities under a CFD.

(2) For the purposes of this regulation the term “unable fully to meet its liabilities under a CFD” includes liabilities under a connected agreement.

(3) The CFD counterparty is unable fully to meet its liabilities under a CFD when the total amount held by the CFD counterparty at any time is less than the total amount of CFD counterparty payments it must pay at that time.

(4) Where this regulation applies, the amount which may be used to make CFD counterparty payments in relation to a particular CFD or connected agreement is the amount given by—

$$AH \times \left( \frac{OG}{OA} \right)$$

where—

AH is the total amount held by the CFD counterparty;

OG is the amount of CFD counterparty payments owed in relation to that CFD or connected agreement; and

OA is the total amount of CFD counterparty payments which the CFD counterparty owes.

- (5) An amount is held by the CFD counterparty if it is in possession of that amount and—
- (a) it is an amount paid to it by electricity suppliers under these Regulations, other than an amount paid under or by virtue of regulation 23(1) or 23(6), or provided under regulation 19(2);
  - (b) it is an amount treated as a payment by an electricity supplier to the CFD counterparty by virtue of regulation 21(4) or (5) or regulation 30(3);
  - (c) it is an amount of collateral which was provided in the form of cash and the CFD counterparty is entitled to call that collateral by virtue of regulation 21;
  - (d) it is an amount received as a CFD party payment by the CFD counterparty; or

- (e) it is any other amount provided to the CFD counterparty for the purpose of making CFD counterparty payments.

### **Application of apportionment to CFDs**

**34.**—(1) This regulation applies where a CFD or connected agreement contains a term that makes reference to amounts allocated pursuant to these Regulations (however that CFD or agreement describes these Regulations).

(2) Where both this regulation and regulation 33 apply, the amount allocated to that CFD or connected agreement, for the purposes of that term, is the amount calculated under regulation 33(4) which may be used by the CFD counterparty to make CFD counterparty payments in relation to that CFD or connected agreement.

(3) In all other cases where this regulation applies, the amount allocated to a CFD or connected agreement, for the purposes of that term, is the amount which is owed by the CFD counterparty in relation to that CFD or connected agreement.

### **Interest**

**35.**—(1) For the purposes of regulations 8(6), 9(7), 11(2), 14(8), 16(5), 17(6), 23(6) and 25(5), the rate of interest is 5 per cent per annum over the relevant Bank of England base rate.

(2) The relevant Bank of England base rate—

- (a) in respect of interest which starts to run on or after 1st January and before 1st July in any year, is the Bank of England base rate in force on 31st December in the previous year; and
- (b) in respect of interest which starts to run on or after 1st July in any year, is the Bank of England base rate in force on 30th June in that year.

(3) Any requirement to pay interest by virtue of these Regulations is a requirement to pay the amount of that interest by the first working day after the day on which that interest has accrued.

(4) In this regulation, “Bank of England base rate” means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998(2) is in force, any equivalent rate determined by the Treasury under that section.