

2016 No. 784

ELECTRICITY

**The Contracts for Difference (Miscellaneous Amendments)
Regulations 2016**

Made - - - - *19th July 2016*

Coming into force in accordance with regulation 1

The Secretary of State has before making these Regulations—

- (a) consulted the persons listed in section 24(1)(a) to (g) of, and paragraph 13(1)(a) to (c) of Schedule 2 to, 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, and paragraph 6(5)(b) of Schedule 2 to, 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), 10(3), 12(1) and (3), 13(1) to (3), 14(2), 15(4), 16, 19(1) and (2), and 21(1)(c) of, and paragraphs 6(1), 10(1), 14(3)(c) and 16(2) of Schedule 2 to, the Energy Act 2013, makes the following Regulations:

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contracts for Difference (Miscellaneous Amendments) Regulations 2016 and come into force on the day after the day on which they are made.

(2) Part 3, except for regulation 18, does not extend to Northern Ireland.

PART 2

Amendments to the Contracts for Difference (Definition of Eligible Generator) Regulations 2014

Amendments to the Contracts for Difference (Definition of Eligible Generator) Regulations 2014

2. The Contracts for Difference (Definition of Eligible Generator) Regulations 2014(a) are amended as follows.

Amendment to regulation 3

3. In regulation 3 (definition of eligible generator)—

(a) after paragraph (4) insert—

“(4A) Where an eligible generator is an unincorporated association, any reference to—

(a) that “eligible generator”; or

(b) a “person”, “applicant”, “generator” or “party”,

is to be read as a reference to the unincorporated association.

(4B) Paragraph (4A) does not apply to—

(a) paragraphs (4), (5) and (8) of regulation 14B of the Allocation Regulations;

(b) regulation 14D of the Allocation Regulations;

(c) regulation 59 of the Allocation Regulations;

(d) sub-paragraphs (a), (b), (c), (e) and (f) of paragraph 2 of Schedule 1 to the Allocation Regulations;

(e) paragraph 4 of Schedule 1 to the Allocation Regulations;

(f) regulation 7 of the General Regulations;

(g) Part 3 of the General Regulations.”;

(b) in paragraph (5) after the definition of “eligible generating station” insert—

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

““the General Regulations” means the Electricity Market Reform (General) Regulations 2014(c).”

PART 3

Amendments to the Contracts for Difference (Allocation) Regulations 2014

Amendments to the Contracts for Difference (Allocation) Regulations 2014

4. The Contracts for Difference (Allocation) Regulations 2014 are amended as follows.

Amendment to regulation 2

5. In regulation 2 (interpretation)—

(a) S.I. 2014/2010.

(b) S.I. 2014/2011, as amended by S.I. 2015/981.

(c) S.I. 2014/2013, as amended by S.I. 2015/718.

- (a) in the definition of “distribution system” for “has the meaning given by” substitute “means a system, other than a private network, of the type described in”;
- (b) insert at the appropriate place—
 - ““private network” means a network for the distribution of electricity which is not operated by a person authorised to distribute electricity under a licence granted or treated as granted under section 6(1)(c) of the Electricity Act 1989(a);”;
 - ““target commissioning date” means the intended date, being a date within the target commissioning window, for the generation of electricity to begin by a CFD unit once it is established or altered;”;
 - ““target commissioning window” means the period in which the generation of electricity must take place by a CFD unit once it is established or altered, the duration of which is listed in the allocation framework for each type of eligible generating station;”;
 - ““target commissioning window start date” means the date on which the target commissioning window begins;”;
 - ““target dates” means the target commissioning date and the target commissioning window start date;”;
- (c) for the definition of “working day”, substitute—
 - ““working day” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(b).”.

Amendment to regulation 14

- 6.** In regulation 14 (excluded applications)—
 - (a) in paragraph (5), for “unit to be altered” substitute “unit to be established or altered”;
 - (b) for paragraph (10) substitute—
 - “(10) No application may be made in respect of a CFD unit in relation to which—
 - (a) a CFD applies;
 - (b) a capacity agreement applies; or
 - (c) an application for a capacity agreement has been made but has not been determined.
 - (10A) For the purposes of paragraph (10)(c)—
 - (a) an application for a capacity agreement has been made when an application is made for prequalification in accordance with the Electricity Capacity Regulations 2014(c) and capacity market rules made under Chapter 3 of Part 2 of the Energy Act 2013 (“CM rules”); and
 - (b) an application for a capacity agreement has been determined when, in accordance with the Electricity Capacity Regulations 2014 and CM rules, it is no longer possible to obtain a capacity agreement as a consequence of that application.”.

Amendment to regulation 14B

- 7.** In regulation 14B (grounds for granting exemption certificates), after paragraph (8) insert—

(a) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27). Other amendments have been made to section 6 but none is relevant to this provision.

(b) 1971 c. 80.

(c) S.I. 2014/2043, amended by S.I. 2014/3354, 2015/875, 2015/1974.

“(9) Where E, P1, P2 or P3 is an unincorporated association, the conditions relating to E, P1, P2 or P3 in paragraphs (4) and (5) apply as if E, P1, P2 or P3 means any member of the unincorporated association.

(10) For the purposes of the definition of “relevant court proceedings”, where the applicant is an unincorporated association, court proceedings include proceedings against any member of the unincorporated association.”.

Amendment to regulation 14D

8. In regulation 14D (register of sites to which a temporary site exclusion applies), after paragraph (1) insert—

“(1A) Where an eligible generator is an unincorporated association, the requirements relating to the eligible generator in paragraph (1)(c) and (d) apply in relation to the unincorporated association and each member of the unincorporated association.”.

Amendment to regulation 25

9. In regulation 25 (connection agreements)—

(a) for paragraphs (2) to (4) substitute—

“(2) Where a direct connection applies or is to apply to the relevant CFD unit, the applicant must provide a copy of the connection agreement applicable to the relevant CFD unit, and—

- (a) where connection is to the national transmission system for Great Britain, that agreement must secure transmission entry capacity for the CFD unit of at least 75% of the provisional capacity estimate of the CFD unit; or
- (b) where connection is to the distribution system, that agreement must provide for the export of at least 75% of the provisional capacity estimate of the CFD unit to the distribution system.

(3) Where a direct connection or a partial connection does not apply or is not to apply to the relevant CFD unit, the applicant must provide either—

- (a) a statement that the applicant is or is to be the operator of the private network to which the relevant CFD unit exports or is to export electricity; or
- (b) a copy of a private network use agreement applicable to the relevant CFD unit.

(4) Where a partial connection applies or is to apply to the relevant CFD unit, the applicant must provide—

- (a) copies of—
 - (i) either—
 - (aa) a statement that the applicant is or is to be the operator of the private network to which the relevant CFD unit exports or is to export electricity; or
 - (bb) a copy of a private network use agreement applicable to the relevant CFD unit; and
 - (ii) the connection agreement applicable to the relevant CFD unit; or
- (b) copies of—
 - (i) the private network use agreement applicable to the relevant CFD unit that allows the CFD unit to access a connection to the national transmission system for Great Britain or the distribution system; and
 - (ii) the connection agreement between the operator of the private network and the national system operator or the distribution system.”;

(b) in paragraph (6)—

- (i) in the definition of “connection agreement” after “means an agreement” insert “(including a countersigned offer)”; and
- (ii) insert at the appropriate place—
 - ““private network use agreement” means an agreement to connect to a private network, entered into by the operator of that private network, which sets out the terms for exporting electricity to that private network and the capacity in the private network that is accessible under the agreement;”;
 - ““provisional capacity estimate” means the capacity of the relevant CFD unit, as provided by an applicant in accordance with paragraph 3(a)(iii) of Schedule 1;”;
 - ““transmission entry capacity” means the maximum amount of electricity permitted by the national system operator to be exported from the relevant CFD unit to the national transmission system for Great Britain at any given time.”.

Amendment to regulation 32

10. In regulation 32 (notices of requests for review or appeal), in paragraph (1), after “Secretary of State” insert “and the Authority”.

Amendment to regulation 34

- 11.** In regulation 34 (delay to the commencement of allocation processes)—
- (a) in paragraph (2), for “the information provided in compliance with paragraph 3(a)(iv) of Schedule 1 (“the target dates”)” substitute “target dates”;
 - (b) in paragraphs (2) and (4) to (6), for “varied” substitute “delayed”;
 - (c) in paragraph (4), for “vary” substitute “delay”;
 - (d) in paragraph (6)(b), for “paragraph (4)(b)” substitute “paragraph (5)(b)”.

Amendment to regulation 38

12. In regulation 38 (proceeding, re-running an allocation process or terminating an allocation round), in paragraph (1) omit “Subject to regulation 40(1)(a),”.

Amendment to regulation 39

- 13.** In regulation 39 (re-running an allocation process)—
- (a) in paragraph (2)(a) omit “subject to regulation 40(1)(b),”;
 - (b) after paragraph (2) insert—
 - “(3) The allocation framework may, in respect of an allocation round to which it applies, set out periods within which the delivery body must complete any re-run of the allocation process or part of it.”.

Amendment to regulation 40

14. In regulation 40 (delay after completion of allocation process), in paragraph (1)(a) for “proceed direction” substitute “re-run notice”.

Amendment to regulation 46

- 15.** In regulation 46 (determinations of the Authority)—
- (a) after paragraph (2) insert—
 - “(2A) The Authority may by notice require the delivery body to provide it with information to assist the Authority to determine a qualification appeal.
 - (2B) Where the delivery body—

- (a) holds the information required by the notice, it must provide the Authority with the information;
 - (b) only holds part of the information required by the notice, it must provide the Authority with the information it holds and a statement describing the information that it does not hold;
 - (c) does not hold any of the information required by the notice, it must provide the Authority with a statement that it does not hold the information.
- (2C) The delivery body must provide the information required by the notice by no later than 5 working days after the date of the notice.”;
- (b) in paragraph (3), after “the applicant” insert “, the Secretary of State”;
 - (c) in paragraph (4), for “must be given of as” substitute “must be given as”.

Amendment to regulation 51

16. In regulation 51 (successful applications determined by the Authority)—

- (a) after paragraph (1) insert—
 - “(1A) Paragraph (1B) applies where the delivery body—
 - (a) receives a notice from the Authority in accordance with regulation 46(3) that states the determination of the Authority is that an applicant is a qualifying applicant; and
 - (b) has not given a proceed notice under regulation 37(1)(b)(i) in respect of the most recent run of the allocation process for the allocation round.
 - (1B) Where this paragraph applies, the delivery body must—
 - (a) re-run the allocation process; and
 - (b) after completion of the re-run, comply with regulation 35.”;
- (b) in paragraph (2), after “Chapter 4 or 5 of Part 5” insert “or paragraph (1B)”;
- (c) in paragraph (3), after “is a successful application” insert “in accordance with the allocation framework for the allocation round”;
- (d) in paragraph (6)—
 - (i) in sub-paragraph (a), for “the information provided in compliance with paragraph 3(a)(iv) of Schedule 1 (“the target dates”)” substitute “target dates”;
 - (ii) in sub-paragraphs (a) to (c), for “varied” substitute “delayed”; and
 - (iii) in sub-paragraph (b), for “vary” substitute “delay”;
- (e) in paragraph (7), for “except any flexible bid” substitute “including any flexible bid”;
- (f) for paragraph (10) substitute—
 - “(10) In paragraph (7), “flexible bid” means a bid, where it is permitted under the allocation framework, in which the applicant specifies—
 - (a) a strike price;
 - (b) the first delivery year as a year the same as or after the first delivery year set out in the applicant’s application;
 - (c) a target commissioning date as a date on or after the target commissioning date provided by the applicant with the applicant’s application; and
 - (d) the amount of electricity to be generated as an amount which is no greater than the amount set out in the applicant’s application.”.

Amendment to regulation 54

17. In regulation 54 (allocation reports), for paragraph (3) substitute—

- “(3) Where the allocation process for the allocation round has included a competitive process under which bids of strike prices were made, the Secretary of State—

- (a) may only direct the delivery body to provide information in respect of those bids in an anonymised form;
 - (b) must not require the delivery body to provide the strike prices submitted as part of those bids;
 - (c) must not require the delivery body to provide the information until after it makes the first CFD notification after the allocation round involving those bids.
- (4) The Secretary of State may disclose information obtained under paragraph (3) to a person providing services to the Secretary of State in connection with the evaluation of any allocation round, to the extent that the disclosure is required to enable that person to provide those services.”.

Amendment to regulation 58

18.—(1) Renumber regulation 58 (obligation to notify the specified person) as paragraph (1) of that regulation.

(2) After paragraph (1) insert—

“(2) Where a specified person is an unincorporated association, the Secretary of State must give a copy of the direction to each member of the unincorporated association.”.

Amendment to Schedule 1

19. In Schedule 1 (information in support of applications)—

(a) renumber paragraph 2 as sub-paragraph (1) of that paragraph;

(b) in paragraph 2(1), after paragraph (c) insert—

“(ca) where the applicant is an unincorporated association, the name of the person whom the applicant intends will act as representative for the parties to the unincorporated association in the CFD;”;

(c) after paragraph 2(1) insert—

“(2) Where an applicant is an unincorporated association—

(a) the requirement relating to the applicant in paragraph (a) of sub-paragraph (1) applies in relation to the unincorporated association and each member of the unincorporated association;

(b) the requirements relating to the applicant in paragraphs (b), (c), (e) and (f) of sub-paragraph (1) apply in relation to each member of the unincorporated association;

(c) paragraph (d) does not apply.”;

(d) for paragraph 3(a)(iv) substitute—

“(iv) the target dates;”;

(e) renumber paragraph 4 as sub-paragraph (1) of that paragraph;

(f) after paragraph 4(1) insert—

“(2) Where an applicant is an unincorporated association, the requirement relating to the applicant in sub-paragraph (1) applies in relation to each member of the unincorporated association.”.

PART 4

Amendments to the Contracts for Difference (Standard Terms) Regulations 2014

Amendments to the Contracts for Difference (Standard Terms) Regulations 2014

20. The Contracts for Difference (Standard Terms) Regulations 2014^(a) are amended as follows.

Amendment to regulation 2

21. In regulation 2 (interpretation), for the definition of “working day” substitute—

““working day” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.”.

Amendment to regulation 10

22. In regulation 10 (offer to contract)—

(a) in paragraph (1) for “two” substitute “the relevant number of” and for “both” substitute “all”;

(b) after paragraph (1) insert—

“(1A) In paragraph (1), “the relevant number of copies” means—

(a) two copies; or

(b) where the eligible generator is an unincorporated association, the number of copies required for there to be one for each member of the unincorporated association and one for the CFD counterparty.”;

(c) in paragraph (3)(a) and (b) for “both” substitute “all”.

PART 5

Amendments to the Electricity Market Reform (General) Regulations 2014

Amendments to the Electricity Market Reform (General) Regulations 2014

23. The Electricity Market Reform (General) Regulations 2014 are amended as follows.

Amendment to regulation 2

24. In regulation 2 (interpretation), for the definition of “working day” substitute—

““working day” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.”.

(a) S.I. 2014/2012, as amended by S.I. 2015/1425, 2016/363.

Amendment to regulation 7

25. In regulation 7 (provision of information by generators to the delivery body), after paragraph (7) insert—

“(8) Where the “generator party” is an unincorporated association, “generator party” is to be read as “a member of the generator party unincorporated association that is a regulated person for the purposes of section 25 of the Electricity Act 1989(a).”.

New regulation 17

26. After regulation 17 (investment contracts) insert—

“PART 6

Secretary of State directing a CFD counterparty

Power to direct a CFD counterparty

18.—(1) Paragraph (2) applies where the Secretary of State issues and publishes revised standard terms in accordance with section 11 of the Act that include revisions to any sustainability obligations in the standard terms.

(2) The Secretary of State may give a notice (“a direction notice”) to a CFD counterparty that requires the CFD counterparty to implement amendments to the sustainability obligations.

(3) A direction notice may only be given for the purpose of the “Sustainability Objective” (as that term was defined in any CFD to which the direction applies).

(4) A direction notice must specify what amendments a CFD counterparty must effect in relation to which CFDs.

(5) A direction notice may only specify an amendment to a CFD that ensures the sustainability obligations in that CFD have the same effect as the sustainability obligations in the revised standard terms.

(6) A direction notice may specify the date from which any amendment to a CFD must take effect.

(7) The Secretary of State must publish a direction notice.”.

19th July 2016

Neville-Rolfe
Minister of State
Department for Business, Energy and Industrial Strategy

(a) 1989 c. 29; section 25 was amended by regulation 39(4) of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704, and there are other amendments but none is relevant.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the powers contained in Chapter 2 (contracts for difference) of Part 2 (electricity market reform) of the Energy Act 2013 (c. 32) (“the Act”).

Part 2 amends the Contracts for Difference (Definition of Eligible Generator) Regulations 2014 (S.I. 2014/2010) (“the Eligible Generator Regulations”).

Regulation 3 inserts new definitions in regulation 3 of the Eligible Generator Regulations which apply to the interpretation of Chapter 2 of Part 2 of the Act.

Regulation 3, along with regulations 7, 8, 18 and 19 in Part 3 and regulation 22 in Part 4 make provision in relation to unincorporated associations.

Part 3 amends the Contracts for Difference (Allocation) Regulations 2014 (S.I. 2014/2011) (“the Allocation Regulations 2014”).

Regulation 5 amends the definition of “distribution system” in regulation 2 of the Allocation Regulations 2014 to account for private networks. It also inserts new definitions. Regulation 5(c), along with regulations 21 and 24 align the definition of “working day” across the Regulations made under Chapter 2 of Part 2 of the Act.

Regulation 6 amends regulation 14 of the Allocation Regulations 2014. The amendments extend the exclusion in regulation 14(5) of the Allocation Regulations 2014 to apply to CFD units being established as well as those being altered. The amendments also provide for a further type of application which is excluded from an allocation round. This type of application is one made in relation to CFD unit in respect of which an application to the capacity market has been made and has not yet been determined.

Regulation 9 amends the requirements in regulation 25 of the Allocation Regulations 2014 setting out what must be provided to evidence direct or partial connection to the national transmission system for Great Britain or the distribution system or, where no such connection applies, connection to a private network. The amendments also clarify that the definition of connection agreement includes a countersigned offer.

Regulation 10 amends regulation 32 of the Allocation Regulations 2014 to include the Authority as a recipient of a notice from the delivery body stating the number, if any, of review notices received.

Regulation 11 amends regulation 34(2) to incorporate the definition of target date. It also amends regulation 34 of the Allocation Regulations 2014 to ensure that target dates can only be delayed, not brought forward as well as correcting a typographical error.

Regulations 12 and 14 prevent a double re-run scenario by prohibiting the delivery body from issuing a proceed direction or a re-run notice where the delay period has expired.

Regulation 13 amends regulation 39 of the Allocation Regulations 2014 to provide for an additional circumstance where a re-run of the allocation process is required and that the allocation framework may establish time periods for such re-runs.

Regulation 15 amends regulation 46 of the Allocation Regulations 2014 to provide for Authority to issue a notice requiring the delivery body to provide information in relation to a qualification appeal. It sets out how the delivery body should respond where the delivery body holds all, part or none of the information required. The amendments also ensure the Secretary of State receives any notice the Authority gives of its determination of an appeal and corrects a typographical error in regulation 46(4) of the Allocation Regulations 2014.

Regulation 16 amends regulation 51 of the Allocation Regulations 2014. The amendments provide for a new circumstance where the delivery body must re-run the allocation process. Regulation 51(3) of the Allocation Regulations 2014 is amended so a determination made under that regulation is made in accordance with the allocation framework. The amendments also incorporate

the definition of target dates and ensure target dates can only be delayed and not brought forward. Regulation 51(7) of the Allocation Regulations 2014 is amended so that a determination made by the delivery body in accordance with that paragraph includes flexible bids. The definition of “flexible bid”, as set out in regulation 51(10) of the Allocation Regulations 2014, is also amended.

Regulation 17 amends regulation 54 of the Allocation Regulations 2014 to ensure the Secretary of State may direct the delivery body to provide certain anonymised information in relation to bids submitted in a competitive allocation process. It only permits such a direction if it is given after the first CFD notification has been given for the relevant round and the information does not include the strike price of any bid. The amendments also clarify that the Secretary of State may share information obtained under regulation 54 of the Allocation Regulations 2014 with persons providing services to the Secretary of State in connection with evaluation of any allocation round to the extent that such disclosure is required for evaluation.

Regulation 19 amends paragraph 3(a)(iv) of Schedule 1 to the Allocation Regulations 2014 to incorporate the definition of target dates.

Regulation 26 inserts a new regulation 18 in the Electricity Market Reform (General) Regulations 2014 (S.I. 2014/2013, as amended by S.I. 2015/721) to enable the Secretary of State to issue a direction to the CFD counterparty to modify existing contracts in the event that a change has been made to the CFD sustainability criteria.

A full impact assessment of the effect 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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£6.00

UK2016072014 07/2016 19585

<http://www.legislation.gov.uk/id/uksi/2016/784>

ISBN 978-0-11-114879-2



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