



Energy Act 2013

2013 CHAPTER 32

PART 2

ELECTRICITY MARKET REFORM

CHAPTER 2

CONTRACTS FOR DIFFERENCE

6 Regulations to encourage low carbon electricity generation

- (1) The Secretary of State may for the purpose of encouraging low carbon electricity generation make regulations about contracts for difference between a CFD counterparty and an eligible generator.
- (2) A contract for difference is a contract—
 - (a) certain payments under which are to be funded by electricity suppliers (see further section 9), and
 - (b) which a CFD counterparty is required to enter into by virtue of section 10 or 14;and such a contract is referred to in this Chapter as a “CFD”.
- (3) For the purposes of this Chapter—
 - “CFD counterparty” is to be construed in accordance with section 7(2);
 - “eligible generator” is to be construed in accordance with section 10(3);
 - “low carbon electricity generation” means electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases;
 - “regulations” means regulations under this section.
- (4) In subsection (3) “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.

Status: This is the original version (as it was originally enacted).

- (5) The provision which may be made by regulations includes, but is not limited to, the provision described in this Chapter.
- (6) Regulations may—
- (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different cases or circumstances or for different purposes;
 - (d) make provision subject to exceptions.
- (7) Regulations are to be made by statutory instrument.
- (8) An instrument containing regulations of any of the following kinds may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament (in each case, whether or not the regulations also make other provision)—
- (a) the first regulations which make provision falling within each of the following—
 - (i) section 14;
 - (ii) section 15;
 - (iii) section 19;
 - (iv) section 20;
 - (b) regulations which make provision falling within—
 - (i) section 9;
 - (ii) section 10;
 - (iii) section 12;
 - (iv) section 13;
 - (v) section 17;
 - (vi) section 18;
 - (vii) section 21;
 - (viii) section 22;
 - (ix) section 23.
- (9) Any other instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If, but for this subsection, an instrument containing regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

7 **Designation of a CFD counterparty**

- (1) The Secretary of State may by order made by statutory instrument designate an eligible person to be a counterparty for contracts for difference.
- (2) A person designated under this section is referred to in this Chapter as a “CFD counterparty”.
- (3) A person is eligible if the person is—
 - (a) a company formed and registered under the Companies Act 2006, or

Status: This is the original version (as it was originally enacted).

- (b) a public authority, including any person any of whose functions are of a public nature.
- (4) A designation may be made only with the consent of the person designated.
- (5) The Secretary of State may exercise the power to designate so that more than one designation has effect under this section, but only if the Secretary of State considers it necessary for the purposes of ensuring that—
 - (a) liabilities under a CFD are met,
 - (b) arrangements entered into for purposes connected to a CFD continue to operate, or
 - (c) directions given to a CFD counterparty continue to have effect.
- (6) A designation ceases to have effect if—
 - (a) the Secretary of State by order made by statutory instrument revokes the designation, or
 - (b) the person withdraws consent to the designation by giving not less than 3 months' notice in writing to the Secretary of State.
- (7) At any time after the first designation has effect, the Secretary of State must, so far as reasonably practicable, exercise the power to designate so as to ensure that at least one designation has effect under this section.
- (8) Schedule 1 (which makes provision about schemes to transfer property, rights and liabilities from a person who has ceased to be a CFD counterparty to a person who is a CFD counterparty) has effect.
- (9) As soon as reasonably practicable after a designation ceases to have effect the Secretary of State must make a transfer scheme under Schedule 1 to ensure the transfer of all rights and liabilities under any CFD to which the person who has ceased to be a CFD counterparty was a party.
- (10) Regulations may include provision about the period of time for which, and the circumstances in which, a person who has ceased to be a CFD counterparty is to continue to be treated as a CFD counterparty for the purposes of the regulations.

8 Duties of a CFD counterparty

- (1) A CFD counterparty must act in accordance with—
 - (a) any direction given by the Secretary of State by virtue of this Chapter;
 - (b) any provision included in regulations.
- (2) A CFD counterparty must exercise the functions conferred by or by virtue of this Chapter to ensure that it can meet its liabilities under any CFD to which it is a party.
- (3) In this Chapter “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

9 Supplier obligation

- (1) Regulations must make provision for electricity suppliers to pay a CFD counterparty for the purpose of enabling the counterparty to make payments under CFDs.

Status: This is the original version (as it was originally enacted).

- (2) Regulations may make provision for electricity suppliers to pay a CFD counterparty for the purpose of enabling the counterparty—
- (a) to meet such other descriptions of its costs as the Secretary of State considers appropriate;
 - (b) to hold sums in reserve;
 - (c) to cover losses in the case of insolvency or default of an electricity supplier.
- (3) In subsection (2)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Chapter.
- (4) Regulations may make provision to require electricity suppliers to provide financial collateral to a CFD counterparty (whether in cash, securities or any other form).
- (5) Regulations which make provision by virtue of subsection (1) for the payment of sums by electricity suppliers must impose on the CFD counterparty a duty in relation to the collection of such sums.
- (6) Provision made by virtue of this section may include provision for—
- (a) a CFD counterparty to determine the form and terms of any financial collateral;
 - (b) a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or are to be provided as financial collateral by an electricity supplier;
 - (c) the issuing of notices by a CFD counterparty to require the payment or provision of such amounts;
 - (d) the enforcement of obligations arising under such notices.
- (7) Provision made by virtue of subsection (6)(b) may provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (8) Provision made by virtue of subsection (6)(d) may include provision—
- (a) about costs;
 - (b) about interest on late payments under notices;
 - (c) about references to arbitration;
 - (d) about appeals.
- (9) Any sum which—
- (a) an electricity supplier is required by virtue of regulations to pay to a CFD counterparty, and
 - (b) has not been paid by the date on which it is required by virtue of regulations to be paid,
- may be recovered from the electricity supplier by the CFD counterparty as a civil debt due to it.
- (10) In this section “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
- (a) section 6(1)(d) of EA 1989, or
 - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).

10 Direction to offer to contract

- (1) The Secretary of State may, in accordance with provision made by regulations, direct a CFD counterparty to offer to contract with a person specified in the direction, on terms specified in the direction.
- (2) A person may be specified in a direction under subsection (1) only if that person is an eligible generator.
- (3) Regulations must make provision defining who is an “eligible generator” for the purposes of this Chapter.
- (4) Regulations may make further provision about a direction under this section and in particular about—
 - (a) the circumstances in which a direction may or must be given;
 - (b) the terms which may or must be specified in a direction.
- (5) Provision falling within subsection (4) may include provision for—
 - (a) the determination of a matter on a competitive basis,
 - (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (6) A direction may not be given under this section in relation to an electricity generating station in Northern Ireland unless the Department of Enterprise, Trade and Investment consent to the direction.
- (7) But regulations may, with the consent of that Department, include provision for circumstances in which consent under subsection (6) is not required.
- (8) In subsection (6) “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

11 Standard terms

- (1) The Secretary of State may issue standard terms and conditions of CFDs (“standard terms”).
- (2) The Secretary of State may from time to time revise standard terms.
- (3) Standard terms issued or revised under this section must be in accordance with provision made in regulations.
- (4) In issuing or revising standard terms the Secretary of State must have regard to the matters mentioned in section 5(2).
- (5) The Secretary of State must publish standard terms as issued or revised under this section.
- (6) In publishing standard terms the Secretary of State may designate particular standard terms as terms that may not be modified under section 15.
- (7) Different standard terms may be issued for different categories of CFD.

Status: This is the original version (as it was originally enacted).

12 CFD notifications

- (1) The national system operator may, in accordance with provision made by regulations, give a notification to a CFD counterparty (a “CFD notification”) specifying—
 - (a) an eligible generator, and
 - (b) such other information as may be required for the purpose of making an offer under section 14 to contract with that generator.
- (2) A CFD notification must not be given if regulations made by virtue of section 23 prevent the giving of the notification.
- (3) Regulations may make further provision about CFD notifications and in particular provision about—
 - (a) the circumstances in which a CFD notification may or must be given;
 - (b) the kinds of information mentioned in subsection (1)(b) that must be specified in a CFD notification;
 - (c) appeals against decisions not to give CFD notifications.
- (4) A CFD notification may not be given by virtue of regulations under this section in relation to an electricity generating station in Northern Ireland unless the Department of Enterprise, Trade and Investment consent to the CFD notification.
- (5) But regulations may, with the consent of that Department, include provision for circumstances in which consent under subsection (4) is not required.
- (6) In subsection (4) “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

13 Allocation of CFDs

- (1) Provision that may be included in regulations by virtue of section 12 includes in particular provision about how CFDs are to be allocated to eligible generators (and for this purpose a CFD is “allocated” to a generator if the generator is specified in a CFD notification).
- (2) Provision made by virtue of subsection (1) may include provision—
 - (a) conferring power on the Secretary of State to make rules (an “allocation framework”) about how CFDs are to be allocated;
 - (b) for different periods within which CFDs are to be allocated (“allocation rounds”);
 - (c) for different allocation frameworks to apply in respect of different allocation rounds;
 - (d) for the publication of allocation frameworks;
 - (e) about matters in relation to which provision may or must be made in an allocation framework.
- (3) Provision made by regulations by virtue of subsection (2) may impose requirements on the Secretary of State, including in particular—
 - (a) requirements as to the giving of notice before an allocation round is commenced;
 - (b) restrictions on the circumstances in which amendments may be made during an allocation round to an allocation framework or to any other matter relevant

Status: This is the original version (as it was originally enacted).

to an allocation round (including any amount by reference to which a limit on the CFDs allocated during the round is to be determined).

- (4) An allocation framework may—
 - (a) confer functions on the national system operator with respect to the allocation of CFDs;
 - (b) specify targets to be met or taken into account by the national system operator in giving CFD notifications by virtue of section 12, including targets relating to—
 - (i) the means by which electricity is generated;
 - (ii) the generating capacity of electricity generating stations;
 - (iii) the geographical location of electricity generating stations;
 - (c) make any provision that may be made by regulations by virtue of subsection (3).
- (5) An allocation framework may include provision for—
 - (a) the determination of a matter on a competitive basis;
 - (b) calculations or determinations to be made under the framework, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the framework.
- (6) An allocation framework may—
 - (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision and savings;
 - (c) make different provision for different cases or circumstances or for different purposes;
 - (d) make provision subject to exceptions.
- (7) Any power conferred by virtue of subsection (2) to make an allocation framework includes a power to amend, add to or remove an allocation framework.
- (8) Subsections (4) to (7) are subject to any provision contained in regulations.

14 CFD notification: offer to contract on standard terms

- (1) Where a CFD notification is given to a CFD counterparty under section 12, the CFD counterparty must, in accordance with provision made by regulations, offer to contract with the eligible generator specified in the notification on—
 - (a) standard terms, or
 - (b) standard terms as modified in accordance with any modification agreement entered into between the CFD counterparty and the eligible generator for the purposes of the CFD notification (see section 15).
- (2) Regulations may make further provision about an offer to contract made under this section, including provision about—
 - (a) how a CFD counterparty is to apply or complete standard terms in relation to the offer in accordance with information specified in a CFD notification;
 - (b) the time within which the offer must be made;
 - (c) how the eligible generator to whom it is made may enter into a CFD as a result of the offer;

Status: This is the original version (as it was originally enacted).

- (d) what is to happen if the eligible generator does not enter into a CFD as a result of it.
- (3) In this section, “standard terms”, in relation to a CFD notification, means standard terms published under section 11, determined in accordance with regulations as the standard terms that are to apply in relation to the CFD notification.

15 Modification of standard terms

- (1) This section applies where a person wishes to be specified as an eligible generator in a CFD notification (“the potential CFD notification”).
- (2) A CFD counterparty and the person may, in accordance with provision made by regulations, agree to modify standard terms for the purposes of any offer that would be required under section 14 if the potential CFD notification is given (a “modification agreement”).
- (3) A CFD counterparty may enter into a modification agreement providing for the modification of any particular standard term only if—
- (a) the CFD counterparty is satisfied that—
 - (i) the effect of the modification is minor, and
 - (ii) the modification is necessary; and
 - (b) the standard term has not been designated under section 11 as a term that may not be modified under this section.
- (4) Regulations may make further provision about modification agreements, including—
- (a) the circumstances in which a person may make an application for a modification agreement;
 - (b) the time by which an application must be made;
 - (c) the procedure to be followed, and the information to be given, by the person in making an application;
 - (d) how a CFD counterparty is to determine an application (including how it is to determine whether the effect of a modification is minor and whether it is necessary);
 - (e) the time by which determinations must be made;
 - (f) the form of modification agreements.
- (5) Provision made by virtue of subsection (4)(d) may include provision under which the CFD counterparty may make alternative proposals for modifications in response to an application.
- (6) In this section “modify” includes add to, alter or omit, and “modification” is to be read accordingly.

16 Sections 12 to 15: further provision

Provision made by regulations by virtue of any of sections 12 to 15 may include provision for—

- (a) the determination of a matter on a competitive basis;
- (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to

such matters and to the opinion of such persons, as may be specified in the regulations.

17 Payments to electricity suppliers

- (1) Regulations may make provision about the amounts which must be paid by a CFD counterparty to electricity suppliers.
- (2) Provision made by virtue of this section may—
 - (a) include provision for a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by the CFD counterparty;
 - (b) provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (3) In this section “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
 - (a) section 6(1)(d) of EA 1989; or
 - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)).

18 Application of sums held by a CFD counterparty

- (1) Regulations may make provision for apportioning sums—
 - (a) received by a CFD counterparty from electricity suppliers under provision made by virtue of section 9;
 - (b) received by a CFD counterparty under a CFD,
in circumstances where the CFD counterparty is unable fully to meet its liabilities under a CFD.
- (2) Provision made by virtue of subsection (1) may include provision about the meaning of “unable fully to meet its liabilities under a CFD”.
- (3) In making provision by virtue of subsection (1) the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed.
- (4) Regulations may make provision about the application of sums held by a CFD counterparty.
- (5) Provision made by virtue of subsection (4) may include provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

19 Information and advice

- (1) Regulations may make provision about the provision and publication of information.
- (2) Provision made by virtue of subsection (1) may include provision—
 - (a) for the Secretary of State to require the national system operator to provide advice to the Secretary of State;

Status: This is the original version (as it was originally enacted).

- (b) for the Secretary of State to require a CFD counterparty, the Authority, the Northern Ireland Authority for Utility Regulation or the Northern Ireland system operator to provide advice to the Secretary of State or any other person specified in the regulations;
 - (c) for the Secretary of State to require a CFD counterparty, the national system operator, the Authority, the Northern Ireland Authority for Utility Regulation, the Northern Ireland system operator or a generator who is party to a CFD to provide information to the Secretary of State or any other person specified in the regulations;
 - (d) for the national system operator to require information to be provided to it by a CFD counterparty, a generator who is party to a CFD or the Northern Ireland system operator;
 - (e) for a CFD counterparty to require information to be provided to it by electricity suppliers or the Northern Ireland system operator;
 - (f) for the classification and protection of confidential or sensitive information;
 - (g) for the enforcement of any requirement imposed by virtue of paragraphs (a) to (f).
- (3) In subsection (2)—
- (a) “Northern Ireland system operator” means the holder of a licence under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
 - (b) “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
 - (i) section 6(1)(d) of EA 1989; or
 - (ii) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).
- (4) The prohibition on disclosure of information by—
- (a) section 105(1) of the Utilities Act 2000;
 - (b) Article 63(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
- does not apply to a disclosure required by virtue of this section.

20 Functions of the Authority

Regulations may make provision conferring functions on the Authority for the purpose of offering advice to, or making determinations on behalf of, a party to a CFD.

21 Regulations: further provision

- (1) Regulations may make provision—
- (a) to require a CFD counterparty to enter into arrangements or to offer to contract for purposes connected to a CFD;
 - (b) specifying things that a CFD counterparty may or must do, or things that a CFD counterparty may not do;
 - (c) conferring on the Secretary of State further powers to direct a CFD counterparty to do, or not to do, things specified in the regulations or the direction.

- (2) Provision made by virtue of subsection (1)(b) or (c) includes provision requiring consultation with, or the consent of, the Secretary of State in relation to—
 - (a) the determination of an application for a modification agreement under section 15;
 - (b) the enforcement of obligations under a CFD;
 - (c) a variation or termination of a CFD;
 - (d) the settlement or compromise of a claim under a CFD;
 - (e) the conduct of legal proceedings relating to a CFD;
 - (f) the exercise of rights under a CFD.
- (3) Regulations must include such provision as the Secretary of State considers necessary to ensure that a CFD counterparty can meet its liabilities under any CFD to which it is a party.

22 Enforcement

- (1) Regulations may make provision for requirements under the regulations to be enforceable—
 - (a) by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
 - (b) by the Northern Ireland Authority for Utility Regulations as if they were relevant requirements on a regulated person for the purposes of Article 41A of the [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419 \(N.I. 6\)\)](#).
- (2) Provision made by virtue of subsection (1)(a) may include provision about the enforcement of requirements imposed on the national system operator.
- (3) Provision made by virtue of subsection (1)(b) may be made in relation only to the enforcement of requirements imposed on the holder of a licence under Article 10(1)(c) of the [Electricity \(Northern Ireland\) Order 1992 \(S.I. 1992/231 \(N.I. 1\)\)](#).

23 Limits on costs to be incurred

- (1) Regulations may make provision for—
 - (a) the power to give a notification under section 12 not to be exercisable if a maximum cost incurred or to be incurred by a CFD counterparty has been reached (such cost to be calculated in accordance with provision made by or under the regulations);
 - (b) a power for the Secretary of State to direct the national system operator not to give a notification under that section if the Secretary of State believes that by virtue of the notification being given a cost greater than the maximum cost provided for by the regulations would be incurred.
- (2) If more than one designation has effect under section 7, the reference in subsection (1)(a) is a reference to all CFD counterparties.
- (3) Provision made by virtue of subsection (1)(a) may provide for anything which is to be calculated under the regulations to be calculated by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

Status: This is the original version (as it was originally enacted).

24 Consultation

- (1) Before making regulations under this Chapter the Secretary of State must consult—
 - (a) the Scottish Ministers,
 - (b) the Welsh Ministers,
 - (c) the Department of Enterprise, Trade and Investment,
 - (d) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989,
 - (e) any person who is a holder of a licence under Article 10(1)(b) or (c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) (transmission or supply licence),
 - (f) the Authority,
 - (g) the national system operator, and
 - (h) such other persons as the Secretary of State considers it appropriate to consult.
- (2) Before publishing standard terms under section 11 the Secretary of State must consult such persons as the Secretary of State considers it appropriate to consult.
- (3) A requirement under this section to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

25 Shadow directors, etc.

Neither the Secretary of State nor the national system operator is, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as—

- (a) a person occupying in relation to a CFD counterparty the position of director;
- (b) being a person in accordance with whose directions or instructions the directors of a CFD counterparty are accustomed to act;
- (c) exercising any function of management in a CFD counterparty;
- (d) a principal of a CFD counterparty.

26 Licence modifications

- (1) The Secretary of State may modify—
 - (a) a condition of a particular licence under section 6(1)(a), (b) or (c) of EA 1989 (generation, transmission and distribution licences);
 - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A(1A) of that Act;
 - (c) a document maintained in accordance with the conditions of licences under that provision, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of—
 - (a) conferring functions on the national system operator in connection with its functions by or by virtue of this Chapter;
 - (b) allowing or requiring services to be provided to a CFD counterparty;
 - (c) enforcing obligations under a CFD.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the power under subsection (1) may in particular include provision of a kind that may be included in regulations.

Status: This is the original version (as it was originally enacted).

- (4) Before making a modification under this section, the Secretary of State must consult—
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers,
 - (c) the holder of any licence being modified,
 - (d) any person who is a holder of a licence to supply electricity under section 6(1) (d) of EA 1989,
 - (e) any person who is a holder of a licence to supply electricity under Article 10(1) (c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)),
 - (f) the Department of Enterprise, Trade and Investment,
 - (g) the Authority, and
 - (h) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.