

**2016 No. 363**

**ELECTRICITY**

**The Electricity Supplier Payments (Amendment)  
Regulations 2016**

*Made* - - - -

*10th March 2016*

*Coming into force in accordance with regulation 1*

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The Secretary of State has before making these Regulations—

- (a) consulted the persons listed in section 24(1)(a) to (g) and section 40(2)(a) and (b) of the Energy Act 2013<sup>(a)</sup> 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) and 40(5) of 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), (5) and (6), 9(1), (2), and (5) to (8), 12(3), 16, 17, 19, 20, 21(1) and (3), 27, 30 and 40(1) of the Energy Act 2013, makes the following Regulations:

## PART 1

### Introduction

#### **Citation and commencement**

**1.**—(1) These Regulations may be cited as the Electricity Supplier Payments (Amendment) Regulations 2016.

(2) Regulations 1, 2 and 24 come into force on the day after the day on which these Regulations are made.

(3) Regulations 3 to 23 come into force on the later of 1st April 2016 or the day after the day on which these Regulations are made.

#### **Interpretation**

**2.** In these Regulations—

“the ESO Regulations” means the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014<sup>(b)</sup>;

“the Standard Terms Regulations” means the Contracts for Difference (Standard Terms) Regulations 2014<sup>(c)</sup>;

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(a) 2013 c.32.

(b) S.I. 2014/2014, amended by S.I. 2015/721.

(c) S.I. 2014/2012, amended by S.I. 2015/1425.

“the Supplier Payment Regulations” means the Electricity Capacity (Supplier Payment etc.) Regulations 2014(a).

## PART 2

### Amendment of the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014

#### Amendment of the ESO Regulations (regulation 2)

3.—(1) Regulation 2 of the ESO Regulations is amended as follows.

(2) At the appropriate place in paragraph (1) insert—

““BM Unit” has the meaning given in the Balancing and Settlement Code (see section X of that code) and “registered” in relation to a BM Unit means registered in accordance with the requirements of section K of the Balancing and Settlement Code;”.

#### Amendment of the ESO Regulations (regulation 6)

4.—(1) Regulation 6 of the ESO Regulations is amended as follows.

(2) For paragraphs (2) and (3) substitute—

“(2) The CFD counterparty must determine an interim levy rate for a quarterly obligation period (“the rate period”) before the commencement of the quarterly obligation period which immediately precedes the rate period.

(3) Where the CFD counterparty has determined an interim levy rate for a quarterly obligation period it must—

- (a) as soon as reasonably practicable, publish a notice setting out that rate and issue that notice to every electricity supplier who has a BM Unit registered as at the day before the date of publication of the notice; and
- (b) issue that notice to every electricity supplier who has a BM Unit that becomes registered on or after the date of publication of the notice and by the last day of the quarterly obligation period to which that rate applies, as soon as reasonably practicable after the BM Unit is registered.”.

#### Amendment of the ESO Regulations (regulation 7)

5.—(1) Regulation 7 of the ESO Regulations is amended as follows.

(2) For paragraph (1) substitute—

“(1) The estimated quarterly obligation period payment cost in respect of a quarterly obligation period (“the rate period”) is the sum of the CFD counterparty’s estimates of TGPR and NDSR in respect of that period, estimated by the CFD counterparty having regard to the matters set out in paragraph (2).”.

(3) In paragraph (2) omit—

- (a) each occurrence of the words “in respect of which payments may become due”; and
- (b) paragraph (v).

(4) In paragraph (3)—

- (a) for “amount which the CFD counterparty estimates it will receive from CFD parties during” substitute “sum of the CFD counterparty’s estimates of TCPR and NGSR in respect of”; and

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(a) S.I. 2014/3354, amended by S.I. 2015/875.

- (b) omit sub-paragraph (b).
- (5) In paragraph (5)—
  - (a) after the definition of CFD generating station insert—
    - ““CP” and “GP” are to be construed in accordance with regulation 4;”; and
  - (b) after the definition of “market reference price”, “settlement hour”, “settlement period” and “strike price” insert—
    - ““NDS” and “NGS” are to be construed in accordance with regulation 5;
    - “NDSR” means the NDS required to be paid by the CFD counterparty during the rate period;
    - “NGSR” means the NGS which is paid to the CFD counterparty during the rate period;
    - “TCPR” means the sum of all CP paid to the CFD counterparty in respect of electricity generation during the rate period; and
    - “TGPR” means the sum of all GP required to be paid by the CFD counterparty in respect of electricity generation during the rate period.”.

**Amendment of the ESO Regulations (regulation 10)**

- 6.—(1) Regulation 10 of the ESO Regulations is amended as follows.
- (2) After paragraph (1) insert—
  - “(1A) The CFD counterparty must make and publish its determination of the total reserve amount for a quarterly obligation period before the commencement of the quarterly obligation period which immediately precedes that period.”.
- (3) For paragraph (2) substitute—
  - “(2) The CFD counterparty must determine the amount of each electricity supplier’s reserve payment for a quarterly obligation period before the 8th working day of the quarterly obligation period which immediately precedes that period.”.
- (4) Omit paragraph (3).
- (5) For paragraph (4) substitute—
  - “(4) The CFD counterparty must issue to every relevant supplier a notice which sets out the amount of that supplier’s reserve payment for a quarterly obligation period before the 8th working day of the quarterly obligation period which immediately precedes that period.
  - (4A) For the purpose of paragraph (4), a “relevant supplier” is an electricity supplier who supplied electricity during the reference period (within the meaning given by regulation 11(4)).”.

**Amendment of the ESO Regulations (regulation 11)**

- 7.—(1) Regulation 11 of the ESO Regulations is amended as follows.
- (2) At the end of paragraph (4) insert “before the CFD counterparty makes its determination under regulation 10(1A) in respect of the relevant period”.

**Amendment of the ESO Regulations (regulation 12)**

- 8.—(1) Regulation 12 of the ESO Regulations is amended as follows.
- (2) In paragraphs (1), (2) and (3) for “during”, in each place it occurs, substitute “in respect of”.

**Amendment of the ESO Regulations (regulation 13)**

- 9.—(1) Regulation 13 of the ESO Regulations is amended as follows.
- (2) In paragraph (1) for “relation to”, in each place it occurs, substitute “respect of electricity supply during”.

(3) For paragraph (3) substitute—

“(3) Where the CFD counterparty has determined an adjusted interim levy rate it must—

- (a) as soon as reasonably practicable, publish a notice setting out that rate and issue that notice to every electricity supplier who has a BM Unit registered as at the day before the date of publication of the notice;
- (b) issue that notice to every electricity supplier who has a BM unit that becomes registered on or after the date of publication of the notice and by the last day of the quarterly obligation period during which that rate has effect, as soon as reasonably practicable after the BM Unit is registered; and
- (c) where paragraph (5) applies, specify a date on which the rate shall have effect.”.

(4) In paragraph (4) for “An adjusted interim levy rate” substitute “Where the adjusted interim levy rate is greater than the previous levy rate, it”.

(5) After paragraph (4) insert—

“(5) Where the adjusted interim levy rate is less than the previous levy rate, it has effect from the date specified in the notice published under paragraph (3).

(6) For the purpose of paragraphs (4) and (5), “previous levy rate” means the interim levy rate or the adjusted interim levy rate most recently determined in respect of the rate period.”.

#### **Amendment of the ESO Regulations (regulation 14)**

**10.**—(1) Regulation 14 of the ESO Regulations is amended as follows.

(2) In paragraph (3) after “supplier” insert “who supplied electricity during the adjusted reference period”.

(3) In paragraph (5) for “purpose of paragraph (4)” substitute “purposes of paragraphs (3), (4) and (6)”.

(4) In paragraph (6)(b) after “supplier” insert “who supplied electricity during the adjusted reference period”.

#### **Amendment of the ESO Regulations (regulation 15)**

**11.**—(1) Regulation 15 of the ESO Regulations is amended as follows.

(2) In paragraph (3) for “electricity supplier” substitute “relevant supplier”.

(3) After paragraph (3) insert—

“(4) For the purpose of paragraph (3), a “relevant supplier” is an electricity supplier who—

- (a) supplied electricity during the reconciliation period,
- (b) is due to make or receive a reconciliation payment, or
- (c) is due to make a reserve payment.”.

#### **Amendment of the ESO Regulations (regulation 17)**

**12.**—(1) Regulation 17 of the ESO Regulations is amended as follows.

(2) At the end of paragraph (1) insert “who supplied electricity during the reference period”.

(3) In paragraph (2) omit sub-paragraphs (c) and (d).

(4) Omit paragraph (4).

(5) In paragraph (8)—

- (a) for “purposes of paragraph (7)” substitute “purposes of paragraphs (1) and (7)”;
- (b) in sub-paragraph (a)—

- (i) omit paragraph (i) and the word “or” that follows it; and
- (ii) in paragraph (ii), omit “in respect of any other default.”.

**Amendment of the ESO Regulations (regulation 18)**

- 13.**—(1) Regulation 18 of the ESO Regulations is amended as follows.
- (2) In paragraph (3) for “5th” substitute “15th”.

**Amendment of the ESO Regulations (regulation 20)**

- 14.**—(1) Regulation 20 of the ESO Regulations is amended as follows.
- (2) In paragraph (5) before “electricity suppliers” insert “BM registered”.
  - (3) After paragraph (5) insert—
    - “(5A) In paragraph (5), “BM registered electricity suppliers” means electricity suppliers who have a BM unit registered as at the day before the date the notice is issued.”.
  - (4) In paragraph (6) after “suppliers” insert “who were sent the first notice”.

**Amendment of the ESO Regulations (regulation 22)**

- 15.**—(1) Regulation 22 of the ESO Regulations is amended as follows.
- (2) In paragraph (3) for “5” substitute “15”.

**Amendment of the ESO Regulations (regulation 23)**

- 16.**—(1) Regulation 23 of the ESO Regulations is amended as follows.
- (2) In paragraph (7)(a) for “£0.0397” substitute “£0.0509”.

**Amendment of the ESO Regulations (regulation 25)**

- 17.**—(1) Regulation 25 of the ESO Regulations is amended as follows.
- (2) In paragraph (2)—
    - (a) after sub-paragraph (c) insert “and”;
    - (b) after sub-paragraph (d) omit “; and”; and
    - (c) omit sub-paragraph (e).

**Amendment of the ESO Regulations (regulation 28)**

- 18.**—(1) Regulation 28 of the ESO Regulations is amended as follows.
- (2) After paragraph (4) insert—
    - “(5) The CFD counterparty must publish information which relates to its estimates of the liabilities of electricity suppliers arising during three consecutive quarterly obligation periods (“the projection period”).
    - (6) The CFD counterparty must publish information under paragraph (5) no later than two quarterly obligation periods before the start of the first quarterly obligation period to which that information relates.
    - (7) The information published under paragraph (5) must include—
      - (a) an estimate of the interim levy rate that would apply to each quarterly obligation period during the projection period;
      - (b) an estimate of the total reserve amount for each quarterly obligation period during the projection period;

- (c) an estimate of CFD party payments and CFD counterparty payments which may arise in respect of each quarterly obligation period during the projection period.

(8) The CFD counterparty is not required to publish any information under paragraph (5) relating to generators that have applied for but not been awarded CFDs or that may apply for CFDs in future.”.

### **Amendment of the ESO Regulations (regulation 30)**

**19.**—(1) Regulation 30 of the ESO Regulations is amended as follows.

(2) In paragraph (1)—

- (a) for sub-paragraph (b) substitute—

“(b) that supplier is liable to pay determined payments; and”;

- (b) after sub-paragraph (b) insert—

“(c) the CFD counterparty considers that there is a high degree of likelihood that the electricity supplier will fail to pay a determined payment.”.

(3) At the end of paragraph (2) insert “, subject to paragraph (2A)”.

(4) After paragraph (2) insert—

“(2A) The maximum amount the CFD counterparty may retain under paragraph (2) is the amount equal to the sum of all determined payments which the supplier is liable to pay at the relevant date.”.

(5) In paragraph (5)—

- (a) after sub-paragraph (b) omit “and”;

- (b) after sub-paragraph (c) insert—

“; and

- (d) which the supplier must make within 5 working days of the relevant date”.

### **Amendment of the ESO Regulations (new regulation 30A)**

**20.**—(1) The ESO Regulations are amended as follows.

(2) After regulation 30 insert—

#### **“Netting of payments by the CFD counterparty**

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

- (a) the CFD counterparty must make a payment of an amount to an electricity supplier under these Regulations by a certain date (the “counterparty payment”); and
- (b) that supplier must make a payment of an amount to the CFD counterparty by the same date (the “supplier payment”).

(2) Where the counterparty payment is more than the supplier payment, payment of the counterparty payment less the supplier payment discharges—

- (a) the CFD counterparty’s obligation to make the counterparty payment, and
- (b) the supplier’s obligation to make the supplier payment.

(3) Where the counterparty payment is less than the supplier payment, payment of the supplier payment less the counterparty payment discharges—

- (a) that supplier’s obligation to make the supplier payment, and
- (b) the CFD counterparty’s obligation to make the counterparty payment.

(4) Where this regulation applies and the counterparty payment is equal to the supplier payment—

- (a) the CFD counterparty's obligation to make the counterparty payment is discharged, and
- (b) the supplier's obligation to make the supplier payment is discharged.”.

#### **Amendment of the ESO Regulations (regulation 31)**

**21.**—(1) Regulation 31 of the ESO Regulations is amended as follows.

(2) In paragraph (6) for “, 23(6) or 25(5)” substitute “or 23(6)”.

#### **Amendment of the ESO Regulations (Schedule)**

**22.**—(1) The Schedule to the ESO Regulations is amended as follows.

(2) After paragraph 29 insert—

“**29A.** Regulation 30A has effect as if—

- (a) each reference in paragraph (1) to “the CFD counterparty” is to “a CFD counterparty”,
- (b) the reference in paragraph (2)(a) to “the CFD counterparty” is to “that CFD counterparty”,
- (c) the reference in paragraph (3)(b) to “the CFD counterparty” is to “that CFD counterparty”,
- (d) the reference in paragraph (4)(a) to “the CFD counterparty” is to “that CFD counterparty”.”.

### **PART 3**

#### **Amendment of the Contracts for Difference (Standard Terms) Regulations 2014**

#### **Amendment of the Standard Terms Regulations (regulation 12)**

**23.**—(1) Regulation 12 of the Standard Terms Regulations is amended as follows.

(2) In paragraph (2)—

(a) after sub-paragraph (f) omit “and”; and

(b) after sub-paragraph (g) insert—

“; and

(h) the date that a generator proposes to be the start date for the purposes of its CFD.”.

(3) After paragraph (4) insert—

“(4A) Information published under paragraph (2)(h) must be updated each quarter.”.

(4) In paragraph (6) after “any information” insert “falling within sub-paragraph (d) or (h) of paragraph (2)”.

### **PART 4**

#### **Amendment of the Electricity Capacity (Supplier Payment etc.) Regulations 2014**

#### **Amendment of the Supplier Payment Regulations (regulation 9)**

**24.**—(1) In regulation 9(2) of the Supplier Payment Regulations, for “£3,891,000” substitute “£4,283,000”.

(2) But paragraph (1) does not apply in respect of any financial year commencing before 2016.



(3) In paragraph (2), “financial year” has the meaning given in regulation 2(1) of the Supplier Payment Regulations.

10th March 2016

*Andrea Leadsom*  
Minister of State  
Department of Energy and Climate Change

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make a number of amendments to the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 (S.I. 2014/2014) (the “ESO Regulations”). These Regulations also set the rate for the operational costs levy in the ESO Regulations. These Regulations also amend the Contracts for Difference (Standard Terms) Regulations 2014 (S.I. 2014/2012) (the “Standard Terms Regulations”). These Regulations also provide a revised figure for the settlement costs levy under regulation 9 of the Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354) (the “Supplier Payment Regulations”).

### **Part 1**

Regulation 2 contains definitions used in these Regulations. These relate to the three statutory instruments which are being amended by these Regulations.

### **Part 2**

Regulation 3 inserts a definition of the term “BM Unit” and of the term “registered” in relation to a BM Unit in the ESO Regulations, for the purpose of amendments made by regulations 4(2), 9(3) and 14(2) and (3). The amended provisions (together with others described below) ensure that the CFD counterparty is only required to send notices to and request payments from relevant suppliers, rather than being required to do so for suppliers who are not active at the relevant time. For these amendments to regulations 6, 13 and 20 of the ESO Regulations, this is achieved by identifying relevant suppliers by reference to those who have a BM Unit registered in accordance with the Balancing and Settlement Code (which is defined in the ESO Regulations) at the relevant time.

The amendments made by regulations 4 and 9 impose deadlines for the CFD counterparty to publish and issue notices.

Regulation 4 also omits redundant wording.

Regulation 5 changes the reference period according to which the interim rate is determined. Previously that rate was determined by reference to payments made during quarterly periods. This has been changed so that the rate is determined according to payments made in respect of those quarterly periods, given that some of those payments may be made outside the actual quarterly period.

Regulation 6 amends regulation 10 of the ESO Regulations in order to provide a period between the time at which the CFD counterparty must determine the total reserve amount in respect of a quarter and the time at which it must determine the individual payments that it will collect from each supplier.

Regulations 7, 8 and 9 contain changes which are consequential to the amendments in regulation 5.

The amendments made by regulations 6(5), 10, 11 and 12(2) ensure that the CFD counterparty is not required to notify inactive suppliers of their obligations where those obligations are not relevant to them. As a result of these changes, regulations 10, 14, 15 and 17 of the ESO Regulations only apply to suppliers who either supplied electricity during specified periods or who are due to make specified payments.

Paragraphs (3) and (4) of regulation 12 remove a requirement to include additional non-essential information in the notices that the CFD counterparty is required to issue under regulation 17. Paragraph (5) simplifies the definition of the reference period according to which mutualised payments are calculated.

Regulation 13 increases the amount of time the CFD counterparty has between recovering a mutualised payment from a defaulting supplier and paying that amount back to other suppliers, from 5 to 15 working days.

Regulation 15 increases the amount of time the CFD counterparty has between receiving an interest payment for collateral it holds on behalf of a supplier and the date on which it is required to pay that interest to that supplier.

Regulation 16 sets the rate for the operational costs levy in the ESO Regulations from the date these Regulations come into force and until amended. (It is expected that the rate will be amended from 1st April 2017.)

Regulation 17 removes the requirement for the CFD counterparty to notify suppliers of interest that has accrued on payments at the date of the notice, which may differ in any event from the interest that supplier is required to pay.

Regulation 18 imposes an obligation on the CFD counterparty to publish forecasts of the liabilities that suppliers are likely to face as a result of the ESO Regulations, up to three quarters in advance of those liabilities arising.

Regulation 19 clarifies the circumstances in which the CFD counterparty is able to set off payments due to suppliers against payments due to and from suppliers under regulation 30.

Regulation 20 inserts a new regulation 30A which enables the CFD counterparty to net payments due to suppliers against payments due from suppliers. Such payments can be netted against one another automatically where they are due at the same time. This differs from the set-off provision in the amended regulation 30, which relates to future payments on which suppliers are highly likely to default.

Regulation 21 amends regulation 31 of the ESO Regulations consequential on the amendment of regulation 25 of the ESO Regulations by regulation 30(3) of the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 (S.I. 2015/721).

Regulation 22 amends the Schedule to the ESO Regulations in order to ensure that the amended provisions can function where multiple CFD counterparties are appointed.

### **Part 3**

Regulation 23 amends the Standard Terms Regulations to require the CFD counterparty to include CFD start dates (a defined term in the CFD contracts) in the CFD register. Paragraph (4) restricts the categories of information that the CFD counterparty may withhold if in its opinion that information would be exempt from disclosure under the transparency legislation.

### **Part 4**

Regulation 24 amends the Supplier Payment Regulations in order to provide a revised figure for the settlement costs levy under regulation 9 of those Regulations. The revised figure does not apply in respect of any financial year commencing before 2016. A financial year for this purpose means a period of one year commencing with 1st April.

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