

2017 No. 502

ELECTRICITY

**The Electricity Supplier Payments (Amendment) Regulations
2017**

Made - - - - - *27th March 2017*

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) and section 40(2)(a) and (b) of 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) 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), (5) to (8), 12(3), 16, 17, 19, 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 2017.

(2) These Regulations come into force on 1st July 2017 except for regulations 8, 14 and 19.

(3) Regulation 8 comes into force on 1st October 2017.

(4) Regulation 14 comes into force on 1st April 2017.

(5) Regulation 19 comes into force on the day after the day on which these Regulations are made.

Interpretation

2. In these Regulations—

(a) 2013 c.32.

“the Act” means the Energy Act 2013.

PART 2

Amendment of the ESO Regulations

3. The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014(a) are amended in accordance with regulations 4 to 18.

4. At the appropriate places in regulation 2(1) insert—

““final reconciliation determination” is to be construed in accordance with regulation 15(2);” and

““reserve period” means a period beginning with the 13th working day of a quarterly obligation period and ending with the 13th working day of the subsequent quarterly obligation period;”.

5. In regulation 4—

(a) for the definition of GP in paragraph (1) substitute—

“GP is the total amount of generation counterparty payments which the CFD counterparty is required to make in respect of electricity generation which occurred on that day except for any payments which, at the time of the final reconciliation determination in respect of that quarterly obligation period, had not been determined by the CFD counterparty;”;

(b) for the definition of CP in paragraph (1) substitute—

“CP is the total amount of generation party payments which the CFD counterparty has received from CFD parties in respect of electricity generation which occurred on that day except for any payments which, at the time of the final reconciliation determination in respect of that quarterly obligation period, had not been determined by the CFD counterparty;”;

(c) for the definition of GE in paragraph (1) substitute—

“GE is the QGE for that supplier in that quarterly obligation period divided by the number of days in that period;”;

(d) for the definition of GT in paragraph (1) substitute—

“GT is the sum of QGE for all suppliers in that quarterly obligation period divided by the number of days in that period.”;

(e) after paragraph (1) insert—

“(1A) In paragraph (1), the QGE for an electricity supplier in a quarterly obligation period is—

(a) where the condition in paragraph (1B) is met by that supplier, the difference between the amount of electricity supplied by that supplier in that quarterly obligation period and the amount of EII excluded electricity supplied by that supplier in that period; or

(b) where the condition in paragraph (1B) is not met by that supplier, the amount of green excluded electricity supplied by that supplier in that quarterly obligation period.

(1B) The condition in this paragraph is met by an electricity supplier where the total amount of green excluded electricity and EII excluded electricity supplied by that supplier in that quarterly obligation period is greater than the amount of electricity supplied by that supplier in that period.”;

(a) S.I. 2014/2014 amended by the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations (S.I. 2015/721) and the Electricity Supplier Payments (Amendment) Regulations (S.I. 2016/363).

(f) in paragraph (2) for “and regulation 5” substitute “and regulations 5 and 28”.

6. In regulation 5—

(a) for the definition of NDS substitute—

“NDS is the sum of—

- (a) the total amount of CFD counterparty payments which are not generation counterparty payments which the CFD counterparty was required to make during that period; and
- (b) the total amount of generation counterparty payments which were made during that period but which had not been determined by the time of the final reconciliation determination in respect of the quarterly obligation period to which the payment relates;”;

(b) for the definition of NGS substitute—

“NGS is the sum of—

- (a) the total amount of CFD party payments which are not generation party payments which the CFD counterparty has received from CFD parties during that period; and
- (b) the total amount of generation party payments which the CFD counterparty has received from CFD parties during that period but which had not been determined by the time of the final reconciliation determination in respect of the quarterly obligation period to which the payment relates;”;

(c) for the definition of XEP substitute—

“XEP is the lesser of—

- (a) the amount of excluded electricity supplied by that supplier in that period; or
- (b) the amount of electricity supplied by that supplier in that period;”;

(d) for the definition of AXP substitute—

“AXP is the sum of XEP for all suppliers in that period.”.

7. For regulation 10(5) substitute—

“(5) The total reserve amount for a quarterly obligation period is the amount which the CFD counterparty determines it would need to be paid for there to be a 19 in 20 probability of it being able to make all the payments it is required to make to CFD parties during the reserve period which commences during that period having regard to—

- (a) the CFD counterparty’s estimate of the payments it expects to receive from CFD parties and electricity suppliers during that reserve period; and
- (b) the likelihood of any supplier failing to make payments it is required to make under these Regulations during that reserve period.”.

8. For regulation 11(1) substitute—

“(1) An electricity supplier must make a reserve payment to the CFD counterparty in respect of a quarterly obligation period (“the relevant period”) by the 5th working day after the day on which the CFD counterparty has issued a notice to that supplier under regulation 15(3) (notice of reconciliation payment) in the relevant period.”.

9. In regulation 11, at the beginning of paragraph (3) insert “Subject to regulation 14A,”.

10. In regulation 14—

(a) for paragraph (1) substitute—

“(1) An additional total reserve amount in respect of a quarterly obligation period is the amount which the CFD counterparty determines it would need to be paid, having regard to the matters set out in paragraph (2),—

- (a) to be able to make any CFD counterparty payments it has failed to make during the reserve period which commences during that quarterly obligation period; and

- (b) for there to be a 19 in 20 probability of it being able to make all payments it is required to make to CFD parties during that reserve period after the making of the determination.”;
- (b) in paragraph (2)—
 - (i) in sub-paragraphs (a) and (b) for “the reserve period” substitute “that reserve period”;
 - (ii) in sub-paragraph (c) for “that period” substitute “that reserve period”;
 - (iii) for sub-paragraph (d) substitute—
 - “(d) the CFD counterparty’s estimate of the payments it expects to receive from CFD parties and electricity suppliers during that reserve period.”.

11. After regulation 14 insert—

“**14A.**—(1) This regulation applies where the CFD counterparty is of the opinion that there is a high degree of likelihood that it will collect significantly more from suppliers under regulations 8(1) and 11(1) in respect of a quarterly obligation period than the amount it requires to be able to make all payments it is required to make during the reserve period which commences during that quarterly obligation period.

(2) Subject to paragraph (3), where this regulation applies the CFD counterparty may determine again the total reserve amount in respect of that quarterly obligation period in accordance with regulation 10(1)(a) and (5) (and for the purposes of this regulation the amount after it has been determined again is the “reduced total reserve amount”).

(3) The CFD counterparty may not make a determination under paragraph (2) in respect of a total reserve amount after the date which is 5 working days before the date electricity suppliers must make a reserve payment in respect of that total reserve amount under regulation 11(1).

(4) Where the CFD counterparty makes a determination under paragraph (2) in respect of a quarterly obligation period, it must—

- (a) publish a notice setting out its determination of the reduced total reserve amount for that period;
- (b) recalculate the amount (the “reduced reserve payment”) each supplier must pay under regulation 11(1) in respect of that period in accordance with regulation 11(3), and
- (c) issue a notice to each electricity supplier who was issued a notice under regulation 10(4) in respect of that period setting out the amount that supplier must pay under regulation 11(1) in respect of that period.

(5) A notice under paragraph (4)(c) may only be issued before a reconciliation notice has been issued under regulation 15(3) in respect of the same obligation period.

(6) Where the CFD counterparty issues a notice to a supplier under paragraph (4)(c) and that supplier has already made a reserve payment in respect of the quarterly obligation period to which it relates which exceeds the reduced reserve payment due from that supplier, the CFD counterparty must pay back to that supplier the difference between the amount of that reserve payment and the reduced reserve payment now due from that supplier as soon as reasonably practicable.”.

12. In regulation 16(4) for “90th day” substitute “5th working day”.

13. In regulation 17—

- (a) in paragraph (1) for “every other electricity supplier (“the non-defaulting suppliers”)” substitute “non-defaulting suppliers”;
- (b) after paragraph (1) insert—
 - “(1A) For the purposes of this regulation a “non-defaulting supplier” in relation to a mutualisation notice means an electricity supplier who has—

- (a) not failed to make any relevant payment within the time limit for making the payment under these Regulations;
- (b) failed to make one or more relevant payments not all of which have subsequently been paid to the CFD counterparty by the time the defaulting supplier was required to make the relevant payment referred to in paragraph (1); or
- (c) failed to make one or more relevant payments not all of which have subsequently been paid to the CFD counterparty by the time the defaulting supplier was required to make the relevant payment referred to in paragraph (1), but the CFD counterparty is of the opinion that it will hold some collateral (within the meaning given by regulation 19) provided by that supplier by the 5th working day after the day on which the CFD counterparty intends to issue that mutualisation notice.”.

14. In regulation 23, in paragraph (7)(a) for “£ 0.0509” substitute “£ 0.0524”.

15. At the end of regulation 28 insert—

“(9) Where the CFD counterparty expects to make a generation counterparty payment or receive a generation party payment at any time after the final reconciliation determination for the quarterly obligation period to which the payment relates it must publish its estimate of—

- (a) when that payment is likely to be made; and
- (b) its estimate of the amount of that payment.”.

16. For paragraph (13)(a) of the Schedule substitute—

“(a) in paragraph (1), the words “in relation to a CFD counterparty” appeared after the words “(“the quarterly obligation period”)” where those words appear for the first time in regulation 14(1), and the reference to “the CFD counterparty” in that paragraph and in paragraph (2) is to “that CFD counterparty”.”

17. After paragraph (13) of the Schedule insert—

“**13A.** Regulation 14A has effect as if every reference to “the CFD counterparty” is to “a CFD counterparty” except the reference in paragraph (2), and the second reference in paragraph (5), which are to “that CFD counterparty”.”.

18. In paragraph (16)(a) of the Schedule—

- (a) for “the reference” substitute “the references”;
- (b) after “that paragraph” insert “and in paragraph (1A)”;
- (c) for “is a reference to” substitute “are to”.

PART 3

Amendment of the Supplier Payment Regulations (regulation 9)

19.—(1) In regulation 9(2) of the Electricity Capacity (Supplier Payment etc.) Regulations 2014(a) (“the Supplier Payment Regulations”), for “£4,283,000” substitute “£6,241,000”.

(2) But paragraph (1) does not apply in respect of any financial year commencing before 2017.

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

Jesse Norman

Minister for Industry and Energy

27th March 2017

Department for Business, Energy and Industrial Strategy

(a) S.I. 2014/3354, amended by S.I. 2015/875, S.I. 2016/363 and S.I. 2016/742.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make further provision about the obligations of electricity suppliers to make payments to fund Contracts for Difference which is set out in the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 (S.I. 2014/2014) (the “ESO Regulations”).

Part 2 of these Regulations make a number of amendments to the ESO Regulations which are mostly of a technical nature.

Regulation 4 defines a new reserve period. This is the period for which the total reserve amount is calculated and aims to alleviate the risk of the CFD counterparty not having enough funds to meet its required payments to generators by aligning the period with the period that the CFD Counterparty holds reserve payments from electricity suppliers. Regulation 7 ensures that certain factors are taken into account within the new period when determining the total reserve amount for a quarterly obligation period.

Regulations 5 and 6 make amendments to ensure that exemptions for suppliers from a proportion of their CFD costs are capped with the result that the total exemption a supplier can demonstrate over a quarterly period cannot exceed that supplier’s total supply over the same period.

Regulation 8 reduces the period of time that reserve payments are collected from suppliers from 90 days after the issue of a reconciliation notice to 5 working days after the issue of a notice.

Regulation 11 inserts a new regulation 14A. This allows the CFD counterparty to reduce the total reserve amount without notice by recalculating it where it considers that it would collect significantly more from suppliers than needed in order to make all CFD payments to generators in 19 out of 20 scenarios. This needs to be done in advance of the issue of the reconciliation notice which triggers payment of a suppliers’ reserve payment.

Regulation 13 excludes suppliers who have defaulted on a payment and whose collateral is exhausted or is likely to be exhausted within five working days from being required to make mutualisation payments.

Regulation 14 sets the rate for the operational costs levy in the ESO Regulations which is intended to apply for the period between 1st April 2017 and 31st March 2018.

Part 3 of these Regulations amend regulation 9(2) of the Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354) to provide a revised figure for the settlement costs levy. The revised figure does not apply in respect of any financial year commencing before 2017. A financial year for this purpose means a period of one year commencing with 1st April.

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