

---

DRAFT STATUTORY INSTRUMENTS

---

**2015 No.**

**The Electricity Supplier Obligations (Amendment  
& Excluded Electricity) Regulations 2015**

**PART 2**

Excluded electricity

CHAPTER 1

Green excluded electricity

**Determination of green excluded electricity**

**3.—**(1) An electricity supplier may apply to the CFD counterparty for a determination that an amount of electricity supplied by that supplier is green excluded electricity.

(2) An application under paragraph (1) must be made within six months of the conclusion of the quarterly obligation period in which the electricity was supplied and must contain evidence of—

- (a) that supply;
- (b) the country where the electricity was generated;
- (c) the name of the generating station which generated the electricity;
- (d) the date on which that generating station first became operational;
- (e) the quarterly obligation period in which the electricity was supplied;
- (f) the energy source from which the electricity was produced; and
- (g) the proportion of that electricity which constitutes energy from renewable sources.

(3) The CFD counterparty must determine, in accordance with regulation 5, that an amount (“the relevant amount”) of electricity which is the subject of an application under paragraph (1) is green excluded electricity where—

- (a) the electricity is energy produced from renewable sources;
- (b) the electricity is generated in a member State other than the United Kingdom; and
- (c) the date on which the generating station which generated the electricity first became operational was after 31st March 2015.

(4) Where the CFD counterparty has determined that an amount of electricity is green excluded electricity but subsequently determines that any of the criteria in paragraph (3)(a) to (c) are not met in respect of that electricity, that electricity shall not constitute green excluded electricity for the purpose of any subsequent calculation of CFD period contributions under the ESO Regulations.

(5) Where the CFD counterparty makes a determination about electricity under paragraph (3) or (4), it must give a notice to the electricity supplier who supplied that electricity which sets out that determination.

(6) The CFD counterparty must, as soon as reasonably practicable after six months have passed since the conclusion of a quarterly obligation period, give a notice to every electricity supplier which

sets out the total volume of electricity which was the subject of applications under paragraph (1) in that quarterly obligation period.

(7) An application under paragraph (1) must be made in writing.

### **Capping of green excluded electricity**

4.—(1) For the purposes of regulation 3(3), the relevant amount is—

- (a) where sub-paragraph (b) does not apply, the amount of electricity which is the subject of the application under regulation 3(1) which meets the criteria in regulation 3(3)(a) to (c); or
- (b) where this paragraph applies the amount given by—

$$\left( \frac{APF}{TGE} \right) \times CAP$$

where—

“APF” is the amount of electricity which is the subject of the application under regulation 3(1) which meets the criteria in regulation 3(3)(a) to (c);

“TGE” is the total amount of electricity supplied by all suppliers which meets the following criteria—

- (i) the electricity was supplied in the quarterly obligation period in which APF was supplied;
- (ii) the electricity was the subject of an application under regulation 3(1); and
- (iii) the electricity meets the criteria in regulation 3(3)(a) to (c);

“CAP” is the amount of the cap which applies in respect of green excluded electricity supplied during that quarterly obligation period.

(2) Paragraph (1)(b) applies where the CFD counterparty determines that TGE exceeds the amount of the cap for the quarterly obligation period in which that electricity was supplied.

(3) For the purposes of this regulation, the cap which applies in respect of green excluded electricity supplied during a quarterly obligation period is—

- (a) for each quarterly obligation period in financial year 2015, 1,844,830 MWh;
- (b) for each quarterly obligation period in a subsequent financial year, the amount of the cap which applied in the last quarterly obligation period of the previous financial year multiplied by 1.1.

(4) Where the CFD counterparty has determined that an amount of electricity is green excluded electricity but subsequently determines that paragraph (1)(b) applies, or that the relevant amount calculated under paragraph (1)(b) is different to that previously determined, only the relevant amount of electricity as most recently determined constitutes green excluded electricity for the purpose of any subsequent calculation of CFD period contributions under the ESO Regulations.

### **Functions of the Authority**

5.—(1) The Authority may provide advice to the CFD counterparty in connection with determining the matters in regulation 3(3)(a) to (c).

(2) Where the Authority is exercising the functions referred to in paragraph (1), it must provide any information held by it which it considers relevant to the matters in 3(3)(a) to (c) to the CFD counterparty.

(3) The CFD counterparty must not disclose any information it receives by virtue of paragraph (2) to any person, except—

- (a) to an electricity supplier who has made an application under regulation 3(1) where that information relates to that supplier or the electricity it has supplied; or
- (b) for the purposes of carrying out its functions under these Regulations, the ESO Regulations or the Act.

## CHAPTER 2

### EII excluded electricity

#### **Determination of EII excluded electricity**

6.—(1) The relevant proportion of electricity which is measured by a meter in respect of which an EII certificate is in force is EII excluded electricity for the purposes of the ESO Regulations where relevant arrangements apply in relation to that meter.

(2) For the purposes of paragraph (1) the relevant proportion in relation to a meter in respect of which an EII certificate is in force is—

- (a) where no notice under regulation 11(3) in relation to that certificate has effect, the proportion specified by virtue of regulation 11(1) in that certificate; or
- (b) where a notice under regulation 11(3) has effect in relation to that certificate, the proportion specified in that notice.

(3) Where the CFD counterparty makes a determination under the ESO regulations which requires the determination of the amount of electricity supplied which is EII excluded electricity, it must, where possible, base that determination of EII excluded electricity on information derived from the most recent BSC volume allocation run carried out by the BSCCo in relation to the day on which the electricity was supplied.

#### **Relevant arrangements**

7.—(1) For the purposes of regulation 6, “relevant arrangements” means arrangements which are approved by the CFD counterparty under paragraph (2) or (3)(a), to enable the provision of information to the CFD counterparty about the amount of electricity measured by meters in respect of which EII certificates are in force.

(2) The CFD counterparty must, by 30th September 2015, approve arrangements which it considers will enable the provision of information about the amount of electricity measured by meters in respect of which EII certificates are in force.

(3) The CFD counterparty must keep the relevant arrangements under review and may—

- (a) approve alternative relevant arrangements; or
- (b) withdraw approval for relevant arrangements provided that—
  - (i) it has given not less than six months’ notice of the withdrawal of approval to electricity suppliers; and
  - (ii) it has ensured that, after the withdrawal of approval of those arrangements, there are relevant arrangements which are approved.

(4) The CFD counterparty may not approve arrangements as relevant arrangements unless it is satisfied that every electricity supplier is able to participate in such arrangements.

(5) Where the CFD counterparty approves relevant arrangements it must publish, in such manner as it considers appropriate for the purpose of bringing it to the attention of electricity suppliers, a document which describes those arrangements.

## EII certificates

8.—(1) A person who uses electricity for a specified activity is entitled, on application to the Secretary of State under regulation 10, to a certificate (an “EII certificate”) in respect of the electricity meter which measures the supply of that electricity where—

- (a) the specified activity is carried out in the course of the person’s business;
- (b) either—
  - (i) the test in paragraph (2) is met in relation to that business; or
  - (ii) paragraph (4) or (5) applies in relation to that business;
- (c) the business has been trading for at least 6 months prior to the making of the application; and
- (d) the Secretary of State is satisfied that the issuing of such a certificate would not breach the law relating to state aid.

(2) The test in this paragraph is met in relation to a person’s business if—

- (a) where the duration of the relevant period in relation to that business is one financial year, the annual electricity cost impact of that business in that year is equal to, or greater than 0.2;
- (b) where the duration of the relevant period in relation to that business is four financial years—
  - (i) the average annual electricity cost impact of the three financial years in which the annual electricity cost impact was greatest during the relevant period is equal to or greater than 0.2; and
  - (ii) the annual electricity cost impact in at least two financial years in the relevant period is equal to or greater than 0.2; or
- (c) where the duration of the relevant period in relation to that business is five financial years—
  - (i) the average annual electricity cost impact of the four financial years in which the annual electricity cost impact was greatest during the relevant period is equal to or greater than 0.2; and
  - (ii) the annual electricity cost impact in at least two financial years in the relevant period is equal to or greater than 0.2.

(3) The annual electricity cost impact in relation to a person’s business in a financial year (“the relevant year”) is the amount given by—

$$\frac{BEP \times BEC}{BGVA}$$

where—

BEP is the price which, in the opinion of the Secretary of State, reflects the electricity price paid by businesses which carry out specified activities, in the most recent calendar year for which information is available, expressed in pounds per megawatt hour and adjusted for inflation so as to reflect prices in financial year 2012;

BEC is the amount of electricity consumed by the person’s business in the relevant year; and

BGVA is the sum of the staff costs and the earnings of that business in the relevant year, adjusted for inflation so as to reflect prices in financial year 2012, except where that sum is less than 1 in which case it is to be treated as 1.

(4) This paragraph applies in relation to a person’s business where, in the opinion of the Secretary of State—

- (a) the business would have met the test in paragraph (2) but for significant costs incurred by it which were not related to the specified activity it carries out; or
  - (b) the majority of businesses engaged in that activity are, or will be, in receipt of EII certificates in respect of that activity and are in competition with the person's business.
- (5) This paragraph applies to a person's business where an EII certificate has previously been issued in relation to that business and—
- (a) the relevant period which applied to that business for the purposes of the most recent application for a certificate where this paragraph did not apply was the relevant period described in regulation 9(2) or (3);
  - (b) the business has been trading for less than four financial years before the commencement of the financial year in which the EII application is made; or
  - (c) paragraph (4) applied in relation to that business in respect of a previous application.
- (6) An EII certificate must set out an address and an email address provided by the Secretary of State for correspondence in relation to that certificate.

### **Relevant period for a business**

9.—(1) The relevant period in relation to a person's business for the purposes of an EII application is to be determined in accordance with this regulation.

(2) Where a person's business was trading throughout the financial years 2010 to 2014, the relevant period in relation to the EII application made by that person is the five year period commencing with 1st April 2010.

(3) Where a person's business was not trading throughout the financial years 2010 to 2014 but has been trading for four or more financial years before the commencement of the financial year in which the EII application is made, the relevant period is the period of four financial years commencing with 1st April in the fourth financial year prior to the commencement of the financial year in which the EII application is made.

(4) Where a person's business has been trading for less than four financial years before the commencement of the financial year in which the EII application is made, the relevant period is the financial year which immediately preceded the financial year in which the EII application is made.

### **Applications for EII certificates**

10.—(1) A person who uses electricity for a specified activity in the course of business may apply to the Secretary of State for an EII certificate in respect of the electricity meter which measures the supply of electricity used for that activity.

- (2) Subject to paragraph (3), the application must be made in writing and must contain—
- (a) evidence of the earnings and staff costs of that business for each financial year in the relevant period;
  - (b) where the meter which measures the supply of electricity used for a specified activity—
    - (i) is registered in SMRS, the MSID that relates to that meter;
    - (ii) is registered in CMRS, the BM Unit Identification Number and MSID that relates to that meter;
  - (c) evidence of the amount of electricity measured by that meter which was supplied in the calendar year which immediately preceded the calendar year in which the EII application is made;
  - (d) evidence of the proportion of electricity measured by that meter which was used for a specified activity in that year;

- (e) except where sub-paragraph (d) is complied with, sufficient evidence of the activities which are carried out using electricity measured by the meter to enable the Secretary of State to estimate the proportion of electricity measured by that meter which was used for a specified activity in that year;
  - (f) information identifying the electricity supplier who, when the application is made, supplies electricity which is measured by that meter;
  - (g) evidence of the amount of electricity used by that business in each financial year in the relevant period in relation to that business;
  - (h) an address and an email address at which the applicant can be contacted.
- (3) Where regulation 8(5) applies to a person's business, the application does not need to contain the evidence described in paragraph (2)(a) or (g).
- (4) Where an EII application does not comply with paragraph (2)(d) the Secretary of State must, if sufficient evidence has been provided under paragraph (2)(e), estimate the proportion of electricity measured by that meter which was used for a specified activity.
- (5) Where the Secretary of State, after making an estimate under paragraph (4), concludes that a different estimate should have been made the Secretary of State may revise that estimate.
- (6) Where an EII application does not comply with paragraph (2)(d) and the Secretary of State is not satisfied that sufficient evidence has been provided under regulation (2)(e), the Secretary of State must notify the applicant and give reasons why any evidence provided is not sufficient.

#### **Proportion to be specified in a certificate**

- 11.**—(1) An EII certificate issued in respect of an electricity meter must specify the proportion of electricity measured by that meter which will constitute EII excluded electricity, that proportion to be determined in accordance with paragraph (2) and rounded to the nearest hundredth with 0.005 being rounded upwards.
- (2) The proportion to be specified in an EII certificate by virtue of paragraph (1) is 0.85 multiplied by either—
- (a) the proportion of electricity measured by that meter which was used for a specified activity in the calendar year which immediately preceded the calendar year in which the EII application is made; or
  - (b) where that proportion is not known, the Secretary of State's estimate under regulation 10(4).
- (3) Where, after issuing an EII certificate, the Secretary of State subsequently concludes that a proportion specified in that certificate is incorrect, the Secretary of State must give a notice, which specifies the correct proportion, to—
- (a) except where the Secretary of State does not hold a proper address for the holder of the certificate, the holder of that certificate;
  - (b) the BSCCo; and
  - (c) the CFD counterparty.
- (4) For the purposes of paragraph (3), reference to a proportion specified in a certificate being "incorrect" includes where the Secretary of State concludes that the estimate made under regulation 10(4) should be revised.
- (5) A notice under paragraph (3) has effect from the 6th working day after it is given and ceases to have effect if a subsequent notice is given and has effect.

### **Cessation of specified activity**

12.—(1) Where the specified activity which was carried out using electricity measured by the meter in respect of which the certificate was issued has ceased to be carried out, the holder of the certificate must notify the Secretary of State of that fact as soon as is reasonably practicable.

(2) A notice under paragraph (1) must be set out in writing and has been given if it is sent to the address or email address for correspondence set out in the certificate.

### **Validity and revocation of EII certificates**

13.—(1) An EII certificate comes into force—

- (a) where there is already an EII certificate in force in relation to the meter in respect of which the certificate is issued, on 1st April in the financial year which follows the financial year in which the certificate is issued; or
- (b) where there is no EII certificate in force in relation to the meter in respect of which the certificate is issued, on the day after the day on which it is issued.

(2) An EII certificate may not be issued before 1st October 2015.

(3) Where an EII certificate is issued the Secretary of State must give a notice to—

- (a) the holder of the certificate;
- (b) the BSCCo; and
- (c) the CFD counterparty.

(4) Where an EII certificate is issued (and not revoked) by the Secretary of State, it is valid from the date on which it comes into force until the end of the financial year in which that date falls.

(5) An EII certificate may only be revoked where the Secretary of State is satisfied that—

- (a) evidence contained in the application for the certificate was false or misleading in a material respect;
- (b) the specified activity which was carried out using electricity measured by the meter in respect of which the certificate was issued has ceased to be carried out; or
- (c) the certificate was issued in error.

(6) Where an EII certificate is revoked the Secretary of State must give a notice to—

- (a) except where the Secretary of State does not hold a proper address for the holder of the certificate, the holder of the certificate;
- (b) the BSCCo; and
- (c) the CFD counterparty.

(7) Revocation has effect from the 6th day after the notice under paragraph (5) is given.

(8) Where an EII certificate is revoked, or a notice under regulation 11(3) has been given in respect of that certificate, the CFD counterparty must, as soon as reasonably practicable, inform electricity suppliers who supply electricity which is measured by the meter in respect of which that certificate was issued.

## **CHAPTER 3**

### **Notices**

#### **Notices**

14. Where the CFD counterparty, or the Secretary of State, is permitted or required to give a notice to a person (“the recipient”), that notice must be in writing and is given if it has been sent (by

or on behalf of the person issuing the notice) by post or electronic means to the recipient's proper address.