
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Contracts for Difference (Allocation) Regulations 2014

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contracts for Difference (Allocation) Regulations 2014 and come into force on the day after the day on which they are made.

(2) Except for Part 10, these Regulations do not extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“accreditation” means accreditation under any of the renewables obligation orders;

“the Act” means the Energy Act 2013;

“additional qualification requirements” means the requirements set out in Chapter 4 of Part 4 applicable to particular applications;

“administrative strike price” means the strike price—

(a) used by the delivery body to value an application under regulation 29(1); and

(b) which is the maximum strike price which applies to a successful application;

“allocation process” means the process included in an allocation framework by which the delivery body determines which qualifying applications are successful applications and the strike price applicable to successful applications;

“allocation round notice” has the meaning given by regulation 4;

“appeals deadline date” has the meaning given by regulation 43(2)(c) and which date is listed in the allocation framework for an allocation round further to regulation 31(1)(b);

“applicable planning consents” has the meaning given by regulation 24(1);

“applicant” has the meaning given by regulation 16(2);

“application” means (except in paragraph 4(b) of Schedule 1) a request by an applicant to the delivery body to take part in an allocation process in respect of a CFD unit;

“application closing date” in relation to an allocation round has the meaning given by regulation 4(2)(b)(iii);

“applications valuations” has the meaning given by regulation 29(1) and (2);

“audit report” has the meaning given by regulation 36(2)(b);

(1) The method of calculation, which uses the administrative strike price, is set out in the allocation framework for the allocation round, see regulation 29(3)(a).

- “budget notice” means a notice required by regulation 11;
- “budget revision notice” means a notice referred to in regulation 12(2)(b);
- “CFD unit” means the whole or part of an eligible generating station;
- “connection agreement” has the meaning given by regulation 25(6);
- “delivery body” means—
- (a) the national system operator; or
 - (b) if the national system operator’s functions under Chapter 2 of Part 2 of the Act have been transferred to an alternative delivery body, that body;
- “delivery year” means any of—
- (a) the period from the date on which these Regulations come into force and ending on 31st March 2015; and
 - (b) the 12 month periods commencing on 1st April 2015 and each anniversary of that date and ending with the 12 month period ending on 31st March 2020;
- “distribution system” has the meaning given by section 4(4) of the Electricity Act 1989⁽²⁾;
- “excluded application” has the meaning given by regulation 14(1);
- “final strike price” means the strike price which applies to a successful application after the allocation process applicable to that application has been completed;
- “framework notice” has the meaning given by regulation 7(1);
- “framework revision notice” has the meaning given by regulation 8(4);
- “general qualification requirements” means the requirements set out in Chapter 3 of Part 4;
- “halt direction” has the meaning given by regulation 38(1)(a)(ii);
- “maxima” has the meaning given by regulation 11(2)(b);
- “minima” has the meaning given by regulation 11(2)(a);
- “non-fossil fuel orders” means—
- (a) the Electricity (Non-Fossil Fuel Sources)(England and Wales) Order 1994⁽³⁾;
 - (b) the Electricity (Non-Fossil Fuel Sources)(Scotland) Order 1994⁽⁴⁾;
 - (c) the Electricity (Non-Fossil Fuel Sources)(England and Wales) Order 1997⁽⁵⁾;
 - (d) the Electricity (Non-Fossil Fuel Sources)(Scotland) Order 1997⁽⁶⁾;
 - (e) the Electricity (Non-Fossil Fuel Sources)(England and Wales) Order 1998⁽⁷⁾;
 - (f) the Electricity (Non-Fossil Fuel Sources)(Scotland) Order 1999⁽⁸⁾;
- “non-qualification determination” has the meaning given by regulation 19(2)(b);
- “non-qualification review” has the meaning given by regulation 20(1);
- “non-qualification review request date” has the meaning given by regulation 20(2)(a);
- “offshore waters” means waters—
- (a) in or adjacent to England, Wales or Scotland which are between the mean low water mark and the seaward limits of the territorial sea; or

(2) 1989 c. 29. The definition of “transmission system” was inserted by section 135(1) and (4) of the Energy Act 2004 (c. 20).

(3) S.I. 1994/3259.

(4) S.I. 1994/3275 (S. 190).

(5) S.I. 1997/248.

(6) S.I. 1997/799 (S. 76).

(7) S.I. 1998/2353.

(8) S.I. 1999/439 (S. 24).

(b) within the area of the sea designated under section 41(3) of the Marine and Coastal Access Act 2009⁽⁹⁾;

“offshore wind CFD unit” means a CFD unit which generates electricity by the use of wind and which is situated (or is to be situated) wholly in offshore waters;

“overall budget” means an amount set out in a budget notice, which is the total—

(a) sum of money potentially payable by the CFD counterparty under CFDs to eligible generators in a delivery year;

(b) capacity of electricity which may be generated by generating stations subject to a CFD in a delivery year; or

(c) a combination of (a) and (b);

“pending applicant” and “pending application” have the meanings given to those terms by regulation 49(2);

“pending bid” has the meaning given by regulation 50(2)(b);

“phased offshore wind CFD unit” means an offshore wind CFD unit—

(a) which is to be established or altered by two or three phases of construction;

(b) where each phase of construction is to provide new generating capacity; and

(c) in the case of a CFD unit which is to be established, where each phase of construction is to provide a generating capacity of more than 5 megawatts;

“post-appeals indicative start date” has the meaning given by regulation 31(2);

“pot” has the meaning given by regulation 11(2)(c);

“proceed direction” has the meaning given by regulation 38(1)(b)(i);

“proceed notice” has the meaning given by regulation 37(1)(b)(i);

“qualification appeal” has the meaning given by regulation 43(1);

“qualifying applicant” has the meaning given by regulation 17(2) and includes a person determined by the appeals body as a qualifying applicant;

“qualifying application” has the meaning given by regulation 17(2);

“registration” means, other than in Schedule 1, registration on the central FIT register as an accredited FIT installation within the meaning of Part 3 of the Feed-in Tariffs Order 2012⁽¹⁰⁾;

“relevant CFD unit” means the CFD unit which is the subject of an application;

“relevant works” has the meaning given by regulation 23(2) and (4);

“renewables obligation orders” means—

(a) the Renewables Obligation Order 2009⁽¹¹⁾; or

(b) the Renewables Obligation (Scotland) Order 2009⁽¹²⁾;

“re-run notice” has the meaning given by regulation 37(1)(b)(ii);

“review notice” has the meaning given by regulation 20(1);

“round variation notice” has the meaning given by regulation 5(1)(a);

“strike price” means (except in Part 10) a price (“SP”) for one megawatt hour of electricity generated by a CFD unit;

⁽⁹⁾ 2009 c. 23. By article 2 of the Exclusive Economic Zone Order 2013 (S.I. 2013/3161), which came into force on 31st March 2014, an area of the sea outside territorial waters has been designated under this section.

⁽¹⁰⁾ S.I. 2012/2782 as amended by S.I. 2013/1099.

⁽¹¹⁾ S.I. 2009/785 as amended by: S.I. 2010/829, 2010/1107, 2011/984, 2011/988, 2013/768.

⁽¹²⁾ S.S.I. 2009/140 as amended by: S.S.I. 2009/276, 2010/147, 2011/225, 2013/116.

“successful application” means an application in respect of which, further to an allocation process, a CFD notification may be made or, in the case of an application in respect of a phased offshore wind CFD unit, more than one CFD notification may be made;

“termination notice” has the meaning given by regulation 5(1)(b);

“transmission system” has the meaning given by section 4(4) of the Electricity Act 1989;

“variation notice” has the meaning given by regulation 34(2);

“working day” means 9 am to 5 pm on Mondays to Fridays excluding—

- (a) bank holidays within the meaning of section 1 of the Banking and Financial Dealings Act 1971(13), including—
 - (i) except in respect of Part 10, those bank holidays in part only of Great Britain;
 - (ii) in respect of Part 10, those bank holidays in part only of the United Kingdom;
- (b) Good Friday; and
- (c) when it falls on a day that would otherwise be a working day, Christmas Day.

(2) The following have the same meanings as they have in the Contracts for Difference (Definition of Eligible Generator) Regulations 2014(14)—

“biomass conversion station”;

“complete CCS system”;

“eligible generating station”;

“eligible generator”;

“generating station”;

“hydro generating station”;

“landfill gas”;

“photovoltaic array”;

“relevant fossil fuel generating station”;

“sewage gas”.

PART 2

Allocation rounds and allocation frameworks

Notices

3. A notice given by the Secretary of State under this Part must be made publicly available by the Secretary of State as soon as practicable after it is given.

Establishing allocation rounds

4.—(1) Subject to paragraphs (2) to (4), the Secretary of State may by notice establish an allocation round (“an allocation round notice”).

(2) An allocation round notice must—

- (a) be given to the delivery body and the CFD counterparty; and
- (b) state—

(13) 1971 c. 80.

(14) S.I. 2004/xxxx.

- (i) the commencement date of the allocation round, which must not be earlier than 10 working days after the date of the notice;
- (ii) the end date of the allocation round, which must be no later than 6 months after the commencement date;
- (iii) subject to paragraph (3), the date by which an application for a CFD to be allocated further to that round must be made (“the application closing date”); and
- (iv) which delivery year or years apply to any CFDs to be allocated further to the allocation round.

(3) The application closing date must be no earlier than 10 working days after the commencement date of the allocation round.

(4) Where the CFDs to be allocated further to an allocation round are restricted to particular types of eligible generator or eligible generating station, the allocation round notice must state the restriction.

(5) An allocation round may be for some or all of the period of another allocation round.

Varying and terminating allocation rounds

5.—(1) The Secretary of State may—

(a) by notice (“a round variation notice”) vary—

- (i) the commencement date of an allocation round;
- (ii) the application closing date; or
- (iii) the end date of an allocation round; or

(b) by notice (“a termination notice”) terminate an allocation round so that no CFDs are to be allocated further to that round.

(2) A round variation notice or a termination notice must—

- (a) be given to the delivery body and the CFD counterparty;
- (b) subject to paragraphs (5) and (6), state the date on which it has effect; and
- (c) identify the allocation round to which the notice applies.

(3) A round variation notice must give reasons for the variation effected by the notice.

(4) Where an allocation round is terminated after an allocation process in that round is completed, the termination notice must give reasons for the termination.

(5) A round variation notice to vary the end date of an allocation round or a termination notice is not valid unless the date on which it has effect is—

- (a) not earlier than the date of the notice; and
- (b) before the delivery body makes the first CFD notification further to the allocation round to which the notice applies.

(6) No variation of the commencement date of an allocation round or the application closing date may be made where the application closing date would be earlier than 10 working days after the commencement date of the allocation round.

(7) Where the delivery body receives a round variation notice or a termination notice, it must as soon as practicable after receipt send a copy of the notice to each applicant who has made an application (which has not been withdrawn) in the round to which the notice applies.

Allocation frameworks

- 6.—(1) The Secretary of State—
- (a) must ensure that one allocation framework applies to each allocation round; and
 - (b) may apply an allocation framework to more than one allocation round, including where the relevant period of one allocation round is for some or all of the relevant period of another allocation round.
- (2) An allocation framework must, in respect of the allocation round or rounds to which it applies, set out—
- (a) the allocation process which applies to each type of application which may be made; and
 - (b) each method of calculation which the delivery body must apply to determine—
 - (i) the applications valuations; and
 - (ii) the value of an application whilst carrying out the allocation process.
- (3) To the extent that the allocation process imposes requirements on the delivery body, the Secretary of State must be satisfied that it is reasonable to expect the delivery body to comply with those requirements.
- (4) Where the provisions of an allocation framework conflict with the provisions of these Regulations, the latter prevail.
- (5) In this regulation, “relevant period” means the period beginning with the commencement date of an allocation round and ending with the end date of the allocation round provided by an allocation round notice or round variation notice.

Framework notices

- 7.—(1) The Secretary of State must by notice (“a framework notice”) identify the allocation framework which applies to an allocation round.
- (2) A framework notice must—
- (a) be given to the delivery body and the CFD counterparty; and
 - (b) be given no later than 10 working days before the commencement date of the allocation round, including where the notice is required by regulation 8(3)(b).

Framework revisions

- 8.—(1) Subject to paragraph (2), the Secretary of State may—
- (a) amend or add to the provisions of an allocation framework identified in a framework notice; or
 - (b) subject to paragraph (3), remove the application of an allocation framework to an allocation round.
- (2) No amendment, addition or removal under paragraph (1) may be made later than 10 working days before the commencement date of the allocation round.
- (3) Where the application of an allocation framework to an allocation round is to be removed, the Secretary of State must—
- (a) unless the allocation round is terminated, ensure that another allocation framework applies to the allocation round; and
 - (b) comply with regulation 7 in respect of that other allocation framework.
- (4) The Secretary of State must give a notice (“a framework revision notice”) to the delivery body and the CFD counterparty which states—

- (a) the date on which an amendment, addition or removal has effect, which must not be earlier than the date of the notice;
- (b) how an allocation framework has been amended or added to; and
- (c) where the allocation framework is to apply to more than one allocation round, the allocation round or rounds affected by the amendment, addition or removal.

Publication of allocation frameworks

9.—(1) The Secretary of State must make publicly available each allocation framework, including any version which includes an amendment or addition.

- (2) The Secretary of State must comply with paragraph (1)—
 - (a) except where an addition or amendment is made to the provisions of an allocation framework, by no later than the date of the framework notice in which the framework is identified; or
 - (b) where an addition or amendment is made to the provisions of an allocation framework, by no later than the date of the framework revision notice in which the framework is identified.

PART 3

Budgets applicable to allocation rounds

Application

10.—(1) This Part applies to an allocation round which has been established further to an allocation round notice.

(2) A notice given by the Secretary of State under this Part must be made publicly available by the Secretary of State as soon as practicable after it is given.

Budget notices

- 11.**—(1) The Secretary of State must by notice (“a budget notice”) specify—
- (a) the overall budget which is available for each delivery year applicable to an allocation round; and
 - (b) the administrative strike prices applicable to applications in an allocation round.
- (2) The Secretary of State may in a budget notice specify any of the following—
- (a) budgets which are reserved for the descriptions of applications specified in the notice (“minima”);
 - (b) maximum budgets which apply to the descriptions of applications specified in the notice (“maxima”);
 - (c) a division of the overall budget such that a different part (“pot”) of the overall budget applies to the description of applications specified in the notice.
- (3) Where maxima or minima are specified, they may be expressed as—
- (a) a sum of money;
 - (b) an amount of capacity of electricity generation; or
 - (c) a combination of (a) and (b).
- (4) Where—

- (a) the overall budget is expressed as a sum of money; and
- (b) that sum is stated by reference to a price which is not current at the date of the budget notice,

the budget notice must include a factor which, when applied to that sum, converts that sum into a price which is current at that date.

- (5) A budget notice must—
 - (a) be given to the delivery body;
 - (b) identify the allocation round to which the budget notice applies; and
 - (c) be given no later than 10 working days before the commencement date of the allocation round.

Budget revision

12.—(1) This regulation applies where the Secretary of State has given a budget notice in respect of an allocation round.

- (2) Subject to the application of paragraph (5), the Secretary of State—
 - (a) may amend, add to or remove any of the matters listed in regulation 11(2) for the allocation round (“a budget revision”); but
 - (b) must only effect a budget revision by a notice (“a budget revision notice”) which complies with regulation 13.

(3) The Secretary of State may make any budget revision where that revision has effect more than 10 working days before the commencement date of the allocation round.

(4) Paragraph (5) applies where the Secretary of State intends to make a budget revision which is to have effect—

- (a) 10 or fewer working days before the commencement date of the allocation round; or
- (b) on or after the commencement date of the allocation round.

(5) Where this paragraph applies, the Secretary of State may increase the overall budget but must not—

- (a) decrease—
 - (i) the overall budget;
 - (ii) any maxima; or
 - (iii) any minima; or
- (b) increase any maxima or minima, unless the overall budget is increased by at least the same amount.

Budget revision notices

- 13.** A budget revision notice must—
- (a) be given to the delivery body;
 - (b) identify the allocation round to which the budget revision notice applies;
 - (c) describe the budget revision; and
 - (d) be given at least one working day before the date on which the revision set out in the notice is to have effect.

PART 4

Applications for CFDs

CHAPTER 1

Excluded applications

Excluded applications

14.—(1) An eligible generator may not make an application under this Part where the application is excluded under any of the following paragraphs (“an excluded application”).

(2) No application may be made in respect of a CFD unit where the unit is—

- (a) a generating station connected to a complete CCS system; or
- (b) a nuclear power station.

(3) No application may be made in respect of a CFD unit where the CFD unit is—

- (a) to be established as a hydro generating station; and
- (b) to have a generating capacity of 5 megawatts or less.

(4) No application may be made in respect of a CFD unit where—

- (a) the CFD unit uses or is to use as its source of energy—
 - (i) gas formed by the anaerobic digestion of material which is not landfill gas or sewage gas;
 - (ii) solar radiation when captured by a photovoltaic array; or
 - (iii) wind, other than in respect of an offshore wind CFD unit; and
- (b) in the case of a CFD unit described in sub-paragraph (a) which is to be established, it is to have a generating capacity of 5 megawatts or less.

(5) Subject to paragraph (11), no application may be made in respect of a CFD unit to be altered where an accreditation or registration applies (or has applied) in respect of that unit.

(6) Subject to paragraph (7), no application may be made in respect of a CFD unit where the CFD unit—

- (a) is or is to be an offshore wind CFD unit; and
- (b) is to be established or altered in phases of construction.

(7) Paragraph (6) does not apply to a phased offshore wind CFD unit.

(8) No application may be made in respect of a CFD unit where the CFD unit is or is to be situated wholly or partially—

- (a) in Northern Ireland; or
- (b) in waters in or adjacent to Northern Ireland which are between the mean low water mark and the seaward limits of the territorial sea.

(9) No application may be made in respect of a CFD unit to be altered where funding has been given in respect of that unit under any of the non-fossil fuel orders.

(10) No application may be made in respect of a CFD unit where a CFD or a capacity agreement applies to the CFD unit.

(11) Paragraph (5) does not apply to a CFD unit described in that paragraph where the CFD unit—

- (a) is a relevant fossil fuel generating station or is part of such a station; and
- (b) is to be altered to be, or be part of, a biomass conversion station.

- (12) No application may be made in respect of a CFD unit unless—
- (a) where the CFD unit is or is to be part only of a generating station, the electricity to be generated by the CFD unit is metered separately from the electricity generated by the other part of the generating station or any other generating station;
 - (b) where sub-paragraph (a) does not apply, the electricity to be generated by the CFD unit is metered separately from the electricity generated by any other generating station.
- (13) No application may be made in respect of a CFD unit to which an investment contract applies.
- (14) The allocation framework may, in respect of an allocation round to which it applies, set out further descriptions of applications which may not be made in that round.

CHAPTER 2

Applications and determinations

Commencement of allocation rounds

15. Chapters 2 to 4 apply where an allocation round has commenced further to an allocation round notice or a round variation notice.

Applications

16.—(1) A person may make an application where that person is an eligible generator in respect of the CFD unit described in the application.

(2) A person who makes an application permitted by paragraph (1) is “an applicant”.

(3) Up to and including the application closing date, an application may be withdrawn by the applicant at any time.

(4) The allocation framework may provide for circumstances where, after the application closing date, an application may be withdrawn or be treated as withdrawn.

(5) Subject to any provision described in paragraph (4), an application may not be withdrawn after the application closing date.

Determinations: qualifying applicants

17.—(1) The delivery body must determine whether or not an application qualifies to take part in the allocation process applicable to the application.

(2) Where an application does so qualify, that application is “a qualifying application” and the applicant in respect of that application is “a qualifying applicant”.

(3) An application is not a qualifying application unless the application—

- (a) is one to which an allocation process applies in the allocation round;
- (b) is not an excluded application;
- (c) meets the general qualification requirements set out or referred to in Chapter 3; and
- (d) where applicable, meets the additional qualification requirements set out or referred to in Chapter 4.

(4) An applicant must provide with the application—

- (a) the information necessary to enable the delivery body—
 - (i) to make the determination under paragraph (1); and
 - (ii) to give a CFD notification were the application to be a successful application, including the information listed or referred to in Schedule 1;

- (b) where more than one set of standard terms(15) applies in an allocation round, a statement by the applicant which identifies the set which would apply in respect of the application were a CFD to be allocated; and
- (c) where the applicant has reached a modification agreement(16), a statement by the applicant which identifies the agreement.

Information to be provided by the Authority

18.—(1) In order to determine an application, the delivery body may require the Authority to inform it whether or not an accreditation or an application for accreditation applies to a relevant CFD unit.

(2) Where the Authority receives a request under paragraph (1), it must reply as soon as practicable in respect of information held by the Authority at the date on which the request is received(17).

Notices of determinations

19.—(1) Subject to paragraph (4), the delivery body must give a notice to each applicant which states whether or not an application made by the applicant is a qualifying application.

(2) A notice under paragraph (1) must—

- (a) subject to paragraph (3), be given no later than 10 working days after the application closing date; and
- (b) where the delivery body determines that the application is not a qualifying application (“a non-qualification determination”), give reasons for that determination.

(3) The allocation framework which applies to the allocation round may provide for a different period than that stated in paragraph (2)(a) and, where such a period is provided, the obligation in paragraph (2)(b) applies in respect of that period.

(4) A notice is not required under paragraph (1) where, before the notice would otherwise be given,—

- (a) a termination notice has effect in respect of the allocation round; or
- (b) the application is withdrawn.

Reviews of non-qualification determinations

20.—(1) An applicant may give a notice (“a review notice”) to the delivery body to request a review of a non-qualification determination (“a non-qualification review”).

(2) A review notice must—

- (a) subject to paragraph (6), be given by a date (“the non-qualification review request date”) which is no later than 5 working days after the date of the notice containing the non-qualification determination;
- (b) contain the matters specified in paragraph (3) and be made in the form and manner as may be required by the delivery body; and
- (c) not contain any documentary evidence which was not provided to the delivery body in support of the application which is the subject of the non-qualification determination.

(15) See section 11(1) of the Energy Act 2014.

(16) See section 15(2) of the Energy Act 2014.

(17) The prohibitions on disclosure stated in section 19(4)(a) and (b) of the Act do not apply in respect of a disclosure required by virtue of section 19.

(3) The matters referred to in paragraph (2)(b) are—

(a) a concise statement which—

- (i) identifies the relevant part of the non-qualification determination in dispute; and
- (ii) sets out the facts on which the applicant relies;

(b) a summary of the grounds for disputing the non-qualification determination;

(c) a succinct presentation of the arguments supporting each of the grounds for dispute; and

(d) a schedule listing the documents submitted with the review notice.

(4) Where the delivery body receives a review notice in accordance with paragraph (2), it must give a notice (“a non-qualification review notice”) to the applicant which—

(a) states whether or not the delivery body has determined to uphold the non-qualification determination; and

(b) gives reasons for the determination.

(5) Subject to paragraph (6), a non-qualification review notice must be given by no later than 10 working days after the date on which the review notice is received.

(6) The allocation framework which applies to the allocation round may provide for a different period than that stated in paragraph (2)(a) or (5), and where such a different period is provided for, the obligation in paragraph (2)(a) or (5) applies in respect of that different period.

Additional applications

21.—(1) Except where paragraph (4) applies, no more than one application in respect of the same CFD unit may be made in the same allocation round, unless the prior application is withdrawn.

(2) Paragraph (3) applies where in respect of an application (“A”)—

(a) a non-qualification determination has been given;

(b) a review has upheld the non-qualification determination; and

(c) the applicant has made an appeal or the period within which an appeal may be brought against the determination has not expired.

(3) Where this paragraph applies, a further application may be made in the same allocation round in respect of the relevant CFD unit to which A applies only where—

(a) the Authority upholds the non-qualification determination or no appeal is made; and

(b) the further application is made no later than the application closing date.

Requirements of applications

22.—(1) An applicant who makes an application must do so—

(a) in the form and manner required by the delivery body; and

(b) no later than the application closing date.

(2) Where an application has been made in accordance with paragraph (1), the delivery body must give a notice to the applicant which states the date of receipt of the application.

CHAPTER 3

General qualification requirements

Requirement for applicable planning consents

23.—(1) Paragraphs (2) to (5) are subject to paragraph (7).

(2) Subject to paragraph (3), the applicant must provide copies of the applicable planning consents which apply to any works (“relevant works”) which enable—

- (a) the relevant CFD unit to be established or altered;
- (b) electricity generated from the relevant CFD unit to be supplied, as applicable, to—
 - (i) the national transmission system for Great Britain;
 - (ii) the distribution system; or
 - (iii) a private network.

(3) Paragraph (2) does not require the provision of any of the applicable planning consents in respect of any relevant works to which a connection agreement applies, where those works are undertaken by a person other than the applicant.

(4) “Relevant works” includes any of the following works—

- (a) the alteration, construction or removal of any plant, building or other structure;
- (b) the alteration, installation or removal of any cable, line, pipeline or other service media;
- (c) any works associated with the matters described in sub-paragraph (a) or (b).

(5) Paragraph (2) applies in respect of relevant works undertaken or to be undertaken by the applicant or any other person on the applicant’s behalf.

(6) Where the applicant considers that in respect of the relevant works—

- (a) any of the applicable planning consents do not apply; or
- (b) a general permission or consent or an exemption applies,

the applicant must provide details of those matters to the delivery body.

(7) The allocation framework which applies to an allocation round may, in respect of the allocation round to which the framework applies, amend, add to or remove the requirements in any of paragraphs (2) to (5) and the general qualification requirements are so modified where such an amendment, addition or removal is made.

Applicable planning consents

24.—(1) “Applicable planning consents” are—

- (a) a development order or, in respect of relevant works in waters in or adjacent to Wales up to the seaward limits of the territorial sea, a TWA order;
- (b) a planning permission;
- (c) a section 36 consent;
- (d) where any relevant works involve a licensable marine activity, a marine licence.

(2) In this regulation—

“development order” means a development consent order under section 114 of the Planning Act 2008⁽¹⁸⁾;

“licensable marine activity” has the meaning given—

- (a) except where paragraph (b) applies, in section 66 of the Marine and Coastal Access Act 2009⁽¹⁹⁾; or

⁽¹⁸⁾ 2008 c. 29. Section 114 was amended by section 128(2) of, and paragraphs 1 and 55(1) and (2)(a) of Part 1 of Schedule 13 to, the Localism Act 2011 (c. 20).

⁽¹⁹⁾ 2009 c. 23.

(b) in respect of relevant works in the Scottish marine area, in section 21 of the Marine (Scotland) Act 2010⁽²⁰⁾;

“marine licence” has the meaning given—

(a) except where paragraph (b) applies, in Part 4 of the Marine and Coastal Access Act 2009; or

(b) in respect of relevant works in the Scottish marine area, in Part 4 of the Marine (Scotland) Act 2010;

“planning permission” means in respect of relevant works in—

(a) England or Wales, planning permission under Part 3 of the Town and Country Planning Act 1990⁽²¹⁾;

(b) Scotland, planning permission under Part 3 of the Town and Country Planning (Scotland) Act 1997⁽²²⁾;

“Scottish marine area” has the meaning given by section 1 of the Marine (Scotland) Act 2010;

“section 36 consent” means a consent under section 36 of the Electricity Act 1989⁽²³⁾;

“TWA order” means an order under section 3 of the Transport and Works Act 1992⁽²⁴⁾.

Connection agreements

25.—(1) Paragraphs (2) to (4) are subject to paragraph (5).

(2) Where a direct connection or a partial connection applies or is to apply to the relevant CFD unit, the applicant must provide a copy of each of the connection agreements applicable to the relevant CFD unit which allows such connection.

(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 a statement that—

(a) no such connection is, or is to be, applicable; and

(b) no agreement to allow such a connection has been obtained or is to be sought during the period in which a CFD may apply to the relevant CFD unit.

(4) Where a partial connection applies or is to apply to a relevant CFD unit, the applicant must provide a statement setting out how data in respect of metering of electricity supply is to be provided to the CFD counterparty.

(5) The allocation framework which applies to an allocation round may amend, add to or remove the requirements in any of paragraphs (2) to (4) and the general qualification requirements are so modified where such an amendment, addition or removal is made.

(6) In this regulation—

“connection agreement” means an agreement to connect to—

(a) the national transmission system for Great Britain; or

(b) the distribution system,

entered into by the operator of the relevant system;

“direct connection” means a connection to—

(20) 2010 asp 5.

(21) 1990 c. 8.

(22) 1997 c. 8.

(23) 1989 c. 29. Section 36 has been amended by: section 93 of the Energy Act 2004 (c. 20), section 36 of, and Schedule 2 to, the Planning Act 2008 (c. 29), section 12 of the Marine and Coastal Access Act 2009 (c. 23) and, in relation to Scotland, by S.I. 2006/1054.

(24) 1992 c. 42. Section 3 has been amended by section 36 of, and Schedule 2 to, the Planning Act 2008.

- (a) the national transmission system for Great Britain; or
 - (b) the distribution system,
- which applies to all the electricity generated by the relevant CFD unit;
- “partial connection” means a connection to—

- (a) the national transmission system for Great Britain; or
- (b) the distribution system,

which applies to part only of the electricity generated by the relevant CFD unit.

CHAPTER 4

Additional qualification requirements

Statements in relation to supply chains

26.—(1) Paragraph (3) applies where the two following conditions apply.

(2) The first condition is that the relevant CFD unit—

- (a) is to be established with a threshold generating capacity; or
- (b) is to be altered and the unit—

- (i) before and after the alteration will have a threshold generating capacity; or
- (ii) in consequence of the alteration, will have a threshold generating capacity.

(3) The second condition is that, in respect only of the first allocation round, the Secretary of State has not made a determination under regulation 12(2) of the Electricity Market Reform (General) Regulations 2014(25) that statements under regulation 11 of those Regulations will not be provided for that round.

(4) Where this paragraph applies, the applicant must provide a statement made by the Secretary of State under regulation 11 of the Electricity Market Reform (General) Regulations 2014 in relation to the relevant CFD unit.

(5) In this regulation, “threshold generating capacity” means a generating capacity of 300 megawatts or more.

Offshore CFD units

27.—(1) This regulation applies where the relevant CFD unit is or is to be an offshore generating station or part of such a station.

(2) The applicant must demonstrate that a lease or an agreement for lease has been granted by the Crown Estate in respect of the location of the relevant CFD unit.

(3) In this regulation, “offshore generating station” means a generating station which is located wholly in offshore waters.

Supplemental requirements

28.—(1) An allocation framework may in respect of an allocation round provide for requirements (“supplemental requirements”) in relation to any or all types of eligible generating station which are in addition to the requirements in this Chapter.

(2) To the extent that any supplemental requirements apply to an application, the applicant in respect of that application must satisfy those requirements as additional qualification requirements for the allocation round.

(3) Supplemental requirements may include any of the following requirements in relation to a CFD unit—

- (a) the amount of electricity to be generated;
- (b) location;
- (c) the manner and security of supply of fuel to be used to generate electricity;
- (d) the metering of electricity to be generated;
- (e) the type of fuel to be used to generate electricity.

PART 5

Allocation processes

CHAPTER 1

Valuation of applications

Valuation of applications

29.—(1) The delivery body must determine in respect of an allocation round the valuations in paragraph (2) (“applications valuations”) for—

- (a) each delivery year;
- (b) the period comprising all delivery years; and
- (c) any period after the last delivery year as may be set out in the allocation framework.

(2) The applications valuations are—

- (a) the valuation of each application and all applications;
- (b) the valuation of each qualifying application and all qualifying applications;
- (c) the valuation of—
 - (i) each application which is subject to a non-qualification review or an appeal, where the review or appeal has not been determined; and
 - (ii) all such applications;
- (d) where a pot applies for the allocation round, the valuation of—
 - (i) all applications to which the pot applies;
 - (ii) all qualifying applications to which the pot applies; and
 - (iii) all applications subject to a non-qualification review or an appeal, where the review or appeal has not been determined, to which the pot applies;
- (e) where maxima or minima apply, the valuation of—
 - (i) all applications to which maxima or minima apply;
 - (ii) all qualifying applications to which maxima or minima apply; and
 - (iii) all applications subject to a non-qualification review or an appeal, where the review or appeal has not been determined, to which maxima or minima apply.

(3) The applications valuations—

- (a) must be carried out in accordance with the appropriate method of calculation set out in the allocation framework; and
 - (b) must not include the valuation of an application which has been withdrawn at the date on which the valuation is carried out.
- (4) The delivery body must make available to the Secretary of State the applications valuations.
- (5) The allocation framework for the allocation round must set out the dates by which the applications valuations must be carried out.
- (6) The allocation framework for the allocation round may—
- (a) set out a period after the last delivery year for which applications valuations are required; and
 - (b) require the delivery body—
 - (i) to make available such further information or analysis in respect of such applications valuations as may be specified in the allocation framework;
 - (ii) to provide some or all of the applications valuations to a person or persons (other than the Secretary of State) as may be specified in the allocation framework; and
 - (iii) to make publicly available any or all of the applications valuations on such date or dates as may be specified in the allocation framework.

CHAPTER 2

Requirements applicable to allocation frameworks

Requirements applicable to allocation frameworks

- 30.**—(1) An allocation framework must ensure that, in respect of an allocation round to which it applies, the allocation process included in the framework complies with the following paragraphs.
- (2) Except in respect of a CFD notification which is required to be made further to Part 8—
- (a) the total value of qualifying applications for which CFD notifications are to be given must not exceed the overall budget; and
 - (b) an allocation process must not result in an application being a successful application if that result would be in breach of sub-paragraph (a).
- (3) Subject to paragraph (2)(b), where minima apply to an allocation round and the value of qualifying applications to which the minima apply is less than or equal to the minima, the allocation process must result in—
- (a) all those applications being successful applications; and
 - (b) the final strike price which applies to those successful applications being the administrative strike price applicable to those applications.
- (4) Where maxima apply to an allocation round, the allocation process must result in the value of successful applications to which such maxima apply not exceeding the maxima.
- (5) Subject to paragraph (2)(b), for those applications where maxima do not apply or the maxima are not exceeded, the allocation process must result in—
- (a) all those applications being successful applications; and
 - (b) the final strike price which applies to those successful applications being the administrative strike price applicable to those applications.
- (6) Except for those applications which become successful applications further to paragraph (3) or (5), the allocation process must include a competitive process (or more than one) which when complied with by the delivery body enables the delivery body to determine—

- (a) which qualifying applications are successful applications; and
 - (b) the final strike price applicable to those successful applications.
- (7) The administrative strike price applicable to a qualifying application must be the maximum final strike price which may apply to that application.
- (8) The allocation process must apply to each qualifying application.

CHAPTER 3

Commencement and completion of an allocation process

Non-qualification review and appeal deadline dates

31.—(1) The allocation framework must specify in respect of an allocation round—

- (a) the non-qualification review request date; and
- (b) the appeals deadline date.

(2) The allocation framework must include in respect of an allocation round a date on which the Secretary of State is minded to require the allocation process for the allocation round to commence (“the post-appeals indicative start date”).

(3) The post-appeals indicative start date must be no earlier than 10 working days after the appeals deadline date.

Notices of requests for review or appeal

32.—(1) The delivery body must give a notice to the Secretary of State as soon as practicable after the non-qualification review request date stating the number, if any, of review notices received.

(2) Paragraph (3) applies where—

- (a) the delivery body gives a notice under paragraph (1) which states that at least one review notice has been received; and
- (b) in respect of at least one request made for a non-qualification review, the delivery body upholds the non-qualification determination.

(3) Where this paragraph applies, the Authority must give a notice to the Secretary of State and the delivery body as soon as practicable after the appeals deadline date stating the number, if any, of qualification appeals made.

(4) Paragraph (5) applies where a notice has been given under paragraph (3) which states that at least one qualification appeal has been made.

(5) Where this paragraph applies, the Authority must give a notice to the Secretary of State and the delivery body by no later than 10 working days before the post-appeals indicative start date which states—

- (a) the number, if any, of qualification appeals which are not determined at the date on which the notice is given; and
- (b) where at least one qualification appeal is not determined, the estimated date for its determination.

(6) Paragraph (7) applies where a notice has been given under paragraph (5) which states that at least one qualification appeal is not determined.

(7) Where this paragraph applies, the Authority must give a notice to the Secretary of State and the delivery body by no later than 3 working days before the post-appeals indicative start date which states the matters set out in paragraph (5)(a) and(b).

(8) Paragraph (9) applies where a notice has been given under paragraph (7) which states that at least one qualification appeal is not determined.

(9) Where this paragraph applies, the Authority must give a notice to the Secretary of State and the delivery body which states the matters set out in paragraph (5)(a) and (b)—

- (a) by no later than 10 working days after the post-appeals indicative start date; and
- (b) where a notice is given under sub-paragraph (a) which states that at least one qualification appeal is not determined, at no later than 10 working day intervals thereafter until all qualification appeals are determined by the Authority.

Commencement of the allocation process

33.—(1) Where a notice is given under—

- (a) regulation 32(1) that no review notice has been received, the delivery body must commence the allocation process as soon as practicable after the date on which the delivery body gives the notice;
- (b) regulation 32(3) that no qualification appeal has been received, the delivery body must commence the allocation process as soon as practicable after the date on which the delivery body receives the notice;
- (c) regulation 32(5) or (7) which states that no qualification appeal is not determined, the delivery body must commence the allocation process as soon as practicable after the date on which the delivery body receives the notice;
- (d) regulation 32(9) which states that at least one qualification appeal is not determined, the delivery body must not commence the allocation process unless the delivery body receives a notice under paragraph (2).

(2) The Secretary of State may give a notice to the delivery body which directs the delivery body to commence the allocation process on the date stated in the notice (“the directed date”), which must be a date after the appeals deadline date.

(3) Where a notice is given under paragraph (2), the Secretary of State may withdraw it by giving a notice to that effect to the delivery body at any time before the directed date.

(4) A copy of a notice given under paragraph (2) or (3) must be given by the Secretary of State to the Authority.

(5) Where—

- (a) before the directed date a qualification appeal is determined; and
 - (b) the application subject to the qualification appeal is determined as a qualifying application,
- the Authority must immediately give a notice to the Secretary of State and the delivery body stating details of that qualifying application.

(6) Where further to this regulation the delivery body must commence the allocation process, the delivery body must give a notice to the CFD counterparty which states—

- (a) when the allocation process has commenced; and
- (b) which qualification appeals are not determined at that date.

Delay to the commencement of allocation processes

34.—(1) This regulation applies where the commencement of an allocation process under regulation 33 is more than 5 months after the application closing date.

(2) The Secretary of State may give a notice to the delivery body to require it to give a notice (“a variation notice”) to each qualifying applicant and pending applicant which states that the

information provided in compliance with paragraph 3(a)(iv) of Schedule 1 (“the target dates”) may be varied by the applicant by a period not greater than that specified in the Secretary of State’s notice.

(3) The delivery body must comply with a notice given to it by the Secretary of State under paragraph (2).

(4) Where a variation notice is given, a qualifying applicant or pending applicant who wishes to vary the target dates must do so by giving a notice to the delivery body with any varied target dates by no later than 5 working days after the date of the variation notice.

(5) Where varied target dates are provided in accordance with paragraph (4), the delivery body must—

- (a) substitute those dates for those provided with the application; and
- (b) to the extent that those dates affect any of the applications valuations determined under regulation 29, re-determine in accordance with regulation 29 such of the applications valuations as are affected.

(6) The delivery body must not continue with the allocation process until the later of—

- (a) the time to provide varied target dates has expired; or
- (b) any re-determination of applications valuations required under paragraph (4)(b) has been made.

Completion of the allocation process

35.—(1) The delivery body must give a notice to the Secretary of State once the delivery body is satisfied that it has completed the allocation process.

(2) The delivery body must provide to the CFD counterparty—

- (a) a copy of a notice given under paragraph (1); and
- (b) a statement of which qualification appeals, if any, are not determined at the date of the notice.

CHAPTER 4

Auditing, re-runs and termination

Auditing

36.—(1) As soon as practicable after a notice is given under regulation 35(1), the delivery body must obtain an audit of the calculations made by it in the allocation process (“a process audit”).

(2) A process audit must—

- (a) be carried out by a person (“the auditor”) independent of the delivery body and who is qualified to perform an audit of the calculations made in the allocation process; and
- (b) include provision of a report to the delivery body (“an audit report”) which—
 - (i) sets out whether or not the auditor considers that calculations have been made correctly and accurately; and
 - (ii) where applicable, identifies any calculations which the auditor considers were not correctly or accurately made and identifies the consequences of those calculations.

(3) Where during an allocation process bids of strike prices are made—

- (a) the audit report must not include any information which would enable the identification of which bids were made by which applicant; and
- (b) the delivery body must provide details of those bids to—

- (i) the auditor; and
- (ii) the Authority, where the Authority requests the details.

(4) Subject to paragraph (5), where the delivery body is provided with an audit report it must make the report publicly available as soon as practicable after Part 6 applies to the allocation round.

(5) The delivery body may exclude from publication any part of the audit report which the delivery body considers to contain commercially confidential information.

(6) In this regulation, “audit of the calculations” means an audit of whether or not the calculations required by the allocation framework were—

- (a) applied correctly; and
- (b) made accurately.

Provision of audit report to the Secretary of State

37.—(1) Subject to regulation 40(1), as soon as practicable after the audit report is received, the delivery body must give a notice to the Secretary of State which—

- (a) includes the audit report; and
- (b) having regard to the report, states whether the delivery body intends—
 - (i) to proceed in accordance with Part 6 and, if so, the date on which it intends to do so (“a proceed notice”); or
 - (ii) to re-run the allocation process or any part of it as set out in the notice and, if so, the date on which it intends to commence the re-run (“a re-run notice”).

(2) A date under paragraph (1)(b) must be not be earlier than 2 working days after the date of the notice.

Proceeding, re-running an allocation process or terminating an allocation round

38.—(1) Subject to regulation 40(1)(a), where the delivery body gives—

- (a) a proceed notice, the Secretary of State may give the delivery body a direction—
 - (i) to re-run the allocation process or a part of it as set out in the direction and when to commence the re-run (“a re-run direction”); or
 - (ii) to take no further steps in respect of the allocation round (“a halt direction”);
- (b) a re-run notice, the Secretary of State may give the delivery body—
 - (i) a direction to proceed in accordance with Part 6 and when to do so (“a proceed direction”); or
 - (ii) a halt direction.

(2) A direction under paragraph (1) may not be given later than 2 working days after the date of the proceed notice or the re-run notice.

(3) The Secretary of State must give a termination notice as soon as practicable after giving a halt direction.

Re-running an allocation process

39.—(1) Paragraph (2) applies where the delivery body—

- (a) gives a re-run notice and does not receive in respect of that notice—
 - (i) a proceed direction; or
 - (ii) a halt direction; or

- (b) receives a re-run direction.
- (2) Where this paragraph applies, the delivery body must—
 - (a) subject to regulation 40(1)(b), in accordance with the re-run notice or re-run direction commence the re-run of the allocation process or part of it; and
 - (b) after completion of the re-run, comply with regulation 35.

CHAPTER 5

Delay and re-running the allocation process

Delay after completion of allocation processes

- 40.**—(1) Where the delay period has expired—
- (a) a proceed notice or a proceed direction must not be given; and
 - (b) the delivery body must not re-run part only of the allocation process.
- (2) Where paragraph (1) applies the delivery body must—
- (a) re-run the allocation process;
 - (b) comply with regulation 34(2) to (6); and
 - (c) after completion of the re-run, comply with regulation 35 and Chapter 4 of this Part.
- (3) In this regulation, “delay period” means—
- (a) where a variation notice was not required to be given when the allocation process commenced, a period of more than 5 months has expired since the application closing date; or
 - (b) where a variation notice was required to be given when the allocation process commenced, a period of more than 5 months has expired since the date on which the variation notice was required to be given.
- (4) The allocation framework for the allocation round may provide for a period other than “5 months” stated in paragraph (3)(a) or (b) and where such other period is provided, “delay period” has effect with that modification.

PART 6

CFD notifications

Application of Part 6

- 41.** This Part applies where the delivery body—
- (a) gives a proceed notice and does not receive in respect of that notice—
 - (i) a re-run direction; or
 - (ii) a halt direction; or
 - (b) receives a proceed direction.

Timing and content of CFD notifications and notices

- 42.**—(1) The delivery body must comply with this regulation—
- (a) where a proceed notice applies, as soon as practicable after the period specified in regulation 38(2) to receive a re-run direction or a halt direction has expired;

- (b) where a proceed direction applies, in accordance with the time period in that notice.
- (2) The delivery body must in respect of each successful application—
 - (a) concerning a phased offshore wind CFD unit, give a CFD notification in respect of each phase; or
 - (b) where sub-paragraph (a) does not apply, give a CFD notification.
- (3) A CFD notification must state the final strike price applicable to the successful application and include such information—
 - (a) supplied by the applicant to the delivery body with the application; or
 - (b) as may be contained in the allocation framework,which enables the CFD counterparty to complete the terms and conditions applicable to the intended CFD.
- (4) Paragraph (5) applies to each qualifying application which is not a successful application, other than a pending application.
- (5) Where this paragraph applies, the delivery body must give a notice to each applicant in respect of the qualifying application made by the applicant which states—
 - (a) that a CFD notification is not given in respect of the qualifying application; and
 - (b) the reason why a CFD notification is not given.

PART 7

Disputes and appeals

Disputes concerning non-qualification determinations: qualification appeals

- 43.**—(1) Where—
- (a) a non-qualification review notice has been given to an applicant;
 - (b) in that notice, a non-qualification determination is upheld; and
 - (c) the applicant disputes that determination,
- the applicant may apply to the Authority to determine that dispute (“a qualification appeal”).
- (2) A qualification appeal must be made—
- (a) by notice to the Authority;
 - (b) in such form and manner as the Authority requires; and
 - (c) by no later than 5 working days after the date of the non-qualification review notice (“the appeals deadline date”).

Requirements for qualification appeals

- 44.**—(1) A qualification appeal must contain—
- (a) a concise statement which—
 - (i) identifies the relevant part of the non-qualification determination in dispute; and
 - (ii) sets out the facts on which the applicant relies;
 - (b) a summary of the grounds for disputing the non-qualification determination;
 - (c) a succinct presentation of the arguments supporting each of the grounds for dispute; and
 - (d) a schedule listing the documents submitted with the qualification appeal.

- (2) A qualification appeal must be accompanied by copies of—
- (a) the non-qualification determination and the non-qualification review notice;
 - (b) any information or evidence submitted to the delivery body in support of the non-qualification review; and
 - (c) any other documentary evidence on which the applicant wishes to rely in support of the qualification appeal and which—
 - (i) was provided to the delivery body in support of the non-qualification review; or
 - (ii) is needed to show what evidence was before the delivery body when it upheld the non-qualification determination.
- (3) A qualification appeal must not include any other documentary evidence.
- (4) A copy of a qualification appeal must be sent by the applicant to the delivery body at the same time as it is sent to the Authority.

Notification and representations

- 45.**—(1) Where a qualification appeal has been made in accordance with regulations 43 and 44, the Authority must give a notice to the delivery body which—
- (a) identifies the applicant and the non-qualification determination; and
 - (b) states that—
 - (i) a qualification appeal has been made; and
 - (ii) the delivery body may reply to the qualification appeal.
- (2) The delivery body may reply to a qualification appeal where it receives a notice under paragraph (1) and such a reply must be given—
- (a) to the applicant and the Authority; and
 - (b) by no later than 5 working days after the date of the notice given under paragraph (1).

Determinations of the Authority

- 46.**—(1) The Authority must determine a qualification appeal as soon as practicable.
- (2) The determinations which the Authority may make are—
- (a) to uphold the non-qualification determination; or
 - (b) that the applicant is a qualifying applicant.
- (3) Where the Authority has made a determination, it must give a notice to the applicant and the delivery body which—
- (a) states the determination of the Authority; and
 - (b) the date of the determination.
- (4) A notice under paragraph (3) must be given of as soon as practicable after the date of the determination by the Authority.

Appeal to the High Court or Court of Session

- 47.**—(1) Where the Authority upholds a non-qualification determination, the applicant may make an appeal to the High Court or, in Scotland, the Court of Session, on a point of law.
- (2) An appeal under paragraph (1) must be made by no later than 28 days after the date on which the notice is given under regulation 46(3) which states that the non-qualification determination is upheld.

Register of appeals

48.—(1) The delivery body must establish and maintain a register of any qualification appeals (“the appeals register”).

(2) The appeals register must include details of—

- (a) the name of an applicant making a qualification appeal;
- (b) the CFD unit included in the non-qualification determination; and
- (c) when made, the determination of the Authority.

(3) The details of a qualification appeal must be removed from the appeals register as soon as practicable after one year from the date of the determination of the Authority in respect of that appeal.

(4) Subject to paragraph (5), the appeals register must be made publicly available.

(5) The delivery body must not make publicly available on the appeals register any qualification appeal made under an allocation round until after Part 6 applies to that round.

PART 8

Pending applications

Application of this Part

49.—(1) This Part applies where—

- (a) an applicant has in accordance with regulations 43 and 44 made a qualification appeal in respect of an application; and
- (b) that appeal has not been determined when the allocation process for the allocation round commences.

(2) An application to which paragraph (1) applies is a “pending application” and an applicant to whom paragraph (1) applies is a “pending applicant”.

Strike price bids

50.—(1) Paragraphs (2) and (3) apply where, under the allocation framework, an applicant in respect of an application equivalent to the pending application (“an equivalent application”) is entitled to make a bid of strike prices before or during the allocation process.

(2) Where this paragraph applies, the delivery body—

- (a) must ensure that the pending applicant is able to make bids of strike prices in respect of the pending application to the same extent as an applicant may make such bids in respect of an equivalent application;
- (b) must not apply any bid (“a pending bid”) made by a pending applicant in the allocation process; and
- (c) except as provided by regulation 51(7), must ensure that it does not become aware of the content of a pending bid.

(3) Where this paragraph applies, the delivery body must destroy a pending bid—

- (a) if an appeal by the pending applicant is made to the High Court or the Court of Session under regulation 47 and the court rejects the appeal; or
- (b) if no appeal is made under regulation 47.

Successful applications determined by the Authority

51.—(1) This regulation applies where the Authority determines that a pending application is a qualifying application after the allocation process for the allocation round commenced.

(2) Where the allocation process, or such part of it as applies to equivalent applications, is to be re-run further to Chapter 4 or 5 of Part 5, the delivery body must ensure that the re-run process includes any pending application which is determined as a qualifying application.

(3) Where the determination of a pending application as a qualifying application is made after Part 6 applies, the delivery body must determine whether or not the pending application is a successful application.

(4) Subject to paragraph (5), paragraph (6) applies where—

- (a) a variation notice was not required to be given when the allocation process commenced and a period of more than 5 months has expired since the application closing date; or
- (b) a variation notice was required to be given when the allocation process commenced and a period of more than 5 months has expired since the date on which the variation notice was required to be given.

(5) The allocation framework for the allocation round may provide for a period other than “5 months” stated in paragraph (4)(a) or (b) and where such other period is provided, paragraph (4) has effect with that modification.

(6) Where this paragraph applies—

- (a) the delivery body must give a notice to the pending applicant stating that the information provided in compliance with paragraph 3(a)(iv) of Schedule 1 (“the target dates”) may be varied by the applicant;
- (b) if the pending applicant wishes to vary the target dates, the applicant must do so by giving a notice to the delivery body with any varied target dates by no later than 5 working days after the date of the variation notice; and
- (c) if such varied target dates are provided, the delivery body must make the determination under paragraph (3) using the varied target dates.

(7) The delivery body must make the determination required by paragraph (3) having regard to any pending bid made by the pending applicant, except any flexible bid.

(8) Where a pending application is a successful application, the delivery body must comply with regulation 43(2) in respect of that application.

(9) Paragraph (8) applies notwithstanding that the overall budget for the allocation round may be exceeded by reason of giving a CFD notification in respect of the pending application.

(10) In paragraph (7), “flexible bid” means a bid, where it is permitted under the allocation framework, in which the applicant specifies—

- (a) the first delivery year as a year after the first delivery year set out in the applicant’s application; or
- (b) the amount of electricity to be generated as an amount which is less than the amount set out in the applicant’s application.

Appeals to the High Court or the Court of Session

52.—(1) This regulation applies where—

- (a) under regulation 47 a pending applicant has made an appeal to the High Court or the Court of Session in respect of a pending application; and

- (b) the court holds that the Authority made an error of law in upholding the non-qualification determination in respect of the application.
- (2) The court may in its discretion—
 - (a) remit the pending application to the Authority to re-consider the non-qualification determination;
 - (b) hold that the pending application is a qualifying application and require the delivery body to comply with, as appropriate, regulation 51(2) or (3) as is relevant to the application; or
 - (c) grant such further or other remedy as it thinks fit.
- (3) Where—
 - (a) paragraph (2)(a) applies; and
 - (b) on a re-consideration the Authority determines that the pending application is a qualifying application,the delivery body must comply with regulation 51(2) or (3) as is relevant to the application.

Notices that no CFD notification is given

- 53.**—(1) The delivery body must comply with paragraphs (2) and (3) in respect of a pending application where—
- (a) the Authority upholds a non-qualification determination and the pending applicant does not make an appeal under regulation 47 to the High Court or the Court of Session;
 - (b) the High Court or the Court of Session does not uphold an appeal; or
 - (c) regulation 52(2)(a) applies and the Authority determines that the pending application is not a qualifying application.
- (2) The delivery body must give a notice to the pending applicant that states that no CFD notification is given in respect of the application and gives reasons for that statement.
- (3) A notice under paragraph (2) must be given as soon as practicable after, as appropriate,—
- (a) the time to appeal expires under regulation 47;
 - (b) the date of judgement of the court; or
 - (c) the date of the determination by the Authority under paragraph (1)(c).

PART 9

Allocation reports, compliance and documents

Allocation reports

- 54.**—(1) The delivery body must make available to the Secretary of State details of the matters specified in paragraph (2) in respect of an allocation round, in such form and at such times as the Secretary of State directs.
- (2) The matters referred to in paragraph (1) are—
- (a) all applicants and all the relevant CFD units included in the applications made by them, excluding the applicants and the relevant CFD units of those applicants who withdrew all of the applications made by them;
 - (b) in respect of those relevant CFD units included in sub-paragraph (a), the capacity of electricity to be generated including, where the relevant CFD unit is an offshore wind

CFD unit to be constructed in phases, the capacity of electricity to be generated under each phase;

- (c) all qualifying applicants and qualifying applications;
- (d) all successful applicants and successful applications and in respect of those applications—
 - (i) the final strike price; and
 - (ii) their valuation, made in accordance with the allocation framework which applied to the allocation round; and
- (e) subject to paragraph (3), such other matters as the Secretary of State directs the delivery body to make available.

(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 may not direct the delivery body under paragraph (2)(e) to provide information in respect of those bids.

Enforcement

55. Requirements imposed on the delivery body by these Regulations or under an allocation framework are to be treated as relevant requirements on the delivery body as a regulated person for the purposes of section 25 of the Electricity Act 1989⁽²⁶⁾.

Giving of documents

56. Schedule 2 (documents) has effect, except in respect of Part 10.

PART 10

Directions to offer to contract

Directions under section 10 of the Act

57.—(1) A direction given by the Secretary of State under section 10(1) of the Act must—

- (a) be in writing and be dated;
- (b) specify a date by which the CFD counterparty to whom it is given must comply with the direction; and
- (c) specify the period for which the CFD counterparty must keep the offer of a contract on the specified terms open for acceptance, subject to regulation 59.

(2) The date specified in accordance with paragraph (1)(b) must be no earlier than 20 working days from and including the date on which the direction is given.

Obligation to notify the specified person

58. No later than 5 working days after the date on which a direction under section 10(1) of the Act is given, the Secretary of State must give a copy of the direction to each specified person.

Directions ceasing to have effect

59.—(1) A direction given under section 10(1) of the Act ceases to have effect, if the specified person (or, if there is more than one specified person, any of them)—

(26) 1989 c. 29.

- (a) rejects the offer to contract on the specified terms; or
 - (b) does not accept the offer to contract on the specified terms before the expiry of the period specified pursuant to regulation 57(1)(c).
- (2) If a direction ceases to have effect in accordance with paragraph (1), the CFD counterparty must withdraw any offer of a contract that it has made in compliance with that direction.

Publication of contracts

60.—(1) If a CFD counterparty offers a CFD in accordance with a direction given under section 10(1) of the Act and subsequently enters into that CFD, the CFD counterparty must publish that CFD, subject to paragraph (2).

(2) The CFD counterparty must exclude any confidential information from the CFD that is published.

(3) For the purposes of paragraph (2), “confidential information” means information—

- (a) which is identified in the specified terms as information to which paragraph (4) applies; and
- (b) in relation to which it is an initial term of the CFD that it must not be disclosed.

(4) This paragraph applies to information if, in the opinion of the Secretary of State at the time the relevant direction is given, it is information—

- (a) which constitutes a trade secret;
- (b) the disclosure of which would or would be likely to prejudice the commercial interests of any person; or
- (c) the disclosure of which would constitute a breach of confidence actionable by any person.

(5) Paragraph (4) does not apply to the strike price or the reference price.

(6) In this regulation—

“initial term” means a term of a CFD which is agreed at the time the CFD is first entered into;

“reference price” means the sum that is specified in, or determined under, the CFD as the reference price in respect of electricity generated in the period specified in, or determined under, the contract;

“strike price” means the sum that is specified in, or determined under, the CFD as the strike price in respect of electricity generated in the period specified in, or determined under, the contract.

Interpretation of Part 10

61. In this Part—

“specified person” means a person specified in the direction as the person with whom the CFD counterparty must offer to contract;

“specified terms” means the contract terms specified in the direction.

Date

Name
[Minister][Secretary] of State
Department of Energy and Climate Change