

## EXPLANATORY NOTE

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

These Regulations make further provision about the obligations of electricity suppliers to make payments to fund Contracts for Difference which are set out in the Contracts for Difference (Electricity Supplier Obligations) Regulations [S.I. 2014/2014](#) (the “ESO Regulations”). These Regulations also make a number of amendments to the ESO Regulations which are mostly of a technical nature. These regulations also set the rate for the operational costs levy in the ESO Regulations which is intended to apply for the period between 31st March 2015 and 1st April 2016.

### Part 1

Regulation 2 contains definitions used in these Regulations. Some of the terms used are defined by reference to the ESO Regulations where the definitions are set out fully. Regulation 2(4) makes provision for how these Regulations are to operate where there is more than one CFD counterparty designated. This is analogous to provision found in the Schedule to the ESO Regulations. The circumstances in which it is possible that there is more than one CFD counterparty are limited by the Energy Act 2013 and the Department expects that they are unlikely to occur. In general the Department considers that all counterparties should have the same powers and duties. However there are some instances, where to ensure certainty about the liabilities of suppliers, it is necessary that only one (the most recently designated) makes determinations.

Regulation 2 also define the two most important concepts in these Regulations for the purpose of these Regulations and the ESO Regulations. EII excluded electricity (about which there is provision in Regulations 7 to 13) is electricity supplied to certain industrial users of electricity. Following an application to the Secretary of State these users will have a proportion of the electricity they use excluded from the calculation of their electricity suppliers’ obligations to make payments under the ESO Regulations. Regulations 4 to 6 make provision about green excluded electricity which is electricity which is imported to Great Britain from another EU member state where that electricity is generated by a renewable generating station, which if located in GB would have been potentially eligible to apply for support under a CFD. Such electricity will be excluded from the calculation of electricity supplier’s liabilities under Part 2 of the ESO Regulations (“the supplier obligation”). This exclusion was a condition of State Aid approval for CFDs.

### Part 2

Regulation 3 makes provision for electricity suppliers to apply to the CFD counterparty that an amount of electricity they have supplied in GB is green excluded electricity. Where electricity supplied was generated from a renewable source (as defined in [Directive 2009/28/EC](#) of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources), is generated in another member state, and the generating station which generated that electricity was commissioned on or after 1st April 2015 the CFD counterparty must determine that the electricity is green excluded electricity.

If electricity is green excluded electricity, it is excluded from the calculation of CFD daily and quarterly contributions under regulations 4 and 5 of the ESO Regulations. This means that the exclusion will only take effect through reconciliation of the supplier obligation. Regulation 3 therefore also requires the CFD counterparty to inform electricity suppliers about the volume of

electricity which was the subject of applications to enable those suppliers to make estimates about the impact of green electricity on their liabilities following future reconciliations.

Regulation 4 makes provision for a cap on the total amount of electricity which can be green excluded electricity in a quarter. This is designed to limit the distortionary effect on cross border trading of electricity that the exclusion might have. Where the cap applies suppliers will only get a proportion of the eligible electricity excluded (relative to the total eligible electricity which all suppliers made applications in respect of).

Regulation 5 enables Ofgem (the Gas and Electricity Markets Authority) to provide assistance to the counterparty in determining whether electricity meets the criteria to be green excluded electricity. Ofgem is in a position to provide such assistance as it already has a role in relation to the recognition of guarantee of origin certificates issued in respect of generation outside of GB and in identifying that such electricity was supplied within GB.

Regulation 6 makes provision about EII excluded electricity. It provides that EII excluded electricity is a proportion of electricity measured by certified meters, where there is a mechanism in place for providing supply data from those meters to the CFD counterparty. Regulation 7 describes that mechanism, which is necessary as the EII excluded electricity is excluded from all calculations of a supplier's liability under the ESO Regulations in real time and not just after the event through reconciliation. Only a proportion of such supply is eligible, and this is determined by the Secretary of State in order to represent the proportion of that electricity which is actually used in the carrying out of particularly energy intensive processes ("specified activities").

Regulation 8 makes provision about the certification of an electricity meter as one which is measuring EII excluded electricity. The application must be made by a business carrying out a specified activity (a list of specified activities is set out in the Schedule). Whether an application is granted depends upon the calculation of the impact of electricity costs on that person's business.

Regulation 9 makes further provision about the calculation of electricity cost impact on a business by specifying the periods for which data about the business is assessed.

Regulation 10 sets out the application process for the certification of an electricity meter.

Regulation 11 makes provision about the proportion of electricity measured by a meter which will be excluded. Once the proportion which is being used for a specified activity is determined, this number is multiplied by 0.85 in order to limit the exemption to not more than 85% of electricity used in order to comply with European Commission guidelines on State Aid for environmental protection and energy.

Regulation 12 requires a person who has been granted a certificate to notify the Secretary of State if the specified activity is no longer carried out. This may be because the plant carrying out the activity is mothballed or production otherwise ceases. In those circumstances the Secretary of State may revoke the certificate in accordance with regulation 13.

Regulation 13 also makes provision about the length of time a certificate will be in force. The first certificate issued in relation to a meter will last until the conclusion of the financial year in which it was issued. Subsequent certificates will generally be issued prior to the commencement of a financial year and will last for the duration of that year.

Regulation 14 makes provision about notices which are given by the Secretary of State or the CFD counterparty.

### **Part 3**

All of the regulations in Part 3 concern amendments to the ESO Regulations.

Regulation 15 amends the ESO regulations to include definitions that refer back to these Regulations. It also amends the definition of CFD counterparty payment to ensure that claims made by generators

or other parties to CFD and connected agreements relating to those agreements can be funded by electricity suppliers whether the claims are founded under contract or in tort.

Regulation 16 and 17 amend the formulas used to calculate suppliers' underlying liabilities for the supplier obligation to take account of the exclusion of EII excluded and green excluded electricity.

Regulations 18, to 20, 22 to 24 and 26 to 29 all make amendments to exclude EII excluded electricity from various calculations under Part 2 of the ESO Regulations.

Regulation 20 also corrects a potential ambiguity in relation to the timing of payments.

Regulation 21 corrects an error in regulation 10 of the ESO Regulations.

Regulation 25 corrects an error relating to the description of balancing and settlement code processes.

Regulation 26 also makes an amendment which lengthens the minimum notice period for the mutualisation of amounts which are not daily interim rate payments (such as reconciliation or reserve payments as these may be significant).

Regulation 27 also amends the calculation of a supplier's collateral requirement to ensure that information necessary to make that calculation will be available at the time it must be calculated.

Regulation 28 also amends the rate of the operational costs levy to reflect the CFD counterparty's budget for 2015/16.

Regulation 30 removes the requirement for a supplier to pay interest on collateral which was not provided on time as well as clarifying that it is only outstanding collateral which must be paid at that time. This is necessary because a supplier's collateral requirement may have changed in between the failure to first provide collateral and the giving of a notice under regulation 25 of the ESO regulations.

Regulations 31 and 32 makes an amendment to the ESO Regulations to allow disputes under these Regulations to be determined in accordance with the procedure for disputes under those Regulations.

Regulation 33 amends regulation 29 of the ESO Regulations to ensure consistency with regulation 14 of these Regulations.

Regulation 34 makes a minor correction to regulation 32 of the ESO Regulations.

Regulations 35 and 36 contain consequential amendments to the ESO Regulations.

## **Schedule**

The Schedule to these Regulations contains the list of "specified activities". Column 1 describes the activity and column 2 contains a corresponding "NACE code" which is a European statistical classification of economic activities.

A full impact assessment of the effect the CFD regime will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).