

*Draft Regulations laid before Parliament under section 6(8) of the Energy Act 2013 for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2015 No.**

**ELECTRICITY**

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

*Made* - - - - - *2015*

*Coming into force* - - - - - *1st April 2015*

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The Secretary of State has before making these Regulations—

- (a) consulted the persons listed in section 24(1)(a) to (g) of the Energy Act 2013<sup>(a)</sup> and such other persons as the Secretary of State considered it appropriate to consult; and
- (b) had regard to the matters in section 5(2) of that Act.

In accordance with section 6(8) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 6(1), (5) and (6), 9(1), (2), (4) to (8), and (10), 17, 19, 20, 21(1) and (3) and 22(1) of, and paragraph 16(2) of Schedule 2 to, the Energy Act 2013, makes the following Regulations:

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(a) 2013 c.32.

# PART 1

## Introduction

### Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015.

(2) These Regulations come into force on 1st April 2015.

### Interpretation

2.—(1) In these Regulations—

“the Act” means the Energy Act 2013;

“the Balancing and Settlement Code”, “the BSCCo” and “BSC volume allocation run” have the meanings given in the ESO Regulations;

“BM Unit Identification Number”, “CMRS”, “MSID” and “SMRS” are to be construed in accordance with the Balancing and Settlement Code (see Sections X-1 and X-2 of that code);

“CFD period contribution” has the meaning given in the ESO Regulations;

“earnings” in relation to a business, means the earnings of that business before interest, taxes, depreciation and amortisation;

“EII application” means an application under regulation 10;

“EII certificate” has the meaning given by regulation 8(1);

“EII excluded electricity” means any amount of electricity determined as such in accordance with regulation 6;

“electricity supplier” has the meaning given in the ESO Regulations;

“energy from renewable sources” is to be construed in accordance with 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 and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC(a);

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

“excluded electricity” means EII excluded electricity and green excluded electricity;

“financial year” means a period of 12 months commencing with 1st April and a reference to a financial year followed by the number of a calendar year is to be construed as a reference to the financial year commencing with 1st April of that year;

“green excluded electricity” means any amount of electricity determined as such in accordance with regulation 3;

“NACE Rev 2” is as set out in Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 (relating to the statistical classification of economic activities)(c);

“proper address” means—

(a) in the case of a body corporate—

(i) the registered or principal office of that body, or

(ii) an email address provided (and not withdrawn) by that body;

(b) in the case of a partnership—

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(a) L140 5.6.2009, p16-62.

(b) S.I. 2014/2014.

(c) L393 30.12.2006, p.1.

- (i) the principal office of the partnership, or
- (ii) an email address provided (and not withdrawn) by—
  - (aa) that partnership,
  - (bb) a partner, or
  - (cc) a person having control or management of the partnership business;
- (c) in the case of any other person, that person’s last known address, which includes an email address provided (and not withdrawn) by that person;

“quarterly obligation period” has the meaning given in the ESO Regulations;

“relevant arrangements” has the meaning given by regulation 7;

“relevant period” is to be construed in accordance with regulation 9;

“staff costs” in relation to a business, include any employers’ pension and national insurance contributions which the business makes;

“specified activity” means an activity classified by a NACE Rev 2 class specified in column 2 of the table in the Schedule which corresponds with the description of that class in column 1 of the table;

“working day” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(a).

(2) Any reference in these Regulations to a supply of electricity is a reference to its supply in Great Britain, and “supply” is to be construed in accordance with section 4(4) of the Electricity Act 1989(b).

(3) Any reference in these Regulations to an amount of electricity is a reference to that amount expressed in megawatt hours (MWh).

(4) Where more than one person is designated under section 7 of the Act as a CFD counterparty these Regulations have effect as if—

- (a) in regulation 4—
  - (i) the references to “the CFD counterparty” in paragraphs (1), (3) and (6) were to “the CFD counterparty most recently designated under section 7 of the Act”;
  - (ii) every other reference to “the CFD counterparty” in that regulation were to “a CFD counterparty”; and
  - (iii) the words “the CFD counterparty most recently designated under section 7 of the Act” appeared after the word “but” in paragraph (4);
- (b) in regulation 5—
  - (i) the reference in paragraph (2) to “the CFD counterparty” were to “the CFD counterparty most recently designated under section 7 of the Act” and the reference in paragraph (4) were to “a CFD counterparty”; and
  - (ii) the words “the CFD counterparty most recently designated under section 7 of the Act” appeared after the word “but” in paragraph (4);
- (c) in regulation 6—
  - (i) the first and second references to “the CFD counterparty” in that regulation were to “the CFD counterparty most recently designated under section 7 of the Act” and the other reference in that regulation were to “A CFD counterparty”; and
  - (ii) in paragraph (3) the words “ to another CFD counterparty or” appeared after the word “except”;
- (d) in regulation 6(3), the reference to “the CFD counterparty” were to “a CFD counterparty”

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(a) 1971 c.80.  
 (b) 1989 c.29.

- (e) in regulation 7—
  - (i) the first reference in paragraph (1) to “the CFD counterparty” were to “a CFD counterparty” and the other reference were to “CFD counterparties”;
  - (ii) the words “which on 31st September 2015 was the most recently designated under section 7 of the Act” appeared after “The CFD counterparty” in paragraph (2);
  - (iii) the words “most recently designated under section 7 of the Act” appeared after “The CFD counterparty” in paragraph (3);
  - (iv) the reference in paragraph (4) to “The CFD counterparty” were to “A CFD counterparty”;
  - (v) the reference in paragraph (5) “the CFD counterparty” were to “a CFD counterparty”;
- (f) the references to “the CFD counterparty” in regulations 11(3) and 13(6) were to “every CFD counterparty”;
- (g) the reference to “the CFD counterparty” in regulation 13(8) were to “the CFD counterparty most recently designated under section 7 of the Act”;
- (h) the reference to “the CFD counterparty” in regulation 14 were to “a CFD counterparty”.

## 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.

## **PART 3**

### **Amendment of the ESO Regulations**

#### **Amendment of the ESO Regulations (Regulation 2)**

- 15.**—(1) Regulation 2 of the ESO Regulations is amended as follows.
- (2) In paragraph (1)—

- (a) in the definition of “CFD counterparty payment”, for paragraph (c) substitute—
    - “(c) to a CFD party for the purpose of compensating that person in respect of any breach of any duty (however that duty arises) owed to that person by the CFD counterparty which is connected to a CFD or a connected agreement.”;
  - (b) omit the definition of “electricity supply”;
  - (c) in the definition of “quarterly obligation period” omit the words “in any period of 12 months”;
  - (d) at the appropriate place insert—
    - ““excluded electricity”, “EII excluded electricity” and “green excluded electricity” are to be construed in accordance with the Excluded Electricity Regulations;
    - “Excluded Electricity Regulations” means the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015.”;
- (3) After paragraph (2) insert—
- “(2A) Any reference in these Regulations to a supply of electricity is a reference to its supply in Great Britain, and “supply” is to be construed in accordance with section 4(4) of the Electricity Act 1989(a).”.
- (4) Omit paragraph (5).

**Amendment of the ESO Regulations (Regulation 4)**

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

(2) In paragraph (1)—

- (a) for the formula substitute—

$$\left( GP - CP \right) \times \left[ \frac{SDS - (XE + GE)}{TDS - (TE + GT)} \right];$$

- (b) after the definition of SDS insert—

“XE is the amount of EII excluded electricity supplied by that supplier on that day;

GE is the amount of green excluded electricity supplied by that supplier in that quarterly obligation period divided by the number of days in that period;”

- (c) after the definition of TDS insert—

“TE is the total amount of EII excluded electricity supplied by all suppliers on that day;

GT is the total amount of green excluded electricity supplied by all suppliers in that quarterly obligation period divided by the number of days in that period.”.

**Amendment of the ESO Regulations (Regulation 5)**

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

(2) For the formula substitute—

$$\left[ NDS - (NGS + DI) \right] \times \left( \frac{SQS - XEP}{TQS - AXP} \right).$$

- (3) After the definition of SQS insert—

“XEP is the amount of excluded electricity supplied by that supplier in that period;”;

- (4) After the definition of TQS insert—

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(a) 1989 c.29

“AXP is the total amount of excluded electricity supplied by all suppliers in that period.”.

**Amendment of the ESO Regulations (Regulation 7)**

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

(2) In paragraph (4) after “suppliers in the rate period” insert “less the amount of EII excluded electricity which it estimates will be supplied by all suppliers in that period”.

**Amendment of the ESO Regulations (Regulation 8)**

19.—(1) Regulation 8 of the ESO Regulations is amended as follows.

(2) In paragraph (2) after “on that day” insert “, less any amount of EII excluded electricity supplied by that supplier on that day,”.

**Amendment of the ESO Regulations (Regulation 9)**

20.—(1) Regulation 9 of the ESO Regulations is amended as follows.

(2) In paragraph (7) for “the 5th working day after the day referred to in paragraph (5)” substitute “the day on which that payment should have been made”.

(3) In paragraph (8)(a) after “on that day” insert “, less any amount of EII excluded electricity supplied by that supplier on that day,”.

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

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

(2) In paragraph (5)(c) for “estimated quarterly period cost” substitute “estimated quarterly obligation period payment cost”.

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

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

(2) In paragraph (3)—

(a) for the formula substitute—

$$“TRA \times \left( \frac{SRE - SXE}{RE - XE} \right);”$$

(b) after the definition of SRE—

(i) omit “and”;

(ii) insert—

“SXE is the amount of EII excluded electricity supplied by that supplier in the reference period as determined on the date on which that total reserve amount is determined;”;

(c) after the definition of RE insert—

“XE is the total amount of EII excluded electricity supplied by all suppliers in the reference period as determined on the date on which that total reserve amount is determined.”.

(3) In paragraph (4) omit the words “before the commencement of the quarterly obligation period immediately prior to the relevant period”.

(4) In paragraph (5) for “BSC reconciliation run” substitute “BSC volume allocation run”.

### **Amendment of the ESO Regulations (Regulation 13)**

23.—(1) Regulation 13 of the ESO Regulations is amended as follows.

(2) In paragraph (1) in the definition of EPS, after “will be supplied by all electricity suppliers” insert “, less the amount of EII excluded electricity which it estimates will be supplied by all suppliers, in the period”.

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

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

(2) In paragraph (4)—

(a) for the formula substitute—

$$“TAA \times \left( \frac{SRE - SXE}{RE - XE} \right);”$$

(b) after the definition of SRE insert—

“SXE is the amount of EII excluded electricity supplied by that supplier in the adjusted reference period as determined on the date on which that additional total reserve amount is determined;”;

(c) after the definition of RE insert—

“XE is the total amount of EII excluded electricity supplied by all suppliers in the adjusted reference period as determined on the date on which that additional total reserve amount is determined.”.

(3) In paragraph (5) for “BSSCo” substitute “BSCCo”.

### **Amendment of the ESO Regulations (Regulation 16)**

25.—(1) Regulation 16 of the ESO Regulations is amended as follows.

(2) In paragraph (2) for “BSC reconciliation run” substitute “BSC volume allocation run”.

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

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

(2) For paragraph (2)(f) substitute—

“(f) the date (“the mutualisation date”) by which the mutualisation amount must be paid which must be—

(i) in the case of a mutualisation notice issued in respect of a relevant payment which the defaulting supplier was required to make by virtue of regulation 8(1) or 9(2), no earlier than 5 working days after the date on which the notice was issued; or

(ii) in the case of a mutualisation notice issued in respect of any other relevant payment which the defaulting supplier was required to make, no earlier than 30 days after the date on which the notice was issued.”.

(3) After paragraph (2) insert—

“(2A) A mutualisation date must be the same for each mutualisation notice issued in respect of a relevant payment which a defaulting supplier failed to pay.”.

(4) In paragraph (7)—

(a) for the formula substitute—

$$“DA \times \left( \frac{SRES - EXE}{NDPE - AXE} \right);”$$

- (b) after the definition of SRES—
  - (i) omit “and”;
  - (ii) insert—
 

“EXE is the amount of EII excluded electricity supplied by the non-defaulting supplier in the reference period as determined immediately before the notice is issued;”;
- (c) after the definition of NDPE insert—
 

“AXE is the total amount of EII excluded electricity supplied by all non-defaulting suppliers in the reference period as determined immediately before the notice is issued.”.
- (5) In paragraph (8)(a)(ii) for “BSSCo” substitute “BSCCo”.
- (6) In paragraph (8)(b) for “BSC reconciliation run” substitute “BSC volume allocation run”.

**Amendment of the ESO Regulations (Regulation 19)**

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

- (2) For paragraph (3) substitute—
 

“(3) The supplier’s collateral requirement for a day (“the relevant day”) is determined by reference to the most recent period (“the relevant period”) of 21 consecutive days in respect of which the BSCCo had carried out a BSC volume allocation run prior to the last working day before the relevant day.”.
- (3) For paragraph (4) substitute—
 

“(4) For each day in the relevant period, the amount of electricity supplied by the supplier on that day, less any amount of EII excluded electricity supplied by that supplier on that day, (both as determined on the last working day before the relevant day) multiplied by the interim levy rate which applies in relation to the relevant day gives a relevant amount.”.
- (4) In paragraph (8)(b) for “BSC reconciliation run” substitute “BSC volume allocation run”.

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

**28.**—(1) Regulation 23 of the ESO Regulations is amended as follows.

- (2) In paragraph (2) after “on that day” insert “, less any amount of EII excluded electricity supplied by that supplier on that day,”.
- (3) In paragraph (7)(a) for “£0.079” substitute “£0.0397”.

**Amendment of the ESO Regulations (Regulation 24)**

**29.**—(1) Regulation 24 of the ESO Regulations is amended as follows.

- (2) In paragraph (3)—
  - (a) for the formula substitute—

$$\left( AR - CO \right) \times \left( \frac{SE - EX}{ST - XT} \right);$$

- (b) after the definition of SE insert—
 

“EX is the amount of EII excluded electricity supplied by that supplier in that period;”;
- (c) after the definition of ST insert—
 

“XT is the total amount of EII excluded electricity supplied by all suppliers in that period.”.

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

30.—(1) Regulation 25 of the ESO Regulations is amended as follows.

(2) For paragraph (3) substitute—

“(3) Where the CFD counterparty determines that an electricity supplier has not complied with a requirement to ensure that the CFD counterparty holds sufficient collateral under regulation 19(2) it may issue a notice to that supplier which specifies the amount of collateral which the supplier would have to provide to meet that supplier’s collateral requirement for the day on which the notice is issued.”.

(3) Omit paragraph (5).

**Amendment of the ESO Regulations (Regulation 26)**

31.—(1) Regulation 26 of the ESO Regulations is amended as follows.

(2) In paragraph (1)—

(a) after “under these Regulations” insert “or the Excluded Electricity Regulations”; and

(b) after “regulation 27” insert “of these Regulations”.

**Amendment of the ESO Regulations (Regulation 27)**

32.—(1) Regulation 27 of the ESO Regulations is amended as follows.

(2) In paragraph (1) after “of these Regulations” insert “or the Excluded Electricity Regulations”.

**Amendment of the ESO Regulations (Regulation 29)**

33.—(1) Regulation 29 of the ESO Regulations is amended as follows.

(2) In paragraph (2)(a)(ii) after “provided” insert “(and not withdrawn)”.

(3) In paragraph (2)(b)(ii) after “provided” insert “(and not withdrawn)”.

(4) In paragraph (2)(c) after “provided” insert “(and has not been withdrawn)”.

**Amendment of the ESO Regulations (Regulation 32)**

34.—(1) Regulation 32 of the ESO Regulations is amended as follows.

(2) In paragraph (1) for “regulation 23(1) or by virtue of regulation 23(6),” substitute “regulation 23”.

(3) In paragraph (2) for “regulation 23(1)” substitute “regulation 23”.

**Amendment of the ESO Regulations (Regulation 35)**

35.—(1) Regulation 35 of the ESO Regulations is amended as follows.

(2) In paragraph (1) for “, 23(6) and 25(5)” substitute “and 23(6)”.

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

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

(2) In paragraph 24 omit “, (5)”.

*[Minister]*  
Secretary of State

Date

Department of Energy and Climate Change



## SCHEDULE

### Specified activities

Regulation 2

**Table 1**

<i>Column 1</i> <i>Description of activity</i>	<i>Column 2</i> <i>NACE Rev 2 Class</i>
Mining of hard coal	05.10
Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate	08.11
Operation of gravel and sand pits; mining of clays and kaolin	08.12
Other mining and quarrying not elsewhere classified	08.99
Manufacture of prepared feeds for farm animals	10.91
Manufacture of malt	11.06
Preparation and spinning of textile fibres	13.10
Weaving of textiles	13.20
Manufacture of non-wovens and articles made from non-wovens, except apparel	13.95
Manufacture of other technical and industrial textiles	13.96
Manufacture of other textiles not elsewhere classified	13.99
Manufacture of other wearing apparel and accessories	14.19
Manufacture of knitted and crocheted hosiery	14.31
Manufacture of other knitted and crocheted apparel	14.39
Tanning and dressing of leather; dressing and dyeing of fur	15.11
Manufacture of veneer sheets and wood-based panels	16.21
Manufacture of other products of wood; manufacture of articles of cork, straw and plaiting materials	16.29
Manufacture of paper and paperboard	17.12
Manufacture of household and sanitary goods and of toilet requisites	17.22
Manufacture of refined petroleum products	19.20
Manufacture of industrial gases	20.11
Manufacture of other inorganic basic chemicals	20.13
Manufacture of other organic basic chemicals	20.14
Manufacture of fertilisers and nitrogen compounds	20.15
Manufacture of plastics in primary forms	20.16
Manufacture of synthetic rubber in primary forms	20.17
Manufacture of man-made fibres	20.60
Manufacture of rubber tyres and tubes; retreading and rebuilding of rubber tyres	22.11
Manufacture of plastic plates, sheets, tubes and profiles	22.21
Manufacture of plastic packing goods	22.22
Manufacture of flat glass	23.11
Manufacture of hollow glass	23.13
Manufacture of glass fibres	23.14
Manufacture of bricks, tiles and construction products, in baked clay	23.32
Manufacture of ceramic sanitary fixtures	23.42
Manufacture of other technical ceramic products	23.44
Manufacture of cement	23.51
Manufacture of lime and plaster	23.52
Manufacture of plaster products for construction purposes	23.62
Manufacture of other non-metallic mineral products not elsewhere	23.99

classified	
Manufacture of basic iron and steel and of ferro-alloys	24.10
Aluminium production	24.42
Lead, zinc and tin production	24.43
Copper production	24.44
Other non-ferrous metal production	24.45
Casting of iron	24.51
Casting of light metals	24.53
Manufacture of light metal packaging	25.92
Manufacture of electronic components	26.11
Manufacture of batteries and accumulators	27.20
Manufacture of other electronic and electric wires and cables	27.32
Striking of coins	32.11

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### 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).

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