

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

D R A F T S T A T U T O R Y I N S T R U M E N T S

2024 No.

ELECTRICITY

**The Electricity Supplier Obligations (Excluded Electricity)
(Amendment) Regulations 2024**

Made - - - -

Coming into force - - *1st April 2024*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 6(1) and (6), 9(1), (6) and (7), 17, 19 and 21(1) of the Energy Act 2013(a).

Before making these Regulations, the Secretary of State—

- (a) consulted the persons mentioned in section 24(1)(a) to (g) of that Act 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 the Energy Act 2013, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2024.

(2) These Regulations come into force on 1st April 2024.

(3) These Regulations extend to England and Wales and Scotland.

Amendments to the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015

2. The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015(b) are amended as set out in regulations 3 to 7.

(a) 2013 c. 32.

(b) S.I. 2015/721. Relevant amendments were made by S.I. 2017/1051, S.I. 2020/130 and S.I. 2023/415.

Regulation 2 (interpretation)

3.—(1) Regulation 2(1) is amended as follows.

(2) After the definition of “force majeure application” insert—

““insolvent” in relation to a person means circumstances where—

- (a) the person is unable to pay their debts as those debts fall due, or
- (b) the value of the person’s assets is less than the amount of the person’s liabilities, taking into account the person’s contingent and prospective liabilities;”.

Regulation 8 (EII certificates)

4.—(1) Regulation 8 is amended as follows.

(2) In paragraph (2)(b) substitute—

“(b) it is reasonable to assume that, at the date of making the application, the person is not insolvent or likely to be insolvent.”.

(3) For paragraph (7)(c) substitute—

“(c) sub-paragraph (b) of that test is met in relation to the person’s business.”.

(4) Omit paragraphs (9) and (10).

Regulation 10 (applications for EII certificates)

5.—(1) Regulation 10 is amended as follows.

(2) In paragraph (2)(p) for “in difficulty (see regulation 8(10))” substitute—

“insolvent or likely to become insolvent within the period of the EII certificate.”.

(3) For paragraph (7) substitute—

“(7) The Secretary of State may decide not to issue an EII certificate in respect of an EII application where, in the opinion of the Secretary of State—

- (a) the information or evidence contained in that application pursuant to paragraph (2) or provided pursuant to a request under paragraph (4A) is not sufficient or not satisfactory; or
- (b) the issuing of the EII certificate would be incompatible with international law obligations in respect of subsidy control.”.

Regulation 11 (proportion to be specified in an EII certificate)

6.—(1) Regulation 11 is amended as follows.

(2) In paragraph (1)(b) before “period” insert “certificate”.

(3) Omit paragraph (2).

Regulation 13 (validity and revocation of EII certificates)

7.—(1) Regulation 13 is amended as follows.

(2) After paragraph (4)(b)(ii) insert—

“(c) there is a risk of incompatibility with international law obligations in respect of subsidy control, if the EII certificate is not revoked.”.

Regulation 13ZB (modification of Regulations if State Aid decisions cease to be relevant)

8. Omit regulation 13ZB.

Name
Title
Department for Business and Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the provisions of the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 (the “2015 Regulations”) which concern EII excluded electricity. “EII excluded electricity” is electricity supplied to certain industrial users of electricity (energy-intensive industries (EIIs)). Following an application to the Secretary of State, a proportion of the electricity used by eligible EII’s is excluded from the calculation of the suppliers’ obligations to make payments under the Contracts for Difference (Electricity Supplier Obligations) Regulations S.I. 2014/2014. The supplier is expected to pass the cost saving on to its EII customer to reduce the EII’s electricity bill.

These Regulations increase the level of exemption for EII excluded electricity from 85% (of the electricity measured by the meter) to 100 % (Regulation 6).

Other amendments are made to the 2015 Regulations as follows:

Regulation 3 inserts a new definition of “insolvent”. This definition replaces the concept of a person “not in difficulty”, which was defined by reference to EU State aid law. Regulation 4 amends the 2015 Regulations so that a person will only be eligible for an EII certificate if it is reasonable to assume that the person is not, or is not likely to be insolvent. The new requirement under regulation 4, relating to a person not being insolvent or not likely to be insolvent, is reflected in regulation 5(1)(a), which amends the 2015 regulations so that an applicant EII must provide a statement that they are not insolvent or likely to become insolvent rather than “not in difficulty”.

Regulation 5(3) amends regulation 10(7) so as to allow the Secretary of State not to issue an EII certificate where the Secretary of State is of the opinion that issuing the certificate would be incompatible with international law requirements in respect of subsidy control. Regulation 7(2) amends regulation 13(4) to enable the Secretary of State to revoke the EII certificate where there is a risk it will be incompatible with international law requirements in respect of subsidy control, if the EII certificate is not revoked.

Regulation 8 revokes regulation 13ZB of the 2015 Regulations, which concerned the application of EU State aid decisions.

An impact assessment setting out the key impacts of this policy has been completed. The Impact Assessment is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk. A copy is also available by contacting: EII.correspondence@businessandtrade.gov.uk, or the Department for Business and Trade at Old Admiralty Building, Admiralty Place, London, SW1A 2DY.

© Crown Copyright 2024

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of His Majesty’s Stationery Office and King’s Printer of Acts of Parliament.

£5.78

<http://www.legislation.gov.uk/id/ukdsi/2024/9780348256697>

ISBN 978-0-34-825669-7



9 780348 256697