

**EXPLANATORY MEMORANDUM TO**  
**THE ELECTRICITY SUPPLIER OBLIGATIONS (EXCLUDED ELECTRICITY)**  
**(AMENDMENT) REGULATIONS 2024**

**2024 No. [XXXX]**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015<sup>1</sup> (the 2015 Regulations), which make provision for indirectly exempting eligible Energy-Intensive Industries (EIIs) from part of the costs of funding the Contracts for Difference (CfD) scheme. The CfD scheme is set out in the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 (S.I. 2014/2014).

2.2 This instrument amends the provision specifying the level of exemption from CfD costs within the 2015 Regulations. The level of exemption will increase from 85% to 100%, as set out in the British Industry Supercharger Package<sup>2</sup>. This SI will also make technical changes to the definitions in the 2015 Regulations. Instead of showing that it is not an undertaking in difficulty for purposes of State aid rules, a business will be required to show that is not insolvent or likely to become insolvent. Provisions relating to the application of EU decisions on State aid have also been removed, which are no longer relevant. The SI will also create a provision allowing the Secretary of State to not issue an EII certificate, or revoke an EII certificate, where there is a risk that the certificate would be incompatible with international legal obligations in respect of subsidy control.

2.3 The Renewables Obligations Order 2015 (S.I. 2015/1947) and the Feed-in Tariffs Order 2012 (S.I. 2012/2782) cross refer to the 2015 Regulations to provide for corresponding EII exemptions from costs relating to the renewables obligation (RO) and feed-in tariffs (FITs). The amendments to the 2015 Regulations by this SI will therefore automatically flow through to those Orders raising the level of exemption in respect of RO and FIT costs to 100%. This instrument is being laid alongside the draft Renewables Obligation (Amendment) (Energy Intensive Industries) Order 2024, which will facilitate the increase in exemption level on the RO scheme.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 None.

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<sup>1</sup> S.I. 2015/721.

<sup>2</sup> <https://www.gov.uk/government/news/government-action-to-supercharge-competitiveness-in-key-british-industries-and-grow-economy>

#### **4. Extent and Territorial Application**

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

#### **5. European Convention on Human Rights**

- 5.1 The Rt Hon Kemi Badenoch MP, Secretary of State has made the following statement regarding Human Rights:

“In my view the provisions of the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2024 are compatible with the Convention rights.”

#### **6. Legislative Context**

- 6.1 The Energy Act 2013 contains powers enabling the Secretary of State to implement measures to reform the electricity market to encourage low carbon electricity generation and ensure security of supply. The reforms which have been implemented are known as the Electricity Market Reform. One of the mechanisms for reform is the CfD scheme.
- 6.2 The 2015 Regulations provide a mechanism for allowing eligible EIIs to apply for an exemption from the CfD costs (the exemption), which takes effect by way of a reduction to the compulsory levy paid by suppliers, which is passed on to the eligible EII. The exemption level is currently 85% and is set out in the 2015 Regulations.
- 6.3 This instrument amends the 2015 Regulations by increasing the level of exemption from 85% to 100%. This instrument also makes technical amendments to definitions in the 2015 Regulations, which reflected EU State aid terminology. This instrument also creates provisions allowing the Secretary of State to not issue an EII certificate, or revoke an EII certificate, where there is a risk that the certificate would be incompatible with international legal obligations in respect of subsidy control. This instrument is being made through the powers conferred by sections 6(1) and (6), 9(1), (6) and (7), 17, 19 and 21(1) of the Energy Act 2013.

#### **7. Policy background**

##### *What is being done and why?*

- 7.1 UK industrial electricity costs are higher than those of comparable neighbouring countries. These cost differences arise partly due to 'green levies' and charges put on UK industrial electricity which other countries do not impose, and partly due to the lower carbon generation, which is more present in the UK than in other states. This differential means our Energy Intensive Industries (EIIs), such as steel, struggle to remain profitable.
- 7.2 This difference highlights the need for intervention to mitigate high renewable policy costs (green levies) and the risk that production shifts to countries which have not implemented as ambitious carbon reduction policies as the UK (carbon leakage).

- 7.3 Supporting eligible EIIs with their high electricity costs could help reduce the gap between UK industrial electricity costs and those of comparable nations, helping to minimise the impact of these charges and therefore carbon leakage.

#### *Explanations*

##### What did any law do before the changes to be made by this instrument?

- 7.4 The 2015 Regulations provided that suppliers of electricity to eligible EIIs were exempt from a proportion of CfD costs enabling that deduction to be passed on to the EII. The 2015 Regulations also made provisions imposing requirements that an EII be a “person not in difficulty” in order to be eligible for a EII certificate, and that the EII provide further information to demonstrate that they were a “person not in difficulty”, where necessary. “Person not in difficulty” was defined by reference to the EU State aid concept of “undertaking in difficulty”.

##### Why is it being changed?

- 7.5 This instrument changes the level of the exemption from the renewable policy costs of CfDs, ROs and FITs that can be awarded to eligible EIIs from 85% to 100%.
- 7.6 The Regulations also change the “person not in difficulty” terminology (which was defined by reference to an EU State aid concept) to terminology referring to insolvency. The aim of this change is for the regulations to move away from State Aid concepts which are no longer relevant in this context.
- 7.7 The 2015 Regulations are amended to enable the Secretary of State to revoke or not issue the EII certificate if there is a risk of incompatibility with international subsidy control requirements. The 2015 Regulations are subject to the requirements of the Subsidy Control Act, and these new provisions ensure that the issuing of EII certificates will also be compatible with international subsidy control requirements not within scope of the Act.

##### What will it now do?

- 7.8 This instrument will amend the 2015 Regulations to allow eligible companies to receive an increase in the exemption level from 85% to 100% exemption from the indirect costs of funding CfDs. The amendments to the 2015 Regulations will also result in a corresponding increase to the exemptions from RO and FIT costs because the RO and FIT legislation relies on the definition of “EII excluded electricity” in the 2015 Regulations. The 2015 Regulations will allow the Secretary of State not to issue, or to revoke, the EII certificate, where there is a risk of being incompatible with international law obligations in respect of subsidy control. The 2015 Regulations will now also require a business to show that it is not insolvent or likely to become insolvent in order to be eligible for a certificate (rather than showing that it is a “person not in difficulty” by reference to EU State aid law). This change aligns the relevant terminology to UK law.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

- 9.1 There are no plans to carry out a consolidation at present.

## **10. Consultation outcome**

- 10.1 On 12 August 2022, BEIS launched a consultation to consider whether there was a rationale for increasing the subsidy level of the current scheme to provide EIIs with a greater exemption from the indirect costs of funding renewable electricity policies.
- 10.2 The consultation, which was delivered in line with statutory requirements under section 24 of the Energy Act 2013, was part of a wider review to consider the increased risk of carbon leakage due to higher costs of industrial electricity prices.
- 10.3 The consultation also considered the cumulative burden of the EII exemption scheme on eligible companies through the requirements to provide regular business accounts.
- 10.4 Through the consultation, BEIS sought views and evidence from both existing recipients and non-recipients on:
  - how recipients benefit from the EII exemption scheme and how this helps reduce the risk of carbon leakage;
  - the sufficiency of support of the EII exemption scheme at its current level;
  - whether existing Government decarbonisation and net zero strategies support industry to decarbonise;
  - the design of the scheme if there continues to be a rationale for the EII exemption scheme to continue.
- 10.5 BEIS sought views from a wide range of audiences, including EIIs (whether currently benefitting or not benefitting from the exemption scheme), trade bodies, consumer associations, the devolved administrations and other interested parties.
- 10.6 Stakeholders were given an opportunity to provide their views and evidence in response to the questions posed.
- 10.7 The consultation was available on the gov.uk website and was emailed directly to a number of stakeholders who had previously expressed an interest in this issue. There were also stakeholder events to encourage responses.
- 10.8 This consultation ran for 5 weeks and closed on the 16 September 2022. A total of 63 responses were received from stakeholders, including EIIs, trade associations, and non-governmental organisations, among others.
- 10.9 The Scottish Government ran a parallel consultation due to the Renewable Obligation policy in Scotland being a devolved matter and the proposed increase to the exemption requiring a change to the 2015 Renewable Obligation Order.
- 10.10 The consultation was used as the basis for the technical amendments made in the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2023, however, not all of the policy options that were consulted on were brought forward in the 2023 amendments, for example, the proposal to increase the level of the exemption from 85% to 100% and the proposed amendment to the ‘person not in difficulty’ definition. Both of these options received strong support from those who completed the consultation.
- 10.11 Therefore, the August 2022 consultation provides the basis for the amendments we are bringing forward in 2024 by this instrument.

## **11. Guidance**

- 11.1 Guidance will be published ahead of the draft legislation coming into force to explain the changes and how they affect suppliers and eligible EIIs.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is the anticipated small increase to electricity bills for non-eligible users, including private businesses and households. For the increase to the Exemption Scheme the increase in electricity bills for non-eligible business consumers is likely to be £0.2-£0.3/MWh.
- 12.2 The impact on the public sector is the anticipated small increase to electricity bills and will depend on the electricity consumption.
- 12.3 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](http://www.legislation.gov.uk). A copy is also available by contacting: [eii.correspondence@businessandtrade.gov.uk](mailto:eii.correspondence@businessandtrade.gov.uk) or the Department for Business and Trade at Old Admiralty Building, Admiralty Place, London, SW1A 2DY.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 We expect the changes in this instrument to have a neutral effect on small electricity suppliers as they will continue to pass the benefit or cost of the EII exemption onto their customers. We expect small businesses who are eligible EIIs to continue to benefit from the exemption through their suppliers passing on the reduction in CFD, RO and FIT costs. There will be a small bill increase for small businesses who are not eligible EIIs as a result of the increase in the exemption level (estimated to be £20 - £30 annually).
- 13.3 Overall, we do not expect that this instrument will have a disproportionate effect on small businesses.

## **14. Monitoring & review**

- 14.1 As with previous instruments amending the 2015 Regulations, this instrument is not required to include a statutory review clause as the exemption in section 28(3) of the Small Business, Enterprise and Employment Act 2015 (SBEE Act) applies. This is on the basis that the instrument makes provision varying a levy (imposed on suppliers and bill payers), or in the alternative, makes provision in connection with provision imposing or varying a levy (section 28(3)(a) of the SBEE Act). In addition, the instrument falls within the exemption in section 28(3)(c) as it amends provision in connection with the giving of financial assistance to EIIs. However, we plan to undertake an evaluation and review of the EII exemption scheme within five years as part of a review of the British Industry Supercharger, to assess whether the support continues to achieve the policy objective of reducing the risk of carbon leakage and supporting the competitiveness of energy intensive industries. This review will take account of market conditions, industrial electricity prices, effectiveness of the scheme for the first five years and any wider policies which will have been implemented which may have a material impact.

## **15. Contact**

- 15.1 Tim Young at the Department for Business and Trade [timothy.young@businessandtrade.gov.uk](mailto:timothy.young@businessandtrade.gov.uk) (07901 107588) can be contacted with any queries regarding the instrument.
- 15.2 Neil Hodgson, Deputy Director for Energy Intensive Industries, at the Department for Business and Trade [neil.hodgson@businessandtrade.gov.uk](mailto:neil.hodgson@businessandtrade.gov.uk) can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Kemi Badenoch MP, Secretary of State at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.