
STATUTORY INSTRUMENTS

2014 No. 2012

The Contracts for Difference
(Standard Terms) Regulations 2014

PART 3

Modification of standard terms

Application to modify the standard terms

5.—(1) An applicant may apply to the CFD counterparty for a modification to the standard terms after a notice establishing an allocation round (an “allocation round notice”) has been published by the Secretary of State in accordance with the Contracts for Difference (Allocation) Regulations 2014(1).

(2) An application must be made promptly and no later than 20 working days before the application closing date specified in the allocation round notice.

(3) An application must set out—

(a) a description of the proposed modification to the standard terms; and

(b) an explanation as to how the effect of the modification is minor and why it is necessary.

(4) The CFD counterparty must publish guidance on the form of an application and the information to be included in an application.

(5) The CFD counterparty may request such further information as it reasonably considers necessary to determine an application, and the applicant must, to the extent that it holds the information, comply with such a request as soon as reasonably practicable.

Modification of the standard terms

6.—(1) Where the CFD counterparty receives an application, it must give the applicant a notice setting out whether it accepts or refuses the application.

(2) The notice must be given at least 5 working days before the application closing date set out in the allocation round notice.

(3) Where the CFD counterparty accepts an application, the notice must set out the agreed modification of standard terms (the “modification agreement”).

(4) Where the CFD counterparty refuses an application, the notice must set out the CFD counterparty’s reasons for the refusal.

Minor modification

7.—(1) The CFD counterparty must determine that the effect of a modification is not minor where, in the opinion of the CFD counterparty, it would be likely to decrease the liabilities of a generator under a CFD or increase the commercial benefit for a generator of a CFD.

(2) The CFD counterparty must determine that the effect of a modification is not minor where it would change provision for any of the following in the standard terms—

- (a) the period during which a generator may start to receive payments under a CFD;
- (b) the period during which the parties to a CFD must make payments under a CFD;
- (c) the date by which a generator must—
 - (i) notify the CFD counterparty that it has incurred a sum specified in the CFD in the development of the generating facility; or
 - (ii) provide the CFD counterparty with certain documentation specified in the CFD concerning the development of the generating facility;
- (d) any methodology which directly or indirectly affects the calculation of sums payable under a CFD;
- (e) any time limit for invoicing or for making a payment under a CFD;
- (f) which circumstances allow the CFD counterparty to use sums paid by a generator under a CFD as collateral; or
- (g) any requirement to provide information to the CFD counterparty where the information is necessary for the performance of any of the CFD counterparty's obligations to make payments to a generator under a CFD.

(3) The CFD counterparty must determine that the effect of a modification is not minor where, in the opinion of the CFD counterparty, it would be likely to cause the CFD counterparty to incur costs above an amount specified by the Secretary of State under paragraph (6) as a result of the CFD counterparty—

- (a) carrying out its obligations under a CFD; or
- (b) making arrangements for the performance of new obligations required by a modification.

(4) Subject to paragraph (5), the CFD counterparty must determine that the effect of a modification is not minor where it would—

- (a) affect any existing contractual arrangements between the CFD counterparty and third parties; or
- (b) require the CFD counterparty to enter into any new contractual arrangements with third parties which are not provided for in a CFD.

(5) The CFD counterparty may determine that a modification described in paragraph (4) is minor where, in the opinion of the CFD counterparty, the modification would be likely to provide the CFD counterparty with a commercial benefit.

(6) At the same time as the Secretary of State gives an allocation round notice, the Secretary of State must give the CFD counterparty a notice setting out the specified amount for the purposes of paragraph (3).

(7) The CFD counterparty must publish the notice on its website as soon as reasonably practicable after it is received.

Necessary modification

8.—(1) Subject to paragraph (2), the CFD counterparty may determine that a modification is necessary where, in its opinion, an applicant acting reasonably could not accept the offer of a CFD without the modification.

(2) Where an applicant acting reasonably could not accept the offer of a CFD by reason of the circumstances of the ownership or control of that applicant, a modification designed to deal with those circumstances must not be determined as a necessary modification by the CFD counterparty.