

2014 No. 2012

ELECTRICITY

**The Contracts for Difference (Standard Terms)
Regulations 2014**

Made - - - - *31st July 2014*

Coming into force in accordance with regulation 1

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^(a) 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), 11(3), 14, 15(2) and (4), 16(b) and 19(1) and (2) of the Energy Act 2013, makes the following Regulations:

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Contracts for Difference (Standard Terms) Regulations 2014 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

- “the Act” means the Energy Act 2013;
- “allocation round notice” has the meaning given in regulation 5(1);
- “applicant” means a person to whom section 15(1) of the Act applies;
- “the CFD counterparty” means the person or persons designated as a counterparty for contracts for difference in accordance with section 7 of the Act;
- “delivery body” means—
 - (a) the national system operator; or

(a) 2013 c. 32.

- (b) if the national system operator’s functions under Chapter 2 of Part 2 of the Act have been transferred to an alternative delivery body, that body;
- “eligible generator” has the meaning given by the Contracts for Difference (Definition of Eligible Generator) Regulations 2014(a);
- “generating facility” means the facility which produces low carbon electricity generation for the purposes of a CFD;
- “generator” means a person who enters into a CFD with the CFD counterparty;
- “reference price”, in relation to a CFD, means a price determined under the CFD which is intended to represent a market price of electricity in respect of a period specified in that CFD;
- “strike price”, in relation to a CFD, means a price specified in or determined under the CFD which is compared to the reference price determined under that CFD so as to enable the determination of the amount (if any) which is payable by the CFD counterparty or a generator under the CFD in respect of the generation of electricity by that generator;
- “third party” means a person other than a generator who enters into a contract with the CFD counterparty which is not a CFD; and
- “working day” means 9 am to 5 pm on Mondays to Fridays excluding—
- (a) bank holidays within the meaning of section 1 of the Banking and Financial Dealings Act 1971(b), including those bank holidays in part only of the United Kingdom;
 - (b) Good Friday; and
 - (c) when it falls on a day that would otherwise be a working day, Christmas Day.

PART 2

Standard terms

Provision to be included in standard terms

3. The standard terms issued under section 11(1) of the Act or revised under section 11(2) of the Act must set out—

- (a) that where a strike price is higher than a reference price, the CFD counterparty must pay the generator the difference between the strike price and the reference price;
- (b) that where a reference price is higher than a strike price, the generator must pay the CFD counterparty the difference between the reference price and the strike price;
- (c) that the amount payable under paragraph (a) or (b) must be calculated by reference to the amount of low carbon electricity generation produced by a generating facility;
- (d) the way in which a reference price is to be determined;
- (e) the way in which a strike price is to be adjusted according to inflation;
- (f) the way in which the amount of low carbon electricity generation produced by a generating facility is to be determined;
- (g) that sums must not be paid by the CFD counterparty under a CFD where those sums are not allocated to that CFD in accordance with the Contracts for Difference (Supplier Obligation) Regulations 2014(c);
- (h) which circumstances allow a generator to reduce the capacity of its generating facility;
- (i) which changes in law will cause compensation to be payable by one party to the other party or cause a change to a strike price;

(a) S.I. 2014/2010.
 (b) 1971 c. 80.
 (c) S.I. 2014/2014.

- (j) the way in which the amount of compensation payable or a change to a strike price under paragraph (i) is to be determined;
- (k) which time limits in a CFD may be extended where force majeure prevents a party from complying with them;
- (l) which circumstances require a generator to receive the consent of the CFD counterparty before transferring a CFD or assigning its rights and obligations under a CFD;
- (m) the way in which the parties to a CFD may amend a CFD;
- (n) a mechanism by which disputes between the parties to a CFD are to be resolved;
- (o) which circumstances allow the CFD counterparty to terminate a CFD;
- (p) which circumstances require a generator to make a payment to the CFD counterparty following termination of a CFD; and
- (q) the way in which the amount payable under paragraph (p) is to be determined.

Provision and publication of information

4.—(1) Where the Secretary of State publishes revised standard terms in compliance with section 11(5) of the Act, the Secretary of State must also publish an explanation of why the revisions have been made.

(2) Before issuing or revising standard terms in accordance with section 11(1) and (2) of the Act, the Secretary of State may request the CFD counterparty to provide information or advice to the Secretary of State concerning the issue or revision of standard terms, and the CFD counterparty must comply with such a request as soon as reasonably practicable.

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(a).

(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.

(a) S.I. 2014/2011.

(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.

PART 4

Offer to contract on standard terms

Preparation of a CFD

9.—(1) At the same time as giving an allocation round notice, the Secretary of State must give a notice (a “CFD standard terms notice”) to the CFD counterparty setting out—

- (a) the way in which the CFD counterparty must use the information in the CFD notification to apply or complete the standard terms; and
- (b) which standard terms can be used by the CFD counterparty to offer a CFD in that allocation round.

(2) The notice must be published on the CFD counterparty’s website as soon as reasonably practicable after it is received.

(3) Where a CFD notification is given to the CFD counterparty by the delivery body, the CFD counterparty must apply or complete the standard terms (or the standard terms as modified in accordance with any modification agreement) in accordance with—

- (a) the CFD standard terms notice; and
- (b) the information contained in the CFD notification.

Offer to contract

10.—(1) An offer of a CFD is made by the CFD counterparty signing two copies of a CFD completed in accordance with regulation 9(3) and sending both copies to the eligible generator.

(2) The CFD counterparty must make an offer of a CFD within 10 working days of receiving a CFD notification.

(3) The eligible generator, to whom the offer of a CFD is made, enters into a CFD where—

- (a) the eligible generator signs both copies of a CFD and returns one copy to the CFD counterparty; and
- (b) the CFD counterparty gives the eligible generator a notice stating that the CFD counterparty has received a copy of the CFD from the eligible generator which has been signed by both contracting parties.

(4) The CFD counterparty must give the notice under paragraph (3)(b) as soon as reasonably practicable after the CFD counterparty receives a signed copy of a CFD from an eligible generator.

(5) Where a CFD is entered into, the CFD counterparty must inform the delivery body as soon as reasonably practicable.

Failure to accept an offer

11.—(1) Where the CFD counterparty does not receive a signed copy of a CFD from an eligible generator within 10 working days of the offer being made, the offer lapses.

(2) Where an offer lapses, the CFD counterparty must, as soon as is reasonably practicable, give the eligible generator and the delivery body a notice which states that the offer has lapsed.

A register of CFDs

12.—(1) Where a CFD has been entered into in accordance with regulation 10, the CFD counterparty must within a reasonable time assign a unique identifier to the CFD.

(2) The CFD counterparty must establish and maintain a register and enter the following information in the register—

- (a) the unique identifier of a CFD;
- (b) the information set out in a CFD notification;
- (c) any modification of standard terms;
- (d) the CFD counterparty's reasons for accepting an application to modify standard terms;
- (e) any change to the strike price of a CFD;
- (f) any reduction to the capacity of a generating facility under a CFD; and
- (g) where a CFD is terminated, the date on which termination occurs.

(3) The CFD counterparty may enter any other information in the register which in its opinion would facilitate the administration of CFDs.

(4) The CFD counterparty must, so far as it is reasonably practicable, ensure that entries in the register are accurate.

(5) The register must be published on the CFD counterparty's website.

(6) The CFD counterparty may exclude from publication any information which in its opinion it would be entitled not to disclose in response to a request for its disclosure under the Freedom of Information Act 2000(a) or the Environmental Information Regulations 2004(b).

(7) The CFD counterparty must give a generator an opportunity to make representations before deciding what information to exclude from publication.

Giving of notices

13. The Schedule (documents) has effect.

31st July 2014

Amber Rudd
Parliamentary Under-Secretary of State
Department of Energy and Climate Change

(a) 2000 c. 36.
(b) S.I. 2004/3391.

SCHEDULE

Regulation 13

Documents

1. The provisions of this Schedule apply to a document, which includes an application, notice, request or a CFD.

2. A document must be in writing and dated.

3. A document given to a person on a non-working day is to be treated as given on the next following working day.

4. A document may be given to a person by—

- (a) delivering it to that person in person;
- (b) leaving it at that person's proper address;
- (c) sending it by post or fax to that person's proper address;
- (d) sending it by email to that person; or
- (e) submitting it by means of a dedicated portal on that person's website.

5. For the purposes of paragraph 4(a) a document is given to—

- (a) a body corporate, where it is given to a person having control or management of that body;
- (b) a partnership, where it is given to a partner or a person having control or management of the partnership business;
- (c) an unincorporated association, where it is given to a person having management responsibilities in respect of the association.

6. For the purposes of paragraph 4(d), a document is given to—

- (a) a body corporate, where it is sent to an email address of—
 - (i) the body corporate; or
 - (ii) a person having control or management of that body,where that address is supplied by that body for the conduct of the affairs of that body;
- (b) a partnership, where it is sent to an email address of—
 - (i) the partnership; or
 - (ii) a partner or a person having control or management of the partnership business,where that address is supplied by that partnership for the conduct of the affairs of that partnership;
- (c) an unincorporated association, where it is sent to an email address of a person having management responsibilities in respect of the association, where that address is supplied by that association for the conduct of the affairs of that association.

7. A person may, in substitution for the proper address which would otherwise apply, specify an address in Great Britain at which that person or someone on that person's behalf may be given documents, which address is to be treated instead as that person's proper address.

8. In this Schedule—

“dedicated portal” means a facility on a person's website which is established to allow electronic communication with that person;

“proper address” means in the case of—

- (a) a body corporate, the registered office (if it is in Great Britain) or the principal office of that body in Great Britain;

- (b) a partnership, the principal office of the partnership in Great Britain;
- (c) any other person, that person's last known address, which includes an email address.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made further to the powers contained in Chapter 2 (contracts for difference) of Part 2 (electricity market reform) of the Energy Act 2013 (c. 32). The Regulations are concerned with the provision to be included in standard terms issued or revised by the Secretary of State; the modification of standard terms before the allocation of a CFD; and the making of an offer to contract on standard terms. The Regulations also provide for the publication of information by the CFD counterparty in the form of a CFD register.

Regulation 3 sets out the kind of provision to be included in standard terms. Where standard terms are revised, regulation 4(1) requires the Secretary of State to publish an explanation as to why the revisions have been made. Pursuant to regulation 4(2), the Secretary of State may require the CFD counterparty to provide information or advice before the Secretary of State issues or revises standard terms.

Regulation 5 sets out the requirements for an application to modify the standard terms. An application must be made at least 20 working days before the application closing date specified in an allocation round notice given under the Contracts for Difference (Allocation) Regulations 2014. Regulation 6 requires the CFD counterparty to determine an application to modify standard terms at least 5 working days before the application closing date specified in the allocation round notice.

Regulations 7 and 8 make further provision about how the CFD counterparty is to determine whether the effect of a modification is minor and whether it is necessary.

Regulation 9 makes provision about how the CFD counterparty is to apply or complete standard terms before making an offer of a CFD. Regulation 10 sets out the requirements for making an offer of a CFD including the time limits in which an offer must be made and accepted. Regulation 11 provides that an offer of a CFD will lapse where it is not accepted within 10 working days.

Regulation 12 requires the CFD counterparty to establish and maintain a register of CFDs, and enter information in the register including a unique identifier for each CFD and the information set out in a CFD notification. The register must be published on the CFD counterparty's website.

A full impact assessment of the effect that this instrument 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.

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£6.00

UK201407316 08/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/2012>

ISBN 978-0-11-111946-4



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