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STATUTORY INSTRUMENTS

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**2015 No. 721**

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

**PART 2**

Excluded electricity

<sup>F1</sup>CHAPTER 1

Green excluded electricity

**Textual Amendments**

- F1** Pt. 2 Ch. 1 omitted (1.4.2023) by virtue of [The Electricity Supplier Obligations \(Green Excluded Electricity\) \(Amendment\) Regulations 2023 \(S.I. 2023/389\)](#), regs. 1(2), **3(3)**

**Determination of green excluded electricity**

3. ....

**Capping of green excluded electricity**

4. ....

**Functions of the Authority**

5. ....

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 [<sup>F2</sup>12A] 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 [<sup>F3</sup>12A] 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.

#### Textual Amendments

- F2** Word in reg. 6(2)(a) substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **6(2)(a)**
- F3** Word in reg. 6(2)(b) substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **6(2)(b)**

#### 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.

#### [<sup>F4</sup>EII certificates

8.—(1) Subject to regulation 10(7), a person who uses electricity for a specified activity is entitled, on application to the Secretary of State under regulation 10, to be issued with a certificate by the Secretary of State (an “EII certificate”) in respect of the electricity meter which measures the supply of that electricity where—

- (a) the specified activity—
  - (i) is carried out in the course of the person’s business, and
  - (ii) has been carried out in the course of the person’s business for at least [<sup>F5</sup>two consecutive financial quarters][<sup>F5</sup>one financial quarter] in the 12 month period immediately prior to the making of the EII application; <sup>F6</sup>...
- (b) either—

- (i) the test in paragraph (2) is met in relation to that business, or
  - (ii) paragraph (4) or (7) applies to that business [<sup>F7</sup>; and]
- [<sup>F8</sup>(c) the EII application contains evidence under regulation 10(2)(h) of the proportion of electricity measured by the meter that was used for a specified activity in the course of the person's business in a period that is at least 3 months in length.]
- [<sup>F9</sup>(2) The test in this paragraph is met in relation to a person's business if—
- (a) the electricity cost impact of the business in the relevant period is equal to, or greater than, 0.2; and
  - (b) paragraph (9) applies to the person.]
- (3) For the purposes of paragraph (2), the electricity cost impact is the amount calculated in accordance with the formula—

$BEP \times BECBGVA$

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 in accordance with a measure of inflation determined by the Secretary of State so as to reflect prices in the year 2012;

BEC is the amount of electricity consumed in the United Kingdom by the person's business in the relevant period; and

BGVA is the sum of the staff costs and the earnings of the person's business in the relevant period, adjusted for inflation in accordance with a measure of inflation determined by the Secretary of State so as to reflect prices in the year 2012, except that—

- (a) in the case of a new business, where the staff costs and the earnings of that business in any financial quarter during the relevant period together total less than £1 they are to be treated as £1; and
  - (b) in the case of any other business, where the staff costs and the earnings of that business in any business year during the relevant period together total less than £1 they are to be treated as £1.
- (4) Subject to paragraph (6), this paragraph applies to a person's business where—
- (a) an EII certificate has previously been issued to that person;
  - (b) that EII certificate is in force in respect of the meter that measures the supply of electricity to that business on the date of that person's EII application; and
  - (c) when that person applied for that EII certificate, the relevant period was the three most recent business years for which there are annual accounts in respect of that person's business [<sup>F10</sup>or would have been but for the application of regulation 9A].
- (5) Where a notice has been issued in respect of an EII certificate pursuant to regulation 12(7) (a), and the person who is identified in that notice makes an EII application in respect of the meter identified in that certificate before that certificate ceases to be valid, paragraph (4) is to be treated as applying to that person's business in respect of that EII application if paragraph (4) applies to that person's business in respect of another EII certificate.
- (6) If paragraph (4) applies to a person's business in respect of four consecutive EII applications, the test in paragraph (2) must be met in relation to that person's business in respect of an EII application identifying that meter before paragraph (4) will apply again.
- (7) This paragraph applies to a person's business where—
- (a) that person makes a force majeure application in relation to that business; <sup>F11</sup>...

*Status: Point in time view as at 24/04/2023.*

*Changes to legislation: There are currently no known outstanding effects for the The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015, PART 2. (See end of Document for details)*

(b) in the opinion of the Secretary of State, but for force majeure the test in paragraph (2) would have been met [<sup>F12</sup>; and]

[<sup>F13</sup>(c) paragraph (9) applies to that person.]

(8) An EII certificate must set out an address and an email address provided by the Secretary of State for correspondence about that certificate.

[<sup>F14</sup>(9) This paragraph applies to a person if—

(a) the person is not in difficulty; and

(b) the person is not subject to an outstanding recovery order made by virtue of Article 108(2) of the Treaty on the Functioning of the European Union (Commission decision declaring aid illegal and incompatible with the common market).

(10) For the purposes of these Regulations, a person is “not in difficulty” if it is reasonable to assume that the person would not be regarded as an undertaking in difficulty for the purposes of the European Commission’s Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01).]

#### Textual Amendments

- F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), 2(3)
- F5** Words in reg. 8(1)(a)(ii) substituted (E.W.S.) (24.4.2023) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2023 \(S.I. 2023/415\)](#), regs. 1(2), 3(2)
- F6** Word in reg. 8(1)(a)(ii) omitted (2.3.2020) by virtue of [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 7(2)(a)
- F7** Word in reg. 8(1)(b)(ii) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 7(2)(b)
- F8** Reg. 8(1)(c) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 7(2)(c)
- F9** Reg. 8(2) substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 7(3)
- F10** Words in reg. 8(4)(c) inserted (E.W.S.) (24.4.2023) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2023 \(S.I. 2023/415\)](#), regs. 1(2), 3(3)
- F11** Word in reg. 8(7)(a) omitted (2.3.2020) by virtue of [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 7(4)(a)
- F12** Word in reg. 8(7)(b) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 7(4)(b)
- F13** Reg. 8(7)(c) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 7(4)(c)
- F14** Reg. 8(9)(10) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 7(5)

#### Relevant period for a business

- 9.—(1) The relevant period for a person’s business for the purposes of an EII application is—
- (a) in respect of a new business, the period of at least six months prior to the relevant date—
- (i) throughout which the person was carrying out a specified activity in the course of business, and
- (ii) in respect of which there is financial data in relation to that business;

- (b) in respect of any other business, to be determined in accordance with paragraph (2).
- (2) Where on the relevant date a person has, in respect of their business—
- (a) annual accounts for three or more consecutive business years commencing after 1st January 2012, the relevant period is the three most recent consecutive business years for which there are annual accounts in respect of the business;
  - (b) annual accounts for two, but not three, consecutive business years commencing after 1st January 2012, the relevant period is those two business years; or
  - (c) annual accounts for one, but not two, business years commencing after 1st January 2012, the relevant period is that business year.
- (3) For the purposes of this regulation the relevant date is the date on which a person applies for an EII certificate in respect of their business.

**Textual Amendments**

**F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), 2(3)

**[<sup>F15</sup>Modification of the application of Regulation 9**

- 9A.**—(1) This regulation applies in relation to an EII application—
- (a) which is made before 1<sup>st</sup> April 2026;
  - (b) in respect of which the relevant period by virtue of regulation 9(2)(a) would, but for the application of this regulation, be the three most recent consecutive business years for which there are annual accounts for the business; and
  - (c) in which the applicant has included a request that this regulation should apply.
- (2) Where this regulation applies, the applicant may specify in the application any three of the five most recent business years for which there are annual accounts in respect of the business and the expression “relevant period” is to be construed as a reference to the period or periods covered by the accounts specified by the applicant.]

**Textual Amendments**

**F15** [Reg. 9A](#) inserted (E.W.S.) (24.4.2023) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2023 \(S.I. 2023/415\)](#), regs. 1(2), 4

**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) The application must be made in writing and, subject to paragraphs (3) and (4), it must contain—
- (a) evidence of the earnings and the staff costs of the person’s business for which the electricity is used in the relevant period;
  - (b) evidence of the amount of electricity consumed in the United Kingdom by the person’s business in the relevant period;

Status: Point in time view as at 24/04/2023.

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- (c) 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;
- (d) a statement setting out the specified activity for which electricity supplied to that meter is used in the course of business by the person making the application;
- (e) except where the person obtains electricity measured by that meter from a third party other than an electricity supplier, evidence of—
  - (i) the amount of electricity measured by that meter which was supplied during the entire calendar year which immediately preceded the calendar year in which the EII application is made, and
  - (ii) the sum paid to the electricity supplier supplying such electricity for such supply;
- (f) a statement—
  - (i) confirming that all the electricity supplied to that meter is used in the course of business by the person applying for the EII certificate, or
  - [<sup>F16</sup>(ii) identifying any person with whom that electricity is shared;]
- (g) if applicable, a statement identifying any third party, other than an electricity supplier, from whom the person applying for the EII certificate obtains electricity;
- [<sup>F17</sup>(h) evidence of the proportion of the electricity measured by that meter that was used for a specified activity in the course of the person’s business—
  - (i) where at the date of the EII application there is a continuing change in relation to that meter, in the period—
    - (aa) beginning on the date (the “commencement date”) on which the last-commencing continuing change commenced; and
    - (bb) ending on the earlier of 12 months after the commencement date and the last date for which (at the date of the application) the person has such evidence:  
Provided that this paragraph does not apply unless that period is at least 3 months in length;
  - (ii) where paragraph (i) does not apply—
    - (aa) if that meter measured the supply of such electricity during the entire previous year, in the previous year; or
    - (bb) if that meter did not measure the supply of such electricity during the entire previous year, in the period beginning on the date (the “start date”) on which the supply of such electricity began and ending on the earlier of 12 months after the start date and the last date for which (at the date of the EII application) the person has such evidence;
- (ha) where at the date of the EII application there is a continuing change in relation to that meter, a statement setting out the date on which the last-commencing continuing change commenced;]
- [<sup>F18</sup>(i) .....
- (j) information identifying the electricity supplier who, when the EII application is made, supplies electricity which is measured by that meter;
- (k) information identifying the name of the person who pays the electricity supplier referred to in sub-paragraph (j) where that person is not the person making the EII application;

- (l) an address and an email address at which the person applying for the EII certificate can be contacted, and where a statement is made in accordance with sub-paragraph (g), an address and an email address at which the third party referred to in that statement can be contacted;
- (m) a statement setting out the business year used in respect of the person’s business to which the EII application relates;
- (n) in respect of a force majeure application, evidence of force majeure and of its effect on the amount of electricity used by the person’s business during the relevant period; <sup>F19</sup> ...
- (o) except where an EII application relates to a new business, a statement setting out the accounting standards to which the annual accounts have been prepared in respect of the person’s business to which the application relates [<sup>F20</sup>; and]

[<sup>F21</sup>(p) a statement that the person is not in difficulty (see regulation 8(10)).]

(3) Where regulation 8(4) applies to a person’s business, the EII application made by that person in respect of that business does not need to contain the [<sup>F22</sup>evidence mentioned in paragraph (2)(a) and (b) or the statement mentioned in paragraph (2)(p)].

(4) Where a person provided information or evidence required by paragraph (2) to the Secretary of State before 1 March 2017, an EII application made by that person need not contain that information or evidence.

[<sup>F23</sup>(4A) Where the EII application is required under paragraph (2)(p) to contain a statement that the person making the application is not in difficulty, the Secretary of State may request the person to provide such information or evidence as the Secretary of State thinks necessary to satisfy the Secretary of State that the person is not in difficulty.]

<sup>F24</sup>(5) .....

<sup>F25</sup>(6) .....

(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, the information or evidence contained in that application pursuant to paragraph (2) [<sup>F26</sup>or provided pursuant to a request under paragraph (4A)] is not sufficient or not satisfactory.

(8) Where the Secretary of State decides not to issue an EII certificate in respect of a person’s EII application in accordance with paragraph (7), the Secretary of State must notify that person and give reasons, except where the Secretary of State does not hold a proper address for such person.

(9) Where an EII application is made by a person who pays a third party other than an electricity supplier for the supply of electricity measured by the meter identified in that application, the Secretary of State may issue EII certificates to both that person and that third party in respect of that application.

[<sup>F27</sup>(10) In this regulation, “previous year”, in relation to an EII application, means the calendar year immediately preceding the calendar year in which the EII application is made.]

#### Textual Amendments

- F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), **2(3)**
- F16** Reg. 10(2)(f)(ii) substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(2)(a)**
- F17** Reg. 10(2)(h)(ha) substituted for reg. 10(2)(h) (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(2)(b)**

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*Changes to legislation: There are currently no known outstanding effects for the The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015, PART 2. (See end of Document for details)*

- F18** Reg. 10(2)(i) omitted (2.3.2020) by virtue of [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(2)(c)**
- F19** Word in reg. 10(2)(n) omitted (2.3.2020) by virtue of [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(2)(d)**
- F20** Word in reg. 10(2)(o) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(2)(e)**
- F21** Reg. 10(2)(p) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(2)(f)**
- F22** Words in reg. 10(3) substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(3)**
- F23** Reg. 10(4A) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(4)**
- F24** Reg. 10(5) omitted (2.3.2020) by virtue of [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(5)**
- F25** Reg. 10(6) omitted (2.3.2020) by virtue of [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(5)**
- F26** Words in reg. 10(7) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(6)**
- F27** Reg. 10(10) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **8(7)**

## **[<sup>F28</sup>Proportion to be specified in an EII certificate**

- 11.—(1)** An EII certificate issued in respect of an electricity meter must specify—
- (a) the proportion of electricity measured by the meter that constitutes EII excluded electricity, rounded to the nearest one-hundredth with 0.005 being rounded upwards; and
  - (b) the start and end dates of the period by reference to which the proportion is determined.
- (2) The proportion to be specified in an EII certificate under paragraph (1)(a) is 0.85 multiplied by the proportion of relevant electricity measured by the meter in the certificate period.
- (3) The certificate period is—
- (a) where at the date of the application for the EII certificate there is a continuing change in relation to the meter, the period (beginning on the date on which the last-commencing continuing change commenced and not exceeding 12 months) for which evidence of the proportion of relevant electricity measured by the meter is contained in the application:  
Provided that this sub-paragraph does not apply unless that period is at least 3 months in length;
  - (b) where sub-paragraph (a) does not apply—
    - (i) if the meter measured the supply of relevant electricity during the entire previous year, the previous year; or
    - (ii) if the meter did not measure the supply of relevant electricity during the entire previous year, the period (beginning on the date on which the supply of relevant electricity began and not exceeding 12 months) for which evidence of the proportion of relevant electricity measured by the meter is contained in the application.
- (4) In this regulation—
- “previous year” has the meaning given in regulation 10(10);
- “relevant electricity” means electricity used for a specified activity in the course of the business of the person applying for the EII certificate.]



**Textual Amendments**

- F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), 2(3)
- F28** Reg. 11 substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 9

**Notifications and Reports**

12.—(1) Where any of the following occur in respect of a relevant person’s business, that person must notify the Secretary of State of such occurrence as soon as possible—

- (a) <sup>F29</sup>[every specified activity] which was carried out using electricity measured by the meter identified in an EII certificate has ceased to be carried out;
- (b) that person becomes aware of an error in a successful EII application made in respect of a meter that measures the supply of electricity to that person’s business and, but for the error, the test in regulation <sup>F30</sup>8(2)(a) would not have been met using the information and evidence contained in that application;
- (c) that person becomes aware of an error in any successful EII application in respect of a meter that measures the supply of electricity to that person’s business, as a result of which the proportion of electricity measured by the meter in respect of which the certificate was issued which constitutes EII excluded electricity should be, or should have been, lower;

<sup>F31</sup>(d) .....

(2) For the purposes of paragraph (1), a “relevant person” refers to any of the following—

- (a) a person who has successfully applied for an EII certificate;
- (b) a person identified in a notice issued pursuant to paragraph (7), where that notice is in force.

<sup>F32</sup>(3) .....

<sup>F33</sup>(4) Subject to paragraph (4A), where an EII certificate issued in respect of an electricity meter is in force on the first day of a quarter, the person who applied for the certificate or, where a notice under paragraph (7)(a) has been issued in respect of the certificate, the person identified in the notice must send a report (the “quarterly report”) in respect of the certificate to the Secretary of State during the quarter.

(4A) Paragraph (4) does not apply if the EII certificate ceases to be valid before the last day of the quarter.

(4B) The quarterly report must set out—

- (a) whether or not the electricity measured by the meter is still being used in the course of the person’s business for the specified activity set out in the EII application under regulation 10(2)(d);
- (b) any other specified activity for which the electricity is being used in the course of the person’s business.

(4C) This paragraph applies where the proportion of electricity constituting EII excluded electricity specified in the EII certificate mentioned in paragraph (4) or, if a notice under regulation 12A has effect in relation to the certificate, in the notice is determined by reference to—

- (a) a period of less than 12 months in length; or

- (b) where at the date of the quarterly report there is a continuing change in relation to the meter (whether commencing before or after the date of the EII application), a period that does not begin on the date on which the last-commencing continuing change commenced.
- (4D) Subject to paragraph (4F), the quarterly report must include—
- (a) where paragraph (4C)(a) or (b) applies, the evidence mentioned in regulation 10(2)(h)(i) or, as the case may be, regulation 10(2)(h)(ii)(bb);
- (b) where paragraph (4C)(b) applies—
- (i) the date on which the last-commencing continuing change commenced;
- (ii) where the last-commencing continuing change is a continuing change by virtue of regulation 2A(3), the identity of the person mentioned in that paragraph with whom electricity measured by the meter continues to be shared.
- (4E) For the purposes of paragraph (4D)(a)—
- (a) where a notice under paragraph (7)(a) has been issued in respect of the certificate, the reference in regulation 10(2)(h) to the business of the person applying for an EII certificate includes a reference to the business of the person identified in the notice;
- (b) references in regulation 10(2)(h)(i) and (ii)(bb) to the date of the EII application must be treated as references to the date of the quarterly report.
- (4F) Paragraph (4D) does not require evidence or information to be included in the quarterly report if it was contained in the EII application for the certificate or included in a previous report under paragraph (4) in respect of the certificate.]
- (5) A notice or report under paragraph (1) or (4) must be set out in writing and is to be treated as having been given when it is sent, if it is sent to—
- (a) the address or email address for correspondence set out in the EII certificate, or
- (b) where the address or email address for correspondence set out in the EII certificate has been withdrawn by the Secretary of State, the address or email address for correspondence notified by the Secretary of State to the person required to give a notice or report.
- (6) A person who is issued with an EII certificate in respect of their business at a time when that business is a new business must, unless a notice under paragraph (7)(a) has been issued in respect of that EII certificate, within a period of 30 days beginning with the day on which annual accounts are finalised in respect of that business which relate to all or part of the relevant period for the purposes of that application, provide to the Secretary of State—
- (a) a copy of such annual accounts; and
- (b) a statement setting out the accounting standards to which such annual accounts have been prepared.
- (7) The Secretary of State may issue a notice where the Secretary of State is satisfied that a person other than a person identified in an EII certificate does any of the following—
- (a) uses electricity supplied to the meter identified in that certificate for a specified activity in the course of business;
- (b) pays for the supply of electricity to which the certificate relates.
- (8) A notice issued under paragraph (7)—
- (a) must identify the person who the Secretary of State is satisfied acts in a way described in paragraph (7);
- (b) ceases to have effect if a subsequent notice is given under paragraph (7); and
- (c) must be given to—

- (i) the person who applied for the EII certificate, except where the Secretary of State does not hold a proper address for such person, or where a notice has previously been issued in respect of the certificate pursuant to regulation 12(7)(a),
- (ii) if applicable, the person identified in a notice previously issued in respect of the certificate pursuant to regulation 12(7)(a), except where the Secretary of State does not hold a proper address for such person,
- (iii) the person who the Secretary of State is satisfied acts in a way described in paragraph (7),
- (iv) the BSCCo, and
- (v) the CFD counterparty.

[<sup>F34</sup>(9) In this regulation, “quarter” means a period of 3 months beginning on 1st January, 1st April, 1st July or 1st October.]

#### Textual Amendments

- F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), **2(3)**
- F29** Words in reg. 12(1)(a) substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **10(2)(a)**
- F30** Word in reg. 12(1)(b) substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **10(2)(b)**
- F31** Reg. 12(1)(d) omitted (2.3.2020) by virtue of [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **10(2)(c)**
- F32** Reg. 12(3) omitted (2.3.2020) by virtue of [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **10(3)**
- F33** Reg. 12(4)-(4F) substituted for reg. 12(4) (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **10(4)**
- F34** Reg. 12(9) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **10(5)**

#### [<sup>F35</sup>Notices correcting and updating EII certificates

**12A.**—(1) Subject to paragraph (5), where at any time after issuing an EII certificate the Secretary of State is satisfied that—

- (a) the proportion of electricity constituting EII excluded electricity specified in the certificate or, if a notice under this regulation has effect in relation to the certificate, in the notice; or
- (b) the start or end date of the period specified in the certificate or notice by reference to which the proportion is determined,

is incorrect, the Secretary of State must give a notice in relation to the certificate to the persons mentioned in paragraph (7) specifying the correct proportion or, as the case may be, the correct start or end date of the period.

(2) Subject to paragraph (5), where the Secretary of State receives a report under regulation 12(4) (a “quarterly report”) in respect of an EII certificate that includes evidence under regulation 12(4D) (a), the Secretary of State must give a notice in relation to the certificate to the persons mentioned in paragraph (7) specifying—

- (a) the updated proportion; and

*Status: Point in time view as at 24/04/2023.*

*Changes to legislation: There are currently no known outstanding effects for the The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015, PART 2. (See end of Document for details)*

- (b) the start and end dates of the period by reference to which the updated proportion is determined.
- (3) The updated proportion is the proportion of electricity constituting EII excluded electricity mentioned in regulation 11(1)(a) determined in accordance with regulation 11 as if the application for the certificate had been made at the date of the quarterly report.
- (4) For the purposes of paragraph (3)—
- (a) the evidence included under regulation 12(4D)(a) in the quarterly report (and any evidence included under that sub-paragraph in any previous report under regulation 12(4) in respect of the certificate) must be treated as having been contained in the application;
  - (b) the reference in regulation 11(3)(a) to the date of the application must be treated as a reference to the date of the quarterly report;
  - (c) where a notice under regulation 12(7)(a) has been issued in respect of the certificate, the reference in regulation 11(4) to the business of the person applying for an EII certificate includes a reference to the business of the person identified in the notice.
- (5) Paragraphs (1) and (2) do not apply if the notice would take effect only after the EII certificate ceases to be valid.
- (6) A notice under paragraph (1) or (2)—
- (a) has effect from the 6th working day after it is given; and
  - (b) ceases to have effect if a subsequent notice is given and has effect.
- (7) The persons are all of the following (except for any person for whom the Secretary of State does not hold a proper address)—
- (a) the person who applied for the EII certificate or, where a notice under regulation 12(7)(a) has been issued in respect of the certificate, the person identified in the notice;
  - (b) where a notice under regulation 12(7)(b) has been issued in respect of the certificate, the person identified in the notice;
  - (c) where an EII certificate has been issued to a third party under regulation 10(9), the third party;
  - (d) the BSCCo;
  - (e) the CFD counterparty.]

#### Textual Amendments

- F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), 2(3)
- F35** Reg. 12A inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 11

#### 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 the day after the expiry of the EII certificate that was already in force; 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) Where an EII certificate is issued the Secretary of State must give a notice to—
  - (a) the BSCCo;
  - (b) the CFD counterparty.
- (3) Where an EII certificate is issued (and not revoked) by the Secretary of State, it is valid from the day on which it comes into force until either—
  - (a) midnight on the day falling 16 months after the first day of the relevant period for the purposes of the EII application in respect of which the EII certificate was issued, if—
    - (i) at the time of that application the person’s business in respect of which the application was made was a new business, and
    - (ii) at the time of that application the person’s business in respect of which the application was made had been trading for not more than four consecutive financial quarters; or
  - <sup>F36</sup>(b) in the case of all other businesses, the end of June in the calendar year immediately following the calendar year in which the EII certificate comes into force.]
- (4) An EII certificate may only be revoked where the Secretary of State is satisfied that—
  - (a) the person who applied for the certificate or, if applicable, the person identified in a notice issued in respect of the certificate pursuant to regulation 12(7)(a)—
    - (i) is not entitled to the EII certificate pursuant to regulation 8, or
    - (ii) has failed to comply with the requirements of regulation 12; <sup>F37</sup>...
  - <sup>F38</sup>(aa) any evidence or information included in a report under regulation 12(4) is not sufficient or not satisfactory; or]
  - (b) the certificate was issued pursuant to regulation 10(9) to a third party other than an electricity supplier and—
    - (i) the person who applied for the certificate no longer pays that third party for the supply of electricity, or
    - (ii) either of the circumstances described in sub-paragraph (a) <sup>F39</sup>or the circumstances described in sub-paragraph (aa)] exist.
- (5) Where an EII certificate is revoked the Secretary of State must give a notice of such revocation to—
  - (a) the person who applied for the certificate, except where the Secretary of State does not hold a proper address for such person, or where a notice has been issued in respect of the certificate pursuant to regulation 12(7)(a);
  - (b) if applicable, the person identified in a notice issued in respect of the certificate pursuant to regulation 12(7)(a), except where the Secretary of State does not hold a proper address for such person;
  - (c) if applicable, the third party to whom an EII certificate has been issued pursuant to regulation 10(9), except where the Secretary of State does not hold a proper address for such person;
  - (d) if applicable, the person identified in a notice issued in respect of the certificate pursuant to regulation 12(7)(b), except where the Secretary of State does not hold a proper address for such person;
  - (e) the BSCCo; and
  - (f) the CFD counterparty.
- (6) Revocation of an EII certificate has effect from the beginning of the 6th day after the notice under paragraph (5) is given.

*Status: Point in time view as at 24/04/2023.*

*Changes to legislation: There are currently no known outstanding effects for the The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015, PART 2. (See end of Document for details)*

(7) Where an EII certificate is revoked, or a notice under regulation [F40 12A] or regulation 12(7) has been given in respect of an EII certificate, the CFD counterparty must, as soon as reasonably practicable, inform electricity suppliers who supply electricity which is measured by the meter identified in that certificate.

#### Textual Amendments

- F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), **2(3)**
- F36** Reg. 13(3)(b) substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **12(2)**
- F37** Word in reg. 13(4)(a)(ii) omitted (2.3.2020) by virtue of [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **12(3)(a)**
- F38** Reg. 13(4)(aa) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **12(3)(b)**
- F39** Words in reg. 13(4)(b)(ii) inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **12(3)(c)**
- F40** Word in reg. 13(7) substituted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **12(4)**

#### [F41] Extension of validity of certain EII certificates

**13ZA.**—(1) This regulation applies to an EII certificate that—

- (a) was issued before this regulation comes into force;
- (b) in accordance with provision made by regulation 13(3)(b) (before its substitution by the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2020), was at the time of issue valid until the end of the financial year beginning on 1st April 2019 (that is to say, until the end of March 2020); and
- (c) is valid on the date on which this regulation comes into force.

(2) An EII certificate to which this regulation applies is valid until the end of June 2020, unless revoked before then.

(3) If this regulation comes into force on or after 1st April 2020, this regulation has effect with the following modifications—

- (a) in paragraph (1)(b)—
  - (i) for “1st April 2019” substitute “1st April 2020”;
  - (ii) for “March 2020” substitute “March 2021”;
- (b) in paragraph (2) for “June 2020” substitute “June 2021”.

#### Textual Amendments

- F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), **2(3)**
- F41** Regs. 13ZA, 13ZB inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), **13**

## Modification of Regulations if State aid decisions cease to be relevant

**13ZB.**—(1) This regulation applies if all of the decisions of the European Commission mentioned in paragraph (2) cease to be relevant to any question of law in the United Kingdom that relates to whether EII certificates may be issued under this Chapter.

(2) The decisions are—

- (a) SA.43657 (2015/N) of 14th December 2015 (aid for indirect costs of renewable energy support in the UK);
- (b) SA.45155 (2017/N) of 12th June 2017 (amendment to the decision providing aid to exempt energy intensive users from the indirect costs of renewable obligation);
- (c) SA.52615 (2019/N) of 26th March 2019 (modification of the support scheme providing aid for indirect costs of renewable energy support).

(3) These Regulations have effect as if the amendments made by regulations 7(3) to (5) and 8(2) (d) to (f), (3), (4) and (6) of the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2020 had not been made.]

### Textual Amendments

- F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), 2(3)
- F41** Regs. 13ZA, 13ZB inserted (2.3.2020) by [The Electricity Supplier Obligations \(Excluded Electricity\) \(Amendment\) Regulations 2020 \(S.I. 2020/130\)](#), regs. 2(1), 13

## Information sharing

**13A.** The CFD Counterparty may share information with the Authority for the purpose of facilitating the performance of the Authority’s functions under the Feed-in Tariffs Order 2012, the Renewables Obligation Order 2015 or the Renewables Obligation (Scotland) Order 2009.]

### Textual Amendments

- F4** Regs. 8-13A substituted for regs. 8-13 (31.10.2017) by [The Electricity Supplier Obligations \(Amendment and Excluded Electricity\) \(Amendment\) Regulations 2017 \(S.I. 2017/1051\)](#), regs. 1(2), 2(3)

## 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.

**Status:**

Point in time view as at 24/04/2023.

**Changes to legislation:**

There are currently no known outstanding effects for the The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015, PART 2.