
STATUTORY INSTRUMENTS

2017 No. 1051

The Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017

Citation and Commencement

1.—(1) These Regulations may be cited as the Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017.

(2) They come into force on the day after the day on which they are made.

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

2.—(1) The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 are amended in accordance with this regulation.

(2) Amend regulation 2(1) as follows—

(a) after the definition of “the Act” insert—

““annual accounts”—

- (a) in the case of a company within the meaning of section 1(1) of the Companies Act 2006⁽¹⁾, has the meaning given in section 471 of that Act;
- (b) in the case of a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000⁽²⁾, has the meaning given in section 471 of the Companies Act 2006 as applied with modifications by regulation 29 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008⁽³⁾;
- (c) in the case of a business carried on by any other person, means accounts which relate to that business which are prepared by that person—
 - (i) annually, and
 - (ii) in accordance with accounting standards which are, in the opinion of the Secretary of State, satisfactory;”;

(b) after the definition of “BM Unit Identification Number” insert—

““business year”—

- (a) in the case of a company within the meaning of section 1(1) of the Companies Act 2006, means the company’s “financial year” as determined in accordance with section 390 of that Act;
- (b) in the case of a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, means the limited liability partnership’s financial year as determined in accordance with section 390 of the Companies

⁽¹⁾ 2006 c.46; section 471 was amended by S.I. 2012/2301, 2013/3008, 2013/1970.

⁽²⁾ 2000 c.12.

⁽³⁾ S.I. 2008/1911 as amended by S.I. 2012/2301, 2016/575.

Act 2006 as applied with modifications by regulation 7 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008;

- (c) in the case of a business carried on by any other person, means a period of one year commencing with 1st April;”;
 - (c) at the end of the definition of “earnings” add “, excluding items which are extraordinary in the opinion of the Secretary of State”;
 - (d) after the definition of “excluded electricity” insert—
 - ““financial data” in relation to a person’s business, means complete details of the earnings and staff costs of that business;
 - “financial quarter” means a period of three consecutive months in a business year;”;
 - (e) after the definition of “financial year” insert—
 - ““force majeure” means abnormal and unforeseeable circumstances, including natural events, outside the control of the person applying for an EII certificate, the consequences of which could not have been avoided by the exercise of all due care by that person;
 - “force majeure application” means an EII application which states that the person’s business to which the application relates was affected by force majeure during the relevant period;”;
 - (f) after the definition of “NACE Rev 2” insert—
 - ““new business” means a person’s business—
 - (a) in respect of which no annual accounts have been prepared by that person;
 - (b) in respect of which there is financial data for two or more consecutive financial quarters in the 12 month period immediately prior to the making of an EII application in relation to it; and
 - (c) in respect of which that person has been trading for no more than 21 months;”.
- (3) For regulations 8 to 13 (EII certificates—Validity and revocation of EII certificates) substitute—

“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 two consecutive financial quarters in the 12 month period immediately prior to the making of the EII application; and
- (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.

(2) The test in this paragraph is met in relation to a person’s business if the electricity cost impact of the business in the relevant period is equal to, or greater than, 0.2.

(3) For the purposes of paragraph (2), the electricity cost impact is the amount calculated in accordance with the formula—

$$\frac{BEP \times BEC}{BGVA}$$

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.

(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; and
- (b) in the opinion of the Secretary of State, but for force majeure the test in paragraph (2) would have been met.

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

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.

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;
 - (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
 - (ii) identifying any third party with whom the person applying for the EII certificate shares, or to whom that person supplies, electricity supplied to that meter;
 - (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;
 - (h) evidence of—
 - (i) where the person was carrying out a specified activity in the course of business during the entire calendar year which immediately preceded the calendar year in which the EII application is made, the proportion of electricity measured by that meter which was used for a specified activity by that person's business in that year, or
 - (ii) where the person was not carrying out a specified activity in the course of business during the entire calendar year which immediately preceded the calendar year in which the EII application is made, the proportion of electricity measured by that meter which was used for a specified activity by that person's business in the relevant period;
 - (i) where sub-paragraph (h) cannot be complied with, sufficient evidence of the activities which are carried out using electricity measured by that meter to enable the Secretary of State to estimate the proportion of electricity measured by that meter which was used for a specified activity in the course of business by the person applying for the EII certificate in the period specified in sub-paragraph (h)(i) or (ii), as applicable;
 - (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; and
 - (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.
- (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 evidence described in paragraphs (2)(a) and (b).
- (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.

- (5) Where an EII application—
- (a) does not comply with paragraph (2)(h), the Secretary of State must, if sufficient evidence has been provided under paragraph (2)(i), estimate the proportion of electricity measured by that meter which was used for a specified activity in the period specified in paragraph (2)(h)(i) or (ii), as applicable;
 - (b) is a force majeure application, the Secretary of State must, if sufficient evidence has been provided under paragraph (2)(n), estimate the proportion of electricity that would have been measured by that meter and used for a specified activity in the period specified in paragraph (2)(h)(i) or (ii), as applicable, but for force majeure.
- (6) Where the Secretary of State, after making an estimate under paragraph (5), concludes that a different estimate should have been made, the Secretary of State may revise that estimate.
- (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) 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.

Proportion to be specified in an EII certificate

- 11.—**(1) An EII certificate issued in respect of an electricity meter must specify the proportion of electricity measured by that meter which will constitute EII excluded electricity, that proportion to be determined in accordance with paragraph (2) and rounded to the nearest hundredth with 0.005 being rounded upwards.
- (2) The proportion to be specified in an EII certificate by virtue of paragraph (1) is 0.85 multiplied by either—
- (a) the proportion of electricity measured by that meter which was used for a specified activity in the course of business by the person who applied for the EII certificate, either—
 - (i) in the relevant period, in respect of a new business which was not carrying out a specified activity for the entire calendar year which immediately preceded the calendar year in which the EII application is made, or
 - (ii) in the calendar year which immediately preceded the calendar year in which the EII application is made, in respect of any other person's business; or
 - (b) the Secretary of State's estimate under regulation 10(5) where the proportion—
 - (i) is not known in respect of sub-paragraph (a)(i) or (ii), or
 - (ii) is known in respect of either sub-paragraph (a)(i) or (ii), but the Secretary of State is satisfied that the proportion was affected by force majeure.
- (3) Where, after issuing an EII certificate, the Secretary of State subsequently concludes that a proportion specified in that certificate is incorrect, the Secretary of State must give a notice, which specifies the correct proportion, 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) the BSCCo; and
- (d) the CFD counterparty.

(4) For the purposes of paragraph (3), reference to a proportion specified in an EII certificate being “incorrect” includes where the Secretary of State concludes that the estimate made under regulation 10(5) should be revised.

(5) A notice under paragraph (3) has effect from the 6th working day after it is given and ceases to have effect if a subsequent notice is given and has effect.

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) a 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 8(2) 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;
- (d) that person begins to—
 - (i) share with a third party the electricity supplied to the meter identified in the EII certificate, or
 - (ii) supply to a third party any electricity supplied to the meter identified in the EII certificate.

(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.

(3) Where a person is required to notify the Secretary of State under paragraph (1)(d), the notice must specify the identity of the third party and the proportion of the electricity supplied to that meter which is used by, or supplied to, that third party.

(4) While an EII certificate is in force, the person who applied for it or, if applicable, the person to whom a notice under paragraph (7)(a) has been issued in respect of it, must report to the Secretary of State on the last working day in the months of March, June, September and December on whether the person’s business is still carrying out the specified activity to which the EII certificate relates.

- (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.

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
 - (b) in the case of all other businesses, either—
 - (i) the end of the financial year in which the EII certificate comes into force, or
 - (ii) where sub-paragraph (i) would result in an EII certificate expiring after a period of 6 months or less, the end of the financial year after the financial 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; 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) 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: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(7) Where an EII certificate is revoked, or a notice under regulation 11(3) 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.

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⁽⁴⁾, the Renewables Obligation Order 2015⁽⁵⁾ or the Renewables Obligation (Scotland) Order 2009⁽⁶⁾.”.

(4) For the Schedule (Specified activities) substitute the Schedule set out in the Schedule to these Regulations.

Claire Perry
Minister of State for Climate Change and
Industry
Department for Business, Energy and Industrial
Strategy

30th October 2017

⁽⁴⁾ S.I. 2012/2782.

⁽⁵⁾ S.I. 2015/1947.

⁽⁶⁾ S.I. 2009/140 as amended by S.I. 2009/276.