
STATUTORY INSTRUMENTS

2023 No. 1419

The Hydrogen Production Revenue Support (Directions, Eligibility and Counterparty) Regulations 2023

Citation, commencement, extent, interpretation and application

1.—(1) These Regulations may be cited as the Hydrogen Production Revenue Support (Directions, Eligibility and Counterparty) Regulations 2023 and come into force on the day after the day on which they are made (“the commencement date”).

(2) These Regulations extend to England and Wales, Scotland and Northern Ireland.

(3) References to a numbered section are to that section as numbered in the Energy Act 2023.

(4) These Regulations apply for the purposes of a hydrogen production revenue support contract⁽¹⁾ entered into pursuant to a direction made by the Secretary of State under section 66(1).

Meaning of “eligible low carbon hydrogen producer”

2.—(1) In this regulation—

“standard compliant hydrogen” means hydrogen produced in accordance with the low carbon hydrogen standard;

“the low carbon hydrogen standard” means the document published by the Secretary of State in April 2023 entitled “UK Low Carbon Hydrogen Standard - Version 2” or such standard as may be from time to time published for the purposes of these Regulations by the Secretary of State⁽²⁾.

(2) Where, pursuant to regulation 2(1) (low carbon hydrogen standard), the Secretary of State publishes a new or revised low carbon hydrogen standard for the purposes of these Regulations, the publication of the new or revised standard must include, or be accompanied by, a statement in writing that it is published to replace the previous version of the standard.

(3) A low carbon hydrogen producer is, for the purposes of Chapter 1 of Part 2 of the Energy Act 2023, an “eligible low carbon hydrogen producer”⁽³⁾ in relation to proposals it makes for the production of standard compliant hydrogen where—

(a) the Secretary of State issues an invitation to low carbon hydrogen producers to apply for financial support (in the form of a hydrogen production revenue support contract) in the carrying out of proposals they make for the production of standard compliant hydrogen;

(b) in response to that invitation, the low carbon hydrogen producer, in accordance with the requirements of the invitation, applies for such financial support in the carrying out of its proposals; and

(1) A “hydrogen production revenue support contract” is defined by section 65(2) of the Energy Act 2023 which for the purposes of these Regulations means a contract entered into by a hydrogen production counterparty pursuant to a direction made by the Secretary of State under section 66(1).

(2) Paper copies of the UK Low Carbon Hydrogen Standard are available from the Department for Energy Security and Net Zero.

(3) The expression “low carbon hydrogen producer” is defined by section 65(7) of the Energy Act 2023 as “a person who carries on (or is to carry on) in the United Kingdom activities of producing hydrogen which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases”; “greenhouse gas” has the same meaning as section 92(1) of the Climate Change Act 2008.

- (c) the Secretary of State assesses that if the proposals are carried out, hydrogen produced as a result would be standard compliant hydrogen.
- (4) A low carbon hydrogen producer is also an “eligible low carbon hydrogen producer” in respect of proposals made by it for the production of hydrogen, where—
- (a) before the commencement date, the Secretary of State issued an invitation to hydrogen producers to apply for financial support in the carrying out of proposals made by them for the production of hydrogen;
 - (b) before the commencement date, the low carbon hydrogen producer applied in accordance with the terms of the invitation for financial support; and
 - (c) the Secretary of State assessed before or after the commencement date that the proposals made by the low carbon hydrogen producer are capable of meeting the first version of the UK Low Carbon Hydrogen Standard published in July 2022.
- (5) But a low carbon hydrogen producer is not to be regarded as an eligible low carbon hydrogen producer if its proposal to produce standard compliant hydrogen involves the use of existing facilities without the carrying out of works to increase the capacity of those facilities to produce such hydrogen.
- (6) A person who is an eligible low carbon hydrogen producer is not subsequently rendered ineligible merely on account of the publication of a new version of the low carbon hydrogen standard, but a direction issued by the Secretary of State pursuant to section 66(1) may require a hydrogen production revenue support contract to be offered on terms that require compliance with a later version of the standard.

Directions pursuant to section 66(1) of the Energy Act 2023

- 3.—(1)** A direction given by the Secretary of State to a hydrogen production counterparty⁽⁴⁾ pursuant to section 66(1), must—
- (a) be in writing;
 - (b) specify the date on which it is given;
 - (c) specify the name of the eligible low carbon hydrogen producer (and its registered number if it is a company) with whom the counterparty is required to offer to contract;
 - (d) specify the terms that must be included in the hydrogen production revenue support contract to be offered by the hydrogen production counterparty to the eligible low carbon hydrogen producer;
 - (e) prohibit the hydrogen production counterparty from modifying those terms (whether by making additions, omissions, amendments, substitutions or otherwise) when offering to contract except with the prior written consent of the Secretary of State;
 - (f) specify the date by the end of which the hydrogen production counterparty must comply with the direction; and
 - (g) specify the length of time for which the offer must be open for acceptance by the eligible low carbon hydrogen producer.
- (2) The date specified for the purposes of paragraph (1)(f), must—
- (a) in the case of a direction given on a working day, be no earlier than the twentieth working day beginning with the day on which the direction is given;

(4) The expression “hydrogen production counterparty” means a person designated under section 65(1) of the Energy Act 2023 to be a counterparty for hydrogen production revenue support contracts – see section 65(3).

(b) in the case of a direction given on a day that is not a working day, be no earlier than the twentieth working day beginning with the first working day following the day on which the direction is given.

(3) The Secretary of State must send a copy of the direction to the eligible low carbon hydrogen producer specified in it by the end of the fifth working day following the day on which the direction is given.

(4) For the purposes of this regulation, “working day” means any day except a Saturday, a Sunday, Christmas day, Good Friday or a bank holiday within the meaning of the Banking and Financial Dealings Act 1971 in England and Wales.

Directions ceasing to have effect

4.—(1) A direction given to a hydrogen production counterparty under section 66(1) ceases to have effect (and any offer made by the hydrogen production counterparty pursuant to it lapses), if—

- (a) the hydrogen production counterparty receives from the eligible low carbon hydrogen producer to whom the offer is made, a notice in writing rejecting the offer (which includes any case where a counter-offer is made by the eligible low carbon hydrogen producer);
- (b) no written acceptance of the offer is received by the hydrogen production counterparty from the eligible low carbon hydrogen producer to whom the offer is made, by the end of the period within which the hydrogen production counterparty requires acceptance of the offer to be received by it; or
- (c) the direction is revoked by the Secretary of State pursuant to regulation 5 (Revocation of a direction by the Secretary of State).

(2) Where an offer lapses in the circumstances referred to in paragraph (1), the hydrogen production counterparty must forthwith notify the eligible low carbon hydrogen producer of that fact.

Revocation of a direction by the Secretary of State

5.—(1) The Secretary of State may by notice in writing revoke a direction given pursuant to section 66(1) provided that, where an offer has been made pursuant to that direction, that offer has not been accepted in writing by the eligible low carbon hydrogen producer to which it is made.

(2) A notice given under paragraph (1) is of no effect unless it is delivered to the eligible low carbon hydrogen producer named in that direction and the hydrogen production counterparty.

(3) A notice given under paragraph (1) must specify the date on which it is made and identify the direction to which it relates.

Publication of hydrogen production revenue support contracts

6.—(1) A hydrogen production counterparty must, subject to any redaction required by virtue of paragraph (2), publish each hydrogen production revenue support contract to which it is a party as soon as reasonably practicable.

(2) The hydrogen production counterparty must redact from a hydrogen production revenue support contract required to be published by virtue of paragraph (1), any parts of that contract which—

- (a) a term of that contract provides should be redacted from the contract as published;
- (b) the Secretary of State by notice in writing requires the hydrogen production counterparty to redact; or
- (c) contain personal data.

(3) Paragraph (2) does not apply to the low carbon hydrogen strike price (as defined in paragraph 8 of the Schedule).

(4) The Secretary of State may only give the hydrogen production counterparty a notice in writing under paragraph (2)(b), where the Secretary of State considers that those parts of the contract that the Secretary of State requires to be redacted contain information which—

(a) constitutes a trade secret; or

(b) if disclosed, would—

(i) be likely to be harmful to the commercial interests of any person; or

(ii) give rise to an actionable breach of confidence.

(5) Nothing in this regulation prevents the inclusion on the register established and maintained under regulation 7(2) of information that the hydrogen production counterparty is required to enter onto that register.

Register of hydrogen production revenue support contracts

7.—(1) A hydrogen production counterparty must, as soon as is reasonably practicable, assign a unique identifier to any hydrogen production revenue support contract to which it is a party.

(2) A hydrogen production counterparty must establish and maintain a register in accordance with the requirements of the Schedule to these Regulations.

(3) The hydrogen production counterparty must make arrangements for access to the register to be made available online.

(4) The hydrogen production counterparty must make such arrangements as are reasonable in the circumstances, to make the register available for inspection at its premises by any person who requests such access in writing.

Estimate of storage and transport costs to be provided by the Secretary of State

8.—(1) This regulation applies where the costs to be taken into account in calculating sums payable under a hydrogen production revenue support contract include the costs of infrastructure to be used for either or both of the following activities—

(a) the storage of hydrogen produced pursuant to that contract;

(b) the transport of hydrogen produced pursuant to that contract.

(2) Where this regulation applies, the Secretary of State must provide the hydrogen production counterparty to that contract with separate estimates in relation to the costs referred to in paragraph (1)(a) and paragraph (1)(b), as applicable.

(3) The estimates must be expressed in pounds sterling per megawatt hour of hydrogen produced.

Hydrogen production counterparties - notification of defaults

9.—(1) A hydrogen production counterparty must promptly notify the Secretary of State if it is, or considers that it is likely to be, unable to perform a function conferred on it under or by virtue of—

(a) the Energy Act 2023;

(b) subordinate legislation made under that Act; or

(c) a contract it has entered into in pursuance of that Act or that subordinate legislation.

(2) The hydrogen production counterparty must provide such assistance as the Secretary of State may require with a view to securing the performance of that function, including the provision of such information as the Secretary of State may require.

19th December 2023

Callanan
Parliamentary Under Secretary of State
Department for Energy Security and Net Zero