
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the offering by a hydrogen production counterparty designated under section 65 of the Energy Act 2023 of contracts for the production of hydrogen by eligible low carbon hydrogen producers (referred to in the Act as “hydrogen production revenue support contracts”). Such contracts must be offered following a direction from the Secretary of State pursuant to section 66(1) of the 2023 Act. A direction may only be made in favour of an “eligible low carbon hydrogen producer”.

Section 66(4) of the Act provides that the Secretary of State must make regulations which define the meaning of “eligible”. This is achieved by regulation 2. This provides that a low carbon hydrogen producer is “an eligible low carbon hydrogen producer” if—

- (a) the Secretary of State invites applications from low carbon hydrogen producers for the provision of financial support (in the form of a hydrogen production revenue support contracts) for the carrying out of proposals made by them for the production of hydrogen in accordance with the low carbon hydrogen standard (defined as the document published by the Secretary of State in April 2023 entitled “UK Low Carbon Hydrogen Standard – version 2” and hydrogen meeting the requirements of the standard being referred to in the Regulations as “standard compliant hydrogen”);
- (b) in response to that invitation from the Secretary of State, the low carbon hydrogen producer makes an application for financial support for the carrying out of its proposals to produce standard compliant hydrogen; and
- (c) the Secretary of State assesses that the proposals made by the low carbon hydrogen producer are capable of producing standard compliant hydrogen.

Regulation 2(1) provides that the Secretary of State may publish revised versions of the low carbon hydrogen standard from time to time. The Secretary of State must be satisfied that a proposal for the production of standard compliant hydrogen would be able to meet the version of the low carbon hydrogen standard published for the purposes of these Regulations which is current at the time the proposal is made. This avoids a low carbon hydrogen producer becoming ineligible if there is an intervening change in the low carbon hydrogen standard. However, the Secretary of State may still direct the hydrogen production counterparty to offer to contract on terms that require compliance with a later version of the standard. Regulation 2(5) provides that a low carbon hydrogen producer is not eligible in relation to a proposal that involves the use of existing facilities unless the proposals involve an increase in the capacity of those facilities to produce standard compliant hydrogen. Regulation 2(4) makes provision in relation to the eligibility of low carbon hydrogen producers who have made proposals before the date these Regulations came into force.

Regulation 3 makes provision as to the form and contents of directions made by the Secretary of State pursuant to section 66 of the Energy Act 2023. Regulation 4 makes provision as to when a direction ceases to have effect. Regulation 5 confers a power on the Secretary of State to revoke directions and sets out the procedure to be followed in such a case.

Regulation 6 contains requirements regarding the publication of contracts entered into pursuant to a direction made by the Secretary of State. Regulation 7 and the Schedule make provision for the creation and maintenance of a register of contracts entered into following a direction made by the Secretary of State. Regulation 8 makes provision requiring the Secretary of State to provide the hydrogen production counterparty with estimates of the costs of hydrogen transport and

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storage infrastructure associated with the production of low carbon hydrogen. Regulation 9 contains requirements for a counterparty to notify the Secretary of State if it is, or is likely to be, unable to perform its obligations under or by virtue of the 2023 Act, regulations made under the Act or a hydrogen production revenue support contract.

An impact assessment was prepared for the Energy Act 2023 in relation to hydrogen and industrial carbon capture business models.