

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY SUPPLIER OBLIGATIONS (GREEN EXCLUDED
ELECTRICITY) (AMENDMENT) REGULATIONS 2023

2023 No. 389

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 (the 2014 Regulations) and the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 (the 2015 Regulations) to remove the exemption from Contracts for Difference (CfD) scheme costs for Green Excluded Electricity (GEE).
- 2.2 This exemption benefits licensed electricity suppliers in Great Britain who import renewable electricity from EU member States.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 Although this instrument applies to the whole of the United Kingdom, Northern Ireland electricity suppliers are not subject to obligations to make payments to the CfD Counterparty.

5. European Convention on Human Rights

- 5.1 The Minister for Energy and Climate, Graham Stuart, has made the following statement regarding Human Rights:
- “In my view the provisions of the Electricity Supplier Obligations (Green Excluded Electricity) (Amendment) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The 2014 Regulations and the 2015 Regulations make provision about the obligations of electricity suppliers licensed in Great Britain (GB) to make payments to fund the CfD scheme. As noted in section 2 of this Explanatory Memorandum, this instrument amends the 2014 Regulations and the 2015 Regulations to remove the GEE exemption from the CfD scheme.

- 6.2 As a condition of State Aid approval of the CfD scheme, the European Commission required eligible renewable electricity imported from EU member States and supplied to consumers in GB to be exempt from contributing to the cost of CfD payments. This was to ensure that the Supplier Obligation mechanism complied with Articles 30 and 110 of the Treaty on the Functioning of the European Union (TFEU). Articles 30 and 110 respectively prohibit the imposition of customs duties on imports or exports between member States and the imposition of taxes on the products of other member States in excess of those imposed on domestic products.
- 6.3 The 2015 Regulations implemented the exemption by amending the 2014 Regulations¹ so that “green excluded electricity” (broadly, electricity that is imported to Great Britain from an EU member State where that electricity is generated by a renewable generating station, which, if located in Great Britain, would have been potentially eligible to apply for support under a CfD) is excluded from the calculation of electricity suppliers’ CfD daily and quarterly contributions (subject to a cap on the total amount of electricity that can be determined as GEE in any quarter).
- 6.4 The 2015 Regulations also provide that, in order to claim the exemption, suppliers have to submit evidence of eligible imports to the CfD Counterparty within six months of the end of the quarter in which the electricity was supplied. The CfD Counterparty then determines the amount of electricity that qualifies as green excluded electricity according to criteria set out in the regulations, and takes this into account when calculating suppliers’ reconciliation payments under the 2014 Regulations.
- 6.5 The UK left the European Union on 31 January 2020 and the Implementation Period, during which the UK remained part of the EU Single Market and Customs Union, ended on 31 December 2020. As the UK is no longer subject to the terms of the TFEU, the need to ensure compliance with Articles 30 and 110 of that Treaty no longer applies. There is also no trading arrangement which includes the GEE exemption. Therefore, there is no longer any legal obligation for the UK to maintain the GEE exemption in the CfD scheme.

7. Policy background

What is being done and why?

- 7.1 The Contracts for Difference (CfD) scheme is the government’s main mechanism for supporting new, low carbon electricity generation projects. The Electricity Supplier Obligation is a compulsory levy on licensed electricity suppliers to meet the cost of CfDs. It was introduced by The Contracts for Difference (Electricity Supplier Obligation) Regulations 2014². A CfD is a private law contract between a generator of low carbon electricity and the Low Carbon Contracts Company (LCCC - the CfD Counterparty). The generator is paid the difference between the ‘strike price’ – a price for electricity reflecting the cost of investing in a particular low carbon technology – and the ‘reference price’ – a cost measure of the average GB market price for electricity.
- 7.2 Payments to electricity generators supported by the CfD scheme are funded through a compulsory levy on electricity suppliers in Great Britain, known as the ‘Supplier

¹ The GEE exemption was implemented following consultation - <https://www.gov.uk/government/consultations/emr-changes-to-the-CfD-supplier-obligation>

² <https://www.legislation.gov.uk/ukxi/2014/2014/contents>

Obligation'. Individual suppliers contribute to the costs of the scheme in proportion to their share of the GB electricity sales market.

- 7.3 Electricity suppliers can seek exemption from these costs in respect of renewable electricity generated in an EU member State and supplied to customers in GB. Eligible imported electricity is not included in a supplier's market share of supply for the purpose of calculating their obligations to pay CfD scheme costs. This means that suppliers supplying electricity in GB which has been generated via renewable sources in an EU member State can reduce their liability to pay towards the costs of these domestic support schemes, with those costs being absorbed by other suppliers. The amount of imported renewable electricity that can qualify under this exemption is capped in accordance with criteria set out in regulations.
- 7.4 As explained in section 6 of this Explanatory Memorandum, the UK is no longer under any legal obligation to maintain the GEE exemption in the CfD scheme. Therefore, following a policy review and public consultation, this instrument will amend the 2014 Regulations and the 2015 Regulations to remove the GEE exemption from the CfD scheme.
- 7.5 There are no discernible benefits to the UK from the retention of the GEE exemption. The removal of the GEE exemption addresses a distortion where the costs of the CfD scheme, borne by UK suppliers, are not evenly distributed in relation to an energy supplier's market share.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6 The CfD scheme received State aid approval in July 2014. As a condition of that approval³, the UK agreed that eligible renewable electricity imported from EU member States and supplied to consumers in Great Britain would not bear the costs of CfD payments. The 2015 Regulations implemented this by amending the 2014 Regulations to provide for the GEE exemption.

Why is it being changed?

- 7.7 The UK left the European Union on 31 January 2020 and the Implementation Period, during which the UK remained part of the EU Single Market and Customs Union, ended on 31 December 2020. There is no trading arrangement which includes the GEE exemption and as the UK is no longer subject to the terms of the TFEU, the need to ensure compliance with Articles 30 and 110 of that Treaty no longer applies. Following a policy review and public consultation, the amendments will remove the GEE exemption from the CfD scheme.

What will it now do?

- 7.8 The Supplier Obligation is a compulsory levy on licensed electricity suppliers in GB to meet the cost of CfDs. The amendments target specifically the complete removal of the GEE exemption and all references to GEE; the Supplier Obligation will continue to function in all other ways as before.

³ Paragraphs 87-96 of the European Commission's State letter of 23 July 2014 granting State aid approval to the Contracts for Difference scheme:
https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36196

8. European Union Withdrawal and Future Relationship

~~8.1~~ This instrument is not being made using powers provided in the European Union (Withdrawal) Act 2018, but relates to the withdrawal of the United Kingdom from the European Union because the GEE exemption was introduced as a result of a condition in the European Commission's State Aid approval of the CfD scheme. The withdrawal of the UK from the EU means that the UK is no longer legally required to maintain the GEE exemption.

9. Consolidation

9.1 The Department has no current plans to consolidate the 2014 Regulations or the 2015 Regulations.

10. Consultation outcome

10.1 A public consultation⁴ (open from 29 March 2022 to 10 May 2022) was undertaken which sought opinions on GEE policy choices⁵. Three options were given – to retain, extend or repeal the exemption. In response to this question, a clear preference was evident, with Government's preferred option, to repeal the exemption, favoured by a large majority (chosen by 22 of the 25 respondents of that specific question).

10.2 Respondents were then asked to give a preference of two proposed dates for the implementation of their choice of the three options. There was again a clear preference, with the implementation date of 1 April 2023 chosen by the majority of those who responded (chosen by 16 of the 25 respondents of that specific question) as opposed to 1 October 2022. The government response to the consultation was published on 27 July 2022 and can be accessed via the link in footnote 4 above.

10.3 The devolved administrations in Scotland and Wales have been consulted about the amendments made by this instrument and agree with the public consultation outcome and Government decision.

11. Guidance

11.1 The Low Carbon Contracts Company, administrator of the CfD scheme, will update its guidance before the changes come into force on 1 April 2023.

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited to electricity suppliers and amounts to a small redistribution of CfD scheme cost obligations.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because impact to individual businesses is minimal, with a net zero impact across all Great Britain electricity suppliers.

⁴ <https://www.gov.uk/government/consultations/feed-in-tariffs-and-contracts-for-difference-proposals-relating-to-guarantees-of-origin>

⁵ The consultation also covered the equivalent exemption in the Feed-In Tariffs scheme (FITs). A separate instrument is being made which will remove that exemption from FITs.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small electricity suppliers, but the amendments made are unlikely to affect small businesses in any significant respect.

14. Monitoring & review

The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Graham Stuart has made the following statement:

“A statutory review clause is not considered appropriate for this instrument as the changes made remove a provision in the CfD scheme that was inserted as a result of a condition of EU State Aid rules, to which the UK is no longer required to adhere.”

15. Contact

- 15.1 Tim Alsop (telephone: 07881 251 573 or email: tim.alsop@beis.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Helena Charlton, Deputy Director at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Graham Stuart, Minister for Energy and Climate at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.