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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the provisions of the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 (the “2015 Regulations”) which concern EII excluded electricity. “EII excluded electricity” is electricity supplied to certain industrial users of electricity (energy-intensive industries (EIIs)). Following an application to the Secretary of State, a proportion of the electricity used by eligible EII’s is excluded from the calculation of the suppliers’ obligations to make payments under the Contracts for Difference (Electricity Supplier Obligations) Regulations [S.I. 2014/2014](#). The supplier is expected to pass the cost saving on to its EII customer to reduce the EII’s electricity bill.

These Regulations increase the level of exemption for EII excluded electricity from 85% (of the electricity measured by the meter) to 100 % (Regulation 6).

Other amendments are made to the 2015 Regulations as follows:

Regulation 3 inserts a new definition of “insolvent”. This definition replaces the concept of a person “not in difficulty”, which was defined by reference to EU State aid law. Regulation 4 amends the 2015 Regulations so that a person will only be eligible for an EII certificate if it is reasonable to assume that the person is not, or is not likely to be insolvent. The new requirement under regulation 4, relating to a person not being insolvent or not likely to be insolvent, is reflected in regulation 5(1) (a), which amends the 2015 regulations so that an applicant EII must provide a statement that they are not insolvent or likely to become insolvent rather than “not in difficulty”.

Regulation 5(3) amends regulation 10(7) so as to allow the Secretary of State not to issue an EII certificate where the Secretary of State is of the opinion that issuing the certificate would be incompatible with international law requirements in respect of subsidy control. Regulation 7(2) amends regulation 13(4) to enable the Secretary of State to revoke the EII certificate where there is a risk it will be incompatible with international law requirements in respect of subsidy control, if the EII certificate is not revoked.

Regulation 8 revokes regulation 13ZB of the 2015 Regulations, which concerned the application of EU State aid decisions.

An impact assessment setting out the key impacts of this policy has been completed. The Impact Assessment is published with the Explanatory Memorandum alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). A copy is also available by contacting: [EII.correspondence@businessandtrade.gov.uk](mailto:EII.correspondence@businessandtrade.gov.uk), or the Department for Business and Trade at Old Admiralty Building, Admiralty Place, London, SW1A 2DY.