EXPLANATORY MEMORANDUM TO

THE CONTRACTS FOR DIFFERENCE (ALLOCATION) (AMENDMENT) REGULATIONS 2016

2016 No. 1053

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends a statutory instrument associated made under the Energy Act 2013 ("the 2013 Act"). The instrument contains an amendment to the Contracts for Difference (Allocation) Regulations 2014. This amendment will not change the way in which Contracts for Difference (CFDs) are allocated, but will extend the period in respect of which CFDs can be allocated ("delivery years") from the current end date of 31st March 2020 to 31st March 2026.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 This instrument amends the definition of delivery year used in the Contracts for Difference (Allocation) Regulations 2014 to permit the Secretary of State to hold CFD allocation rounds for projects which are to start generating electricity after March 31st 2020.

5. Extent and Territorial Application

5.1 The extent of this instrument is England, Wales and Scotland.

5.2 The instrument applies to Great Britain. The CFD scheme does not currently operate in Northern Ireland.

6. European Convention on Human Rights

6.1 Baroness Neville-Rolfe, Minister of State at the Department for Business, Energy and Industrial Strategy has made the following statement regarding Human Rights:

"In my view the provisions of the Contracts for Difference (Allocation) (Amendment) Regulations 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The electricity market reform (EMR) programme is intended to incentivise investment in low-carbon electricity generation, while improving affordability for consumers, and maintaining energy security. CFDs are contracts between a low carbon electricity generator and a Government-owned company, the Low Carbon Contracts Company (LCCC). Under a CFD, the CFD Counterparty will pay the generator the difference between a fixed 'strike price' and a market reference price (or, if the reference price is higher than the strike price, the generator will pay the difference back to the CFD Counterparty). In this way they provide long-term price stabilisation to low carbon plant, allowing investment to come forward at a lower cost of capital and at a lower cost to consumers.

7.2 In Budget 2016, the Chancellor announced up to £730 million of annual support for future auctions for offshore wind and other less established renewable electricity generation technologies. This support is for projects commissioning (i.e. starting to generate) electricity in the period 2021-2026.

7.3 In order to deliver this support, a technical amendment is required to the definition of "delivery year" in the Contracts for Difference (Allocation) Regulations 2014. The definition at present limits a delivery year to being the period from 1st August 2014 – 31st March 2015, and the 12 month periods from 1st April 2015 ending with the 12 month period ending on 31st March 2020. That term is used in those Regulations to enable the Secretary of State to take action such as issue budget notices, and establish allocation rounds.

7.4 Accordingly, this instrument amends the end date of 31st March 2020 to 31st March 2026.

Consolidation

7.5 The Government does not intent to consolidate this instrument with existing legislation at this time.

8. Consultation outcome

8.1 The policy which is now reflected in this instrument was subject to a five week consultation, published on 4 July 2016. A longer period of consultation was not considered necessary as the proposed change is minor and technical in nature.

8.2 The consultation received 24 responses. All responses were in favour of the Government's proposal to extend delivery years to the 31st March 2026.

8.3 Several respondents provided additional views relating to the broader CFD regime that were outside the remit of the consultation. These responses included the following:

Views on the suitability of retaining support for bioenergy-based technologies within the CFD regime;

The importance of clarity on CFD timetabling, technological eligibility and budget volumes;

The impact of variations in lead-in times for less-established technologies on the Government's approach to designing the regime;

The potential for considering the whole electricity system cost of technologies within the regime, and;

A range of options for the actual Delivery Years of the next Allocation Round.

8.4 These broader responses will be taken into account as the Government considers further development of the CFD regime.

8.5 Further detail of the Government's response to the consultation is available on the BEIS website[1].

9. Guidance

9.1 Guidance is provided via Gov.uk, acting as a gateway to information on CFDs, regulatory amendments and links to information provided by delivery partners. Further details are also available in the Government response to the consultation.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. Applying for a CFD is voluntary. This amendment is permissive, extending the powers of the Secretary of State to perform a particular function, but does not change the way in which that function will or can be performed.

10.2 The impact on the public sector is negligible. This amendment does not change the costs to the Government, the LCCC or the Delivery Body associated with the delivery of the CFD regime. Any costs to the consumer of holding CFD rounds are subject to limits on the overall volume of costs in a given year that may be incurred by energy consumers as a consequence of Government decarbonisation policies.

10.3 While the impact of this particular instrument is negligible, an Impact Assessment is submitted and is published alongside the Explanatory Memorandum on the legislation.gov.uk website. The Impact Assessment is from 2014 and refers to Electricity Market Reform (EMR), the programme that introduced CFDs. This amendment is minor and technical and not enough to alter the balance of costs and benefits discussed in the IA.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses, who are free to apply for a CFD if they are building an eligible generating station.

11.2 However, regulation 14 of the Allocation Regulations provides that there are types of application for a CFD which are excluded from Parts 2 to 9 of those Regulations, including where the small scale Feed-in Tariff (FiT) is available for the generating station, such as onshore wind, hydro, solar PV or anaerobic digestion generation of less than or equal to 5MW.

12. Monitoring & review

12.1 Section 5(4) of the 2013 Act requires the Secretary of State to prepare and lay before Parliament a report setting out how the Secretary of State has carried out his EMR functions. The section requires the Secretary of State to report, before 31 December each year and beginning in 2014, on how he has carried out his functions in Part 2 of

[1] https://www.gov.uk/government/consultations/amendment-to-the-contracts-for-difference-allocation-regulations-2014

the Act in order to deliver EMR's objectives. The report must be laid in Parliament and be shared with the Devolved Administrations.

12.2 As well as fulfilling the reporting requirement, the latest EMR Annual Update in October 2015 provided Parliament and other stakeholders with a forward look of the path ahead and a summary of EMR progress since the Energy Bill received Royal Assent in December 2013.

12.3 In addition, section 66 of the 2013 Act requires the Secretary of State to report to Parliament by the end of 2018 on a number of aspects of the operation of the EMR programme. These aspects include the extent to which the original objectives have been met, whether these objectives are still appropriate and whether they could be delivered in a way that imposes less regulation.

13. Contact

13.1 Adam Bell at the Department of Business, Energy & Industrial Strategy, Telephone: 0300 0688 6710 or email: adam.bell@beis.gov.uk who can answer any queries regarding the instrument.