EXPLANATORY MEMORANDUM TO

THE CONTRACTS FOR DIFFERENCE (MISCELLANEOUS AMENDMENTS) REGULATIONS

2016 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to statutory instruments associated with the Energy Act 2013. The instrument contains a number of amendments to the Contracts for Difference (Definition of Eligible Generator) Regulations 2014; the Contracts for Difference (Allocation) Regulations 2014; the Contracts for Difference (Standard Terms) Regulations 2014 and the Electricity Market Reform (General) Regulations 2014. These amendments will not change the way in which Contracts for Difference (CFDs) are allocated, but will make minor changes to the existing allocation methodology and to the operation of the CFD contract once it is signed.

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 varies between provisions.

4. Legislative Context

4.1 Following the first CFD allocation round the previous government consulted on proposals to undertake a package of amendments to the CFD regime intended to ensure that it can operate more effectively and flexibly, in any future Allocation Round.

4.2 These proposals include amendments to four sets of Regulations:

- The Contracts for Difference (Definition of Eligible Generator) Regulations 2014
- The Contracts for Difference (Allocation) Regulations 2014
- The Contracts for Difference (Standard Terms) Regulations 2014
- The Electricity Market Reform (General) Regulations 2014

5. Extent and Territorial Application

5.1 These Regulations extend to the United Kingdom, but Part 3, except for Regulation 18, does not extend to Northern Ireland. The CFD scheme does not currently operate in Northern Ireland.

5.2 The territorial application of this instrument is to the United Kingdom.

6. European Convention on Human Rights

6.1 Andrea Leadsom, Minister of State at the Department of Energy and Climate Change has made the following statement regarding Human Rights:

"In my view the provisions of The Contracts for Difference (Miscellaneous 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 CFD Counterparty. Capacity Agreements ensure providers are held accountable for responsibilities such an obligation brings. 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 The key amendments to the 2014 Allocation, Definition of Eligible Generator and Standard Terms Regulations will:

a) ensure that an application for a CFD cannot be made where there is a pending application for a Capacity Agreement in respect of the same unit. This will ensure that an applicant cannot apply to participate in the CFD and Capacity Market auction at the same time and then make a choice of scheme, potentially distorting the auction for both processes.

b) set out the connection requirements applicable to generators who connect to the national transmission or distribution system through a private network.

c) refine the procedures which apply if there is a need to delay or re-run the auction or allocation round.

d) make a distinction between confidential price information and non-price information in a sealed bid submission, which will ensure that the Secretary of State is able to obtain information relating to non-price sealed bid data in order to evaluate the efficacy of the auction.

e) enable unincorporated joint ventures ("UJV"s) to participate in the CFD regime.

f) ensure that only those bank holidays observed in England and Wales are excluded from the definition of 'working days'. The proposal to focus on a single jurisdiction to define a working day allows for consistency of time periods and deadlines throughout the CFD regime.

7.3 Amendments to the Electricity Market Reform (General) Regulations 2014 allow for the Secretary of State to issue a direction to the CFD Counterparty to amend signed CFD contracts where the sustainability criteria have been altered in subsequently published versions of the CFD.

8. Consultation outcome

8.1 The policy which is now reflected in this instrument was subject to a six week consultation, published on 9 March 2015. A longer period of consultation was not considered necessary as many of the proposed changes were minor and technical in nature.

8.2 The consultation received twenty five responses. These responses were supportive of the proposals relating to the minor and technical amendments. Respondents were also broadly supportive of the need to minimise the risk of a double subsidy and so extend the existing exclusion relating to a capacity agreement to include pending applications to the capacity market scheme.

8.3 Stakeholders were concerned about the proposal to split non-price data from confidential price information in a sealed bid submission. We are confident that non-price data can be effectively dis-aggregated from confidential price information and anonymised in such a way that individual projects cannot be identified.

8.4 Stakeholders expressed other concerns on the proposal to harmonise the definition of 'working day' across the amended regulations, and in particular on the choice of England and Wales as the basis on which to select the Bank Holidays that will be excluded from the definition of a working day. Details in relation to this proposal and the response to these concerns may be found in the response to the consultation (found in the link below.)

8.5 Stakeholders were generally welcoming of the proposal to provide support for UJVs to participate in the CFD regime, both in respect of the proposed amendments and in respect of the revised CFD Contract consulted upon at the same time.

8.6 Stakeholders generally agreed with the proposed inclusion within regulations of a power to require the LCCC to amend signed CFD Contracts where the Sustainability Criteria have been altered in subsequently published versions of the CFD. Respondents supported its inclusion on the understanding that it did not extend beyond the implementation of the power that existing terms within the CFD contract envisage.

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.[1]

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. Applying for a CFD is voluntary. These Regulations impact only on eligible generators who apply for a CFD in respect of an eligible generating station.

10.2 The impact on the public sector is any change to the cost borne by Government and National Grid delivering their EMR functions and those associated with setting up a CFD Counterparty.

[1] https://www.gov.uk/government/consultations/electricity-market-reform-contracts-for-difference-consultation-on-changes-to-the-cfd-contract-cfd-regulations

10.3 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. The amendments brought about by these regulations are 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 Act 2013 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 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 Act 2013, 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 Susan Donaldson at the Department of Energy and Climate Change, Telephone: 0300 0685576 or email: susan.donaldson@decc.gsi.gov.uk who can answer any queries regarding the instrument.