Draft Regulations laid before Parliament under section 6(8) of the Energy Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2021 No.

ELECTRICITY

The Contracts for Difference (Miscellaneous Amendments) Regulations 2021

Made - - - -	***
Coming into force - -	***

Before making these Regulations the Secretary of State—

(a) consulted the persons listed in section 24(1)(a) to (g) of the Energy Act 2013(**a**) and such other persons as the Secretary of State considered it appropriate to consult; and

(b) had regard to the matters in section 5(2) of that Act.

In accordance with section 6(8)(b) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 6(1) and (6), 10(3), 12(3), 13 and 16 of that Act, makes the following Regulations:

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contracts for Difference (Miscellaneous Amendments) Regulations 2021 and come into force on the day after the day on which they are made.

(2) This Part and Parts 2 and 3 extend to England and Wales, Scotland and Northern Ireland.

(3) Part 4 extends to England and Wales and Scotland.

(**a**) 2013 c. 32.

PART 2

Amendments to the Contracts for Difference (Definition of Eligible Generator) Regulations 2014

Amendments to the Contracts for Difference (Definition of Eligible Generator) Regulations 2014

2. The Contracts for Difference (Definition of Eligible Generator) Regulations 2014(**a**) are amended as follows.

Amendment to regulation 2 (interpretation)

3. In regulation 2(1) omit the definition of "biomass conversion station".

Amendment to regulation 3 (definition of eligible generator)

4. In regulation 3(5) in the definition of "carry out a generating activity" omit the words from ", including where" to "such a station)".

Amendment to the Schedule (eligible generating stations)

5. In the Schedule omit paragraph 1(a).

PART 3

Amendments to the Electricity Market Reform (General) Regulations 2014

Amendments to the Electricity Market Reform (General) Regulations 2014

6. The Electricity Market Reform (General) Regulations 2014(**b**) are amended as follows.

Amendment to regulation 2 (interpretation)

7. In regulation 2—

(a) after the definition of "generator party" insert—

""generator party applicant" has the meaning given in regulation 12A(1);";

(b) after the definition of "supply chain application" insert—

""supply chain implementation application" means an application submitted under regulation 12A(1) for a supply chain implementation statement;

"supply chain implementation statement" means a statement by the Secretary of State that confirms that the establishment or alteration of a generating station is making a material contribution to the development of supply chains;".

Amendment to regulation 9 (application for supply chain statements)

8. In regulation 9(4) for sub-paragraphs (a) to (c) substitute—

"(a) increasing productivity, competitiveness and capacity in supply chains;

(b) encouraging innovation in supply chains;

(**a**) S.I. 2014/2010; to which there are amendments not relevant to these Regulations.
(**b**) S.I. 2014/2013, amended by S.I. 2016/784; there are other amending instruments but none is relevant.

(c) developing a diverse and skilled workforce and increasing employment opportunities; and

(d) increasing investment in and finding technical solutions to improving infrastructure that is relevant to the generation, storage, demand or use of electricity. ".

Amendment to regulation 10 (particulars of applications)

9. In regulation 10(2)(a) after "supply chain application" add "or otherwise provided to the Secretary of State in relation to the generating station to support the development of supply chains".

Insertion of regulations 12A, 12B and 12C

10. After regulation 12 (first allocation round) insert—

"Application for supply chain implementation statements

12A.—(1) Where a supply chain statement was previously provided in respect of a generating station that is the subject of a CFD, the generator party (the "generator party applicant") may apply for a supply chain implementation statement by submitting a supply chain implementation application to the Secretary of State.

(2) The Secretary of State must not provide a supply chain implementation statement unless the Secretary of State is satisfied that—

(a) the generator party applicant is the generator party in respect of the generating station;

(b) where the CFD was entered into after a successful application in an allocation round by virtue of the Allocation Regulations, the generator party applicant has fulfilled a "milestone requirement" as defined in the CFD; and

(c) the establishment or alteration of the generating station is making a material contribution to the development of supply chains.

(3) In deciding whether or not to provide a supply chain implementation statement to the generator party applicant, the Secretary of State must have regard to the extent to which—

(a) the establishment or alteration of the generating station is supporting the matters listed in regulation 9(4); and

(b) the proposals set out in the supply chain application (including any amendments agreed by the Secretary of State) are being implemented.

Particulars of supply chain implementation applications

12B.—(1) A supply chain implementation application must—

(a) identify the generating station;

(b) where the CFD was entered into after a successful application in an allocation round by virtue of the Allocation Regulations, demonstrate that a "milestone requirement" as defined in the CFD has been fulfilled;

(c) describe how the generating station is being established or altered;

(d) set out how the generator party applicant considers that the establishment or alteration of the generating station is—

(i) making a material contribution to the development of supply chains;

(ii) supporting the matters listed in regulation 9(4);

(iii) implementing the proposals set out in the supply chain application (including any amendments agreed by the Secretary of State); and

(e) include the information necessary in support of the matters in sub-paragraphs (a) to (d).

(2) A generator party applicant must—

(a) identify any information included in, or in support of, an application for a supply chain implementation statement or otherwise provided to the Secretary of State in relation to the generating station to support the development of supply chains which the generator party applicant considers is commercially confidential; and

(b) where such information is identified, provide reasons why the generator party applicant considers that disclosure of that information (other than to the Secretary of State for the purposes of deciding whether to provide or refuse a supply chain implementation statement) may damage the commercial interests of the generator party applicant or another person.

Providing supply chain implementation statements or refusals

12C.—(1) The Secretary of State must as soon as practicable after a supply chain implementation application is received by the Secretary of State give a notice to the generator party applicant which includes—

(a) a supply chain implementation statement; or

(b) a refusal to provide a supply chain implementation statement and reasons for that refusal.

(2) If the Secretary of State has not given a notice as set out in paragraph (1) within 60 working days of receiving a supply chain implementation application that satisfies the requirements set out in regulation 12B, the Secretary of State must provide a supply chain implementation statement to the generator party applicant.".

Amendment to regulation 13 (confidentiality)

11. In regulation 13—

(a) in paragraph (1)—

(i) for the words before sub-paragraph (a) substitute—

"The Secretary of State must not disclose any information included in, or in support of a supply chain application, an application for a supply chain implementation statement or otherwise provided to the Secretary of State in relation to a generating station to support the development of supply chains where that disclosure may, in the opinion of the Secretary of State, damage the commercial interests of any other person except— ";

(ii) for sub-paragraph (a) substitute—

"(a) with the consent of that person; ";

(b) in paragraph (2), in the definition of "permitted purpose" after "supply chain statement" insert "or a supply chain implementation statement".

PART 4

Amendments to the Contracts for Difference (Allocation) Regulations 2014

Amendments to the Contracts for Difference (Allocation) Regulations 2014

12. The Contracts for Difference (Allocation) Regulations 2014(**a**) are amended as follows.

(**a**) S.I. 2014/2011; relevant amending instruments are S.I. 2015/981, S.I. 2016/784, S.I. 2016/1053, S.I. 2016/1246.

Amendment to regulation 2 (interpretation)

13. In regulation 2—

(a) in paragraph (1)—

(i) in the definition of "appeals deadline date" omit the words from "and which date is listed" to the end;

(ii) in the definition of "delivery year" for "2026" substitute "2035";

(b) in paragraph (2) omit ""biomass conversion station"".

Amendment to regulation 4 (establishing allocation rounds)

14. In regulation 4 omit paragraph (2)(b)(ii).

Amendment to regulation 5 (varying and terminating allocation rounds)

15. In regulation 5—

(a) in paragraph (1)(a)—

(i) in paragraph (i) after "round" insert ", where the commencement date of that allocation round has not yet passed";

(ii) in paragraph (ii) after "date" insert ", where the application closing date has not yet passed";

(iii) omit paragraph (iii);

(b) in paragraph (2)(b) omit "subject to paragraphs (5) and (6),";

(c) in paragraph (5) omit "round variation notice to vary the end date of an allocation round or a";

(d) after paragraph (6) insert—

"(6A) No variation of the commencement date of an allocation round or the application closing date may be made where the varied date would be earlier than 5 working days after the date of the round variation notice.".

Amendment to regulation 6 (allocation frameworks)

16. In regulation 6—

(a) in paragraph (1)(b) omit the words from ", including where" to the end;

(b) omit paragraph (5).

Amendment to regulation 11 (budget notices)

17. In regulation 11 after paragraph (4) insert—

"(4A) Where any budget referred to in paragraph (1)(a) or (2) (that is to say, the overall budget, a minimum, a maximum or a pot) is expressed as an amount of capacity of electricity generation, the Secretary of State may specify in the budget notice that a "soft constraint" applies to that amount; and in such a case, the amount of capacity of electricity generation may be exceeded, but only in accordance with the provisions of the allocation framework that applies to that allocation round.".

Amendment to regulation 12 (budget revision)

18. In regulation 12—

(a) in paragraph (2)(a)—

(i) for "11(2)" substitute "11(1)(a) or (2)";

(ii) for "("a budget revision")" substitute "(in either case "a budget revision")";

(b) in paragraph (5)—

(i) in sub-paragraph (b) for "amount" substitute "amount; or";

(ii) after sub-paragraph (b) insert—

"(c) remove the application of a soft constraint to a budget (see regulation 11(4A)).".

Amendment to regulation 14 (excluded applications)

19. In regulation 14—

(a) in paragraph (5) for "Subject to paragraph (11), no" substitute "No";

(b) omit paragraph (11).

Amendment to regulation 14A (temporary site exclusions and exemption certificates)

20. In regulation 14A—

(a) in paragraph (1)(b)(i) for the words "13 months" to the end substitute "the date determined in accordance with the CFD as the Milestone Delivery Date";

(b) for paragraph (2) substitute—

"(2) Subject to paragraphs (4) and (5), an eligible generator may not make an application in respect of a CFD unit in the next allocation round if the site of the main generating structures of the CFD unit is the same as, or includes any part of, an excluded site; and in this paragraph, "next allocation round" means the first allocation round in which the eligible generator could otherwise have made such an application after the allocation round further to which the CFD notification in respect of the CFD referred to in paragraph (1) was given.".

Insertion of regulation 27ZA

21. After regulation 27 (offshore CFD units) insert—

"Floating offshore wind CFD units

27ZA.—(1) This regulation applies where the relevant CFD unit is to be a floating offshore wind CFD unit.

(2) A floating offshore wind CFD unit is an offshore wind CFD unit that satisfies the floating offshore wind conditions.

(3) The applicant must demonstrate (in addition to the matter referred to in regulation 27(2)) that the relevant CFD unit is expected, by the target commissioning date, to satisfy the floating offshore wind conditions.

(4) The floating offshore wind conditions are that—

(a) the relevant CFD unit is not a phased offshore wind CFD unit (or any other offshore wind CFD unit that is to be established or altered in phases of construction); and

(b) all turbines forming part of the relevant CFD unit—

(i) are mounted on floating foundations; and

(ii) are situated in offshore waters of at least 45 metres depth (measured from the seabed to chart datum).".

Amendment to regulation 30 (requirements applicable to allocation frameworks)

22. In regulation 30 after paragraph (8) insert—

"(9) Paragraphs (2) and (4) are subject to regulation 11(4A).".

Amendment to regulation 31 (non-qualification review and appeal deadline dates)

23. In regulation 31—

(a) in paragraph (1) for "must" substitute "may";

(b) for paragraph (2) substitute—

"(2) The Secretary of State must, in such manner as the Secretary of State thinks appropriate, publish in respect of an allocation round a date on which the Secretary of State is minded to require the allocation process for the allocation round to commence ("the post-appeals indicative start date").".

Amendment to regulation 33 (commencement of the allocation process)

24. In regulation 33 before paragraph (1), insert—

"(A1) Where the delivery body determines that all applications made further to an allocation round are qualifying applications (whether under regulation 17 or following any non-qualification review under regulation 20), the delivery body must commence the allocation process as soon as reasonably practicable after the date of the last notice given under regulation 19, or as the case may be, last non-qualification review notice.".

Amendment to Schedule 1 (information in support of applications)

25. In Schedule 1 omit paragraph 3(a)(v).

Name
Minister of State for Business, Energy and Clean Growth
Department for Business, Energy and Industrial Strategy

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Contracts for Difference (Definition of Eligible Generator) Regulations 2014 (S.I. 2014/2010) ("Eligible Generator Regulations"), the Electricity Market Reform (General) Regulations 2014 (S.I. 2014/2013) ("EMR Regulations") and the Contracts for Difference (Allocation) Regulations 2014 (S.I. 2014/2011) ("Allocation Regulations"). These Regulations form part of the legislative framework underpinning the Contracts for Difference (CFD) scheme under section 6 of the Energy Act 2013. The CFD scheme is designed to encourage low carbon electricity generation by awarding subsidies accessed through a private law contract, which is secured in a competitive allocation round.

Part 2 amends the Eligible Generator Regulations and omits "biomass conversion station" from the list of eligible generators that can apply for a CFD.

Part 3 amends the EMR Regulations to effect a series of amendments to the supply chain assessment process. There has been a revision to the criteria that eligible generators must meet before their supply chain application or supply chain implementation application is approved. An eligible generator that received a supply chain statement may apply to the Secretary of State for a statement ("a supply chain implementation statement") that confirms the establishment or alteration of a generation station is making a material contribution to the development of supply chains, i.e. the chains of suppliers of goods or services in relation to the construction, alteration, maintenance or operation of generating stations. If the eligible generator has a CFD arising from an allocation round, by virtue of the Allocation Regulations, then they can only apply for supply chain implementation statement once they have completed a milestone requirement as set out in their CFD. The confidentiality provisions have been extended to include all the supply chain assessment process.

Part 4 amends the Allocation Regulations to effect a series of amendments to the competitive allocation round. The substantive changes are ensuring exclusions from an allocation round are for the next applicable allocation round, an amendment to the operation of the budget so a soft constraint may be used in relation to capacity and inserting conditions an applicant must meet if they submit an application for a floating offshore wind project.

Part 4 also effects various administrative amendments in the Allocation Regulations which include extending the period in which delivery years can be to 31st March 2035, an amendment to ensure various dates cannot be amended after they have passed and an amendment to allow 5 days' notice when varying key dates of an allocation round.

Insofar as these Regulations have an impact on the costs of business and the voluntary sector an impact assessment has been carried out and is available from the Department for Business, Energy and Industrial Strategy at 1 Victoria Street, London SW1H 0ET and published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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