Department for
Business, Energy
& Industrial Strategy

Contracts for Difference for Low Carbon Electricity Generation

Consultation on drafting amendments to the CfD contract for Allocation Round 5

Closing date: 5 February 2023

December 2022

Any enquiries regarding this publication should be sent to us at: BEISContractsforDifference@beis.gov.uk

Contents

General information

Why we are consulting

The Contracts for Difference (CfD) scheme is the Government's main mechanism for supporting new, low carbon electricity generation projects in Great Britain. Allocation Round 5 (AR5) plans to open to applications from generators of renewable technologies in March 2023 and will be the first in a series of annual auctions.

Views are now invited on amendments to the CfD contract terms and conditions for AR5. The changes ensure that the CfD contracts reflect current policy and that the scheme continues to function as originally intended.

The process for initiating the CfD start date has been updated. The changes ensure that the flexibility in the contract for generators to delay their CfD start date should not be used to optimise electricity generation revenue during the target commissioning window prior to starting the CfD contract. Flexibility will remain for generators to determine their start dates in the event, for example, that any genuine construction hold-ups or other unforeseen delays arise.

Several amendments are suggested to simplify generator data provision requirements. These comprise a proposal to replace the monthly requirement of Expected Start Date and Installed Capacity with a provision of estimates at specific milestones; to remove the requirement for forecast data to be provided for intermittent technologies; and to remove the requirement for generators to provide Expected Generation Output Data as a CfD Operational Condition Precedent.

The CfD Private Network Agreement (PNA) has been updated to ensure definitions relating to Private Networks refer to the Contracts for Difference (Allocation) Regulations 2014, as amended. The changes have been made further to a clarification in the AR5 allocation framework that applicants applying for a Private Network Agreement must demonstrate they are a Private Network Generator, as defined in the CfD Private Network Agreement.

An amended methodology is proposed as to how to calculate interest when repaying cumulated subsidy to an awarding body (where an interest rate is not otherwise specified).

This consultation document also provides an opportunity to set out, for information purposes, some additional amendments to the contract that result from policy changes that have been introduced since AR4. In April 2022, Ofgem decided to remove Balancing Services Use of System (BSUoS) charges from generators with effect from April 2023, and instead apply the charges at the point of demand[1]. This change means there is no longer any requirement for

[1] https://www.ofgem.gov.uk/publications/cmp308-removal-bsuos-charges-generation

references to BSUoS compensation within the contract, and the contract has been updated accordingly.

An amendment has also been made to a Further Conditions Precedent clause within the CfD contract. This amendment reflects the policy that all Floating Offshore Wind applicants (not just those over the 300MW threshold in place for other technologies) are to be subject to the supply chain plan requirements. The decision to implement this policy was set out in the government response in May 2022 on changes to the Supply Chain Plan.[2]

We welcome views from interested parties on all of the amendments to the CfD contract terms proposed in this consultation.

[2] https://www.gov.uk/government/consultations/contracts-for-difference-cfd-proposals-for-changes-to-supply-chain-plans-and-cfd-delivery

Consultation details

Issued: 19 December 2022

Respond by: 5 February 2023

Enquiries to: Email: BEISContractsforDifference@beis.gov.uk

Consultation reference: Contracts for Difference for Low Carbon Electricity: consultation on drafting amendments to the CfD contract for Allocation Round 5

Audiences:

The Government welcomes responses from anyone with an interest in the proposals. We envisage that the consultation will be of particular interest to those considering participating in AR5.

Territorial extent:

This consultation applies to Great Britain only as the CfD scheme does not currently operate in Northern Ireland.

How to respond

Your response will be most helpful if it is framed in direct response to the questions we have asked, though further comments and evidence are also welcome.

Your response should be submitted online using the dedicated online portal:

Respond online at: https://beisgovuk.citizenspace.com/clean-electricity/cfd-changes-ar5

Alternatively, please email your responses to the following address and including **'CFD consultation on contract amendments'** in your email subject line.

Email to: BEISContractsforDifference@beis.gov.uk

Please do not send responses by post to the department, as we may not be able to access them.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

Please let us know if you want the information that you provide to be treated as confidential but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the Government's consultation principles.

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Introduction

Context

1. A CfD is a private law contract between a generator of low carbon electricity and the Low Carbon Contracts Company (LCCC), a government-owned company. These parties are referred to in the contract as 'Generator' and 'CfD Counterparty' respectively. The generator receives or pays 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). Contracts are awarded in a series of competitive auctions. The lowest priced bids are successful, and this drives efficiency and cost reduction. CfDs incentivise investment by giving greater certainty and stability of revenues to electricity generators by reducing their exposure to volatile wholesale prices, while protecting consumers from paying for higher support costs when electricity prices are high.
2. The terms of the CfD contract have been amended ahead of each allocation round to evolve with policy and ensure that they remain fit for purpose. The changes proposed in this consultation document will apply for contracts signed from AR5. The proposed drafting changes are shown as tracked amendments in the CfD Standard Terms and Conditions and Private Network Agreement, published alongside this consultation document. We encourage respondents to the consultation to read and consider the draft changes to the contracts carefully.
3. The CfD contract consists of two components: the CfD Agreement and the CfD Standard Terms and Conditions. The CfD Agreement is the document that a successful generator will sign following an allocation round. It contains project-specific information and designates which conditions of the CfD Standard Terms and Conditions apply to that project. There are variants to the generic CfD Agreement drafted for phased offshore wind projects ('Phasing Agreements'), private network generators ('Private Network Agreement') and Unincorporated Joint Ventures ('CfD Agreement for Unincorporated Joint Ventures'). Any final changes will be transposed into the other variants of the CfD contract as appropriate and published before AR5 opens to applications in March 2023.
4. In light of the Retained EU Law (Revocation and Reform) Bill, consequential amendments to the references to retained EU Law in the contract may be needed if the Bill comes into effect prior to AR5 CfD contracts being signed.

Proposed changes to the CfD contract

CfD start date

5. CfD generators receive revenue from selling their electricity into the market as usual. Generators are topped up when the market price of electricity is below the strike price, i.e. the price awarded at auction, but they must pay the difference back into the scheme when the reference price (a reflection of the market price) is above the strike price. Repayments are refunded to electricity suppliers, who pay for the CfD scheme through a compulsory levy, and net refunds should ultimately be reflected in lower energy bills for consumers.

6. Previous versions of the CfD contract do not specify when the generator should set their CfD start date, as long as it is no earlier than: the first day of the Target Commissioning Window (TCW); the date on which the notice relating to the fulfilment of the final Operational Condition Precedent was given; or the date of the Start Date Notice, and as long as it is no later than the Longstop Date. This flexibility is a feature of the contract intended to provide confidence to generators and investors that the CfD contract can still proceed in the event of unforeseen delays to generation, such as hold-ups during the construction or commissioning phase.

7. We are aware however, that this flexibility is being used by some generators as a means to generate electricity on a merchant (market terms) basis during the TCW before the CfD start date is triggered. By doing this at a time of high electricity rates, such generators are avoiding CfD payments to LCCC. This is not the intention of the flexibility within the contract and does not align with the objective of the scheme to provide certainty and stability to generators and protection to consumers, as set out in paragraph 1 above. Government does not wish for delays for commercial gain to remain an option for future successful CfD applicants, and changes are proposed to address this.

8. Future bidder behaviour, and future wholesale prices, including the likelihood and size of any price spikes, are uncertain and could affect the economic impact of the contract change. Our considerations in relation to this are set out in the ‘Assessment of Impacts’ section within this consultation document.

Changes to start date notice

9. Previous versions of the CfD contract require that generators inform LCCC of their intended start date to begin generation under the CfD scheme within 10 business days of receiving confirmation from LCCC that their operational condition precedents (OCPs) have been fulfilled. The OCPs are the final contract conditions that a generator must satisfy before it can become eligible to receive CfD payments.

10. As set out at Condition 3.21, we propose to extend this requirement from AR5 so that on the completion of the OCPs, the generator’s CfD start date must be no later than 10 business days after the start date notice is issued, or the facility starts commercial operation. The intention of this change is to ensure that generators that have met the OCP requirements should commence the CfD contract within a short period, while still

allowing flexibility for generators who experience genuine pre-start delays. A change is also made to the contract at Condition 3.6 to clarify that the generator should fulfil all OCPs as soon as reasonably practicable, and this now includes the Subsidy Control Declaration OCP (which was previously an exception in this regard).

Consultation questions:

1. **The Government welcomes views on the proposal to amend the CfD Standard Terms and Conditions to prevent generators delaying the CfD start date for commercial reasons.**

2. **The Government welcomes views on the proposed amendments in the draft Standard Terms and Conditions published alongside this consultation document to require the start date to occur within 10 business days of the OCPs being completed or commercial operations commencing.**

Introduction of a Unilateral Commercial Operations Notice

11. The requirement for the start date to be specified at the completion of the OCPs has led to a renewed consideration of the OCP terms. If the generator has begun commercial operations, it follows that the generator should be capable of generating under the CfD scheme.

12. A change to the CfD contract is proposed at Condition 3.26 that allows LCCC to give a Unilateral Commercial Operations Notice (a 'Unilateral CO Notice') to the generator if they deem that commercial operations have begun, whether or not the OCP relating to the commissioning of the facility (at paragraph 2.1(B) of Part B of Schedule 1) or other OCPs have been fulfilled. Such a notice would be effective for determining that the start date notice should be issued (Condition 3.21) but would not remove the obligation on generators to fulfil any remaining OCPs (Condition 3.15).

13. As set out at Conditions 3.35-3.37, unless and until the remaining OCPs are completed, the generator would not be able to receive difference payments, but would be liable to pay difference payments from the time that commercial operations are deemed to have started in the event that the agreed strike price is lower than the reference price. Payments would be payable to LCCC from as early as the date on which LCCC considers that commercial operations have commenced, notwithstanding that not all OCPs may have been fulfilled or waived. The change is proposed to avoid a delay in fulfilling the OCPs being used as a means of delaying the start date being triggered. Consequential amendments to the 'billing statements' clause at Condition 22.3 may be required to reflect this change.

14. As set out at Condition 3.26A, LCCC could not issue a Unilateral CO Notice unless and until, in any period of 28 days, the electrical output of the facility has reached the Threshold Level over the Required Number of Settlement Units. When a Unilateral CO Notice is issued, LCCC would estimate Loss Adjusted Metered Output (for both Dual Scheme and non-Dual Scheme facilities) using Actual Generation Output Data provided by the generator or, if necessary, other relevant information available to them (see Conditions 32.1, 10.3 and 18.3 and the definitions of the new terms at Condition 1.1).

Consultation questions:

3. **The Government welcomes views on the general approach to ensuring that LCCC can effectively unilaterally determine when a generator is capable of generating under the CfD.**
4. **The Government welcomes views on the proposed amendments in the draft Standard Terms and Conditions published alongside this consultation document relating to the Unilateral Commercial Operations Notice.**

Assessment of Impacts

15. BEIS analysis has identified several potential benefits and costs to the consumer arising from a contract change preventing generators from delaying their CfD start dates for commercial gain. Some of the benefits and costs discussed below do not represent an absolute benefit or cost to society because they are a transfer of revenue between consumers and businesses. Since this is a consultation stage assessment, the assessment is draft and will be considered further following the consultation responses in line with question 5 below.

Potential benefits and costs

16. Government views the key potential benefits of the contract change to be:

(a) A medium-term reduction in foregone CfD payments (delayed generator repayments which are refunded to electricity suppliers) from generators delaying their start dates if wholesale electricity prices remain high. By preventing foregone payments, consumers benefit through downward pressures on electricity bills;

(b) Protection against any further unexpected spikes in wholesale electricity prices in the future: the contract change prevents foregone payments in the case of future unexpected rises in wholesale prices, protecting the consumer from incurring additional costs. This would prevent a similar situation to the one occurring now, with current generators delaying their start dates and benefitting from high wholesale prices which they did not foresee when bidding in the auction or upon entering their CfD contracts. Although the likelihood, size and scale of these spikes is uncertain, this could generate a significant net benefit for consumers given these spikes would (at least initially) be unexpected and not priced into future CfD bids;

(c) If generators continue delaying, then this could damage the public's perception of the CfD scheme as a means of delivering new build renewable electricity generation at a low cost;

17. The main potential cost associated with the contract change is the potential impact on strike prices. In the medium-term, generators bidding into AR5 and beyond may price in potential financial gains from operating under merchant (market) terms before their CfD contract starts, while wholesale prices are high. This involves a generator selling their electricity at current high market prices while avoiding the obligation to pay back into the CfD scheme. Closing off this opportunity could lead to higher strike prices as generators

attempt to offset this 'lost' revenue, with these higher costs passed onto consumers, which could diminish or outweigh the benefits to consumers of preventing foregone payments.

Further considerations

18. The economic case for the contract change to prevent generators from delaying their CfD start dates for commercial gain is finely balanced. The following factors may be considered further after the consultation, as they may significantly alter the economic impact and estimated net position of the policy:

    (a) Differences in estimated generator revenue at the end of the CfD contract period in both the policy option and the counterfactual: this may impact the extent to which generators change their strike price bid in response to lost merchant revenue at the start of the project.

    (b) Differences in discounting assumptions used to estimate Administrative Strike Prices in the future and the discount rate used to estimate the value of future CfD payments to consumers.

    (c) When considering the consumer impacts, a key uncertainty is the proportion of generators that will delay for commercial reasons.

Summary of consumer impacts

19. The contract change to prevent generators from delaying their start dates prevents foregone payments, which is a benefit to consumers through downward pressures on electricity bills. However, generators bidding into AR5 and beyond could have priced in the potential upside from merchant generation utilising the start date delay. As a result, any contract change could lead to a corresponding increase in strike prices as generators attempt to offset this 'lost' revenue, which means the impact on consumers may be closer to neutral (or, in some scenarios, negative overall).

20. It is noted that a key benefit of the change would be protecting consumers against further unexpected spikes in the wholesale price of electricity in the future. Whilst the likelihood, size and scale of these future spikes is uncertain, it is plausible that were they to occur, the change could deliver significant net benefits to consumers by capturing foregone CfD payments that were not priced in to CfD bids. Reasonable scenarios exist where a future unexpected price spike would lead the contract change to be a significant net saving for consumers overall.

Consultation question:

5. **The Government welcomes views on any impacts explored in the assessment, or alternative approaches to meet similar objectives, that we should consider for:**

    (a) Preventing delays to the CfD start date for commercial gain

    (b) Other consequences of the contract changes to prevent delays to CfD start dates not currently considered

Amendments to data provision requirements

21. Several amendments are proposed to the existing reporting requirement for generator estimates within the CfD contract at Condition 32.1. The intention of the changes is to simplify the requirements so that only necessary information is provided, when required, and to ease the administrative burden on LCCC and generators. The changes also bring the contract terms into line with the administrative changes implemented by LCCC for existing generators.

Replacing monthly requirement of Expected Start Date and Installed Capacity.

22. Currently, condition 32.1(A) requires generators to provide a monthly update of the Expected Start Date and Installed Capacity. The proposed update will only require this information to be provided on the Agreement Date and at monthly intervals for the six months prior to the Start Date. After that point, updates would be required as soon as reasonably practicable where the Generator becomes aware there is a change to the expected Start Date or Installed Capacity; or upon request in writing by the LCCC.

Removing requirement to provide a commissioning profile of the facility

23. It is proposed that Condition 32.1(A) (iii), which was a requirement for the generator to provide a commissioning profile of the Facility, is removed. This information is no longer required for forecasting purposes.

Simplifying forecast data requirements

24. It is proposed that Condition 32.1(C)(i)(ii)(iii)(iv), which covers the requirement for the generator to provide forecast data, is removed for intermittent technologies. For baseload technologies, it is proposed that the requirements are amended so that Forecast Data is required where the Generator becomes aware of an event which will likely affect significantly the Renewable Qualifying Multiplier; where the Generator becomes aware of an event which will likely affect significantly the CHP Qualifying Multiplier; and upon request in writing by the CfD Counterparty.

Removing requirement to provide Expected Generation Output Data

25. It is proposed that the Operational Condition Precedent requirement to provide Expected Generation Output Data set out in paragraph 2.1(F) of Part B of Schedule 1 is removed. This information is no longer required for forecasting purposes.

Consultation question:

6. The Government welcomes views on the proposed approach to simplifying the reporting requirements for generators

Amendments to Private Network contract definitions

26. Government intends to amend the definitions of “Private Network” and “Private Network Use Agreement” in the CfD Private Network Agreement to align with the definition for those terms given in the Contract for Difference (Allocation) Regulations 2014. It is also proposed that definitions are added to the CfD Private Network Agreement for terms which contribute to the existing definition of the term “Private Network Generator”, but which were previously only defined in the CfD Standard Terms and Conditions.

27. The definition of Private Network Generator within the CfD Private Network Agreement will be referred to within the AR5 allocation framework (AF), along with clarification within the AF that generators wishing to apply for a CfD private network agreement must demonstrate they are a Private Network Generator, as defined in the PNA. The draft AF for AR5, including this change, was published on 14 December 2022.[3]

Consultation question:

7. The Government welcomes views on the proposed amendments to the definitions in the draft CfD Private Network Agreement published alongside this consultation document.

Methodology for determining the interest rate for the repayment/recovery of subsidy

28. The contract stipulates (at Conditions 32.5 and 32.11) that interest shall be due and payable by CfD generators in relation to any Subsidy, State aid, or Union Funding, which they have received in relation to the costs of the Project. Generators and the

[3] https://www.gov.uk/government/publications/contracts-for-difference-cfd-allocation-round-5-allocation-framework

LCCC are required to calculate interest using the interest rate determined in accordance with the "Reference Rate Methodology," in the event that a subsidy is received that conflicts with cumulation policy and must be returned to the awarding body with interest before the completion of the OCPs.

29. EU regulations setting out the methodology requirements were revoked in the UK by the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020. In the 2021 consultation on amendments to the Allocation Round 4 contract[4], the Government stated it would later confirm details of the reference rate methodology.

30. Government has now developed a replacement methodology in order for LCCC and generators to be able to calculate interest as necessary. It is proposed to rename the methodology previously known as the 'Reference Rate Methodology,' as the '*Interest Rate Methodology*.' This '*Interest Rate Methodology*' would use the Bank of England Sterling Overnight Index Average (SONIA)[5] Compound rate, plus 1 percentage point as the interest rate and this would be calculated from the point a project has received a subsidy to the point the Project has repaid it. (The SONIA Compounded Index is the replacement to the LIBOR interest rate benchmark, which was previously used in the reference rate methodology.[6])

31. This interest rate would only be applicable when no interest rate has been set out in a recovery order from the Subsidy Control Competent Authority and the UK body awarding the Subsidy has not defined an interest rate to use.

32. In the case of State aid or Union funding only, the interest rate that applies to recovery shall be set by the relevant State aid or Union Funding authority.

33. Government also proposes additional changes to Condition 32.11 (B) to reflect the above proposals, to insert '*the interest rate set out by the UK awarding body of the Subsidy*' and to replace the definition of 'Reference Rate Methodology' with a definition of '*Interest Rate Methodology*.'

Consultation question:

8. The Government welcomes views on the Interest Rate Methodology proposed and its application within the contract.

[4] https://www.gov.uk/government/consultations/contracts-for-difference-allocation-round-4-further-changes-to-the-cfd-contract

[5] https://www.bankofengland.co.uk/boeapps/database/fromshowcolumns.asp?Travel=NIxAZxSUx&FromSeries=1&ToSeries=50&DAT=RNG&FD=1&FM=Jan&FY=2010&TD=11&TM=May&TY=2025&FNY=Y&CSVF=TT&html.x=66&html.y=26&SeriesCodes=IUDZOS2&UsingCodes=Y&Filter=N&title=IUDZOS2&VPD=Y

[6] https://www.bankofengland.co.uk/markets/transition-to-sterling-risk-free-rates-from-libor

Additional changes to the CfD contract not subject to consultation

Removal of references to Balancing Services Use of System Charges

34. In previous versions of the contract, generators were compensated for BSUoS charges paid. Following Ofgem's April 2022 decision (CMP308), from April 2023 generators will no longer be liable for BSUoS charges. This means that BSUoS compensation will not be relevant as part of the contract. All references to BSUoS have therefore been removed from the contract.

Amendment to the Further Conditions Precedent for Floating Offshore Wind

35. An amendment has also been made to a Further Conditions Precedent clause within the CfD contract (Schedule 1, Part B, Condition 2.1 (G)). This amendment reflects the policy that all Floating Offshore Wind applicants (not just those over the 300MW threshold in place for other technologies) are to be subject to the supply chain plan requirements. The decision to implement this policy was set out in the government response in May 2022 on changes to the Supply Chain Plan.

Consultation questions

1. **The Government welcomes views on the proposal to amend the CfD Standard Terms and Conditions to prevent generators delaying the CfD start date for commercial reasons.**
2. **The Government welcomes views on the proposed amendments in the draft Standard Terms and Conditions published alongside this consultation document to require the start date to occur within 10 business days of the OCPs being completed or commercial operations commencing.**
3. **The Government welcomes views on the general approach to ensuring that LCCC can effectively unilaterally determine when a generator is capable of generating under the CfD.**
4. **The Government welcomes views on the proposed amendments in the draft Standard Terms and Conditions published alongside this consultation document relating to the Unilateral Commercial Operations Notice.**
5. **The Government welcomes views on any impacts explored in the assessment, or alternative approaches to meet similar objectives, that we should consider for:**
   - **(a) Preventing delays to the CfD start date for commercial gain**
   - **(b) Other consequences of the contract changes to prevent delays to CfD start dates not currently considered**
6. **The Government welcomes views on the proposed approach to simplifying the reporting requirements for generators**
7. **The Government welcomes views on the proposed amendments to the definitions in the draft CfD Private Network Agreement published alongside this consultation document.**
8. **The Government welcomes views on the Interest Rate Methodology proposed and its application within the contract.**

Next steps

Following the close of this consultation, we will analyse the responses, summarise the views expressed and set out final decisions in a government response. We intend to publish this alongside the final versions of the CfD contract documents for AR5 before the allocation round opens in March 2023.

This consultation is available from: www.gov.uk/government/consultations/cfd-contract-changes-for-allocation-round-5

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