



Department
of Energy &
Climate Change

Electricity Market Reform: Update on Terms for the Contract for Difference

December 2013



Department of Energy and Climate Change
3 Whitehall Place
London
SW1A 2AW

Telephone: 0300 068 4000
Website: www.decc.gov.uk

© Crown copyright 2013

Copyright in the typographical arrangement and design rests with the Crown. This publication (excluding logos) may be re-used free of charge in any format or medium provided that it is re-used accurately and not used in a misleading context. The material must be acknowledged as crown copyright and the title of the publication specified.

For further information, contact:
CfD Design and Implementation Team
Department of Energy and Climate Change
3 Whitehall Place
London
SW1A 2AW
Telephone: 0300 068 4000
Email: emrcfddesign@decc.gsi.gov.uk

The draft CfD Agreement and the Standard Terms and Conditions can be found on DECC's website: <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

Published by the Department of Energy and Climate Change

Contents

Introduction	5
Contract Structure	8
Milestone Requirement	10
Revision of the Installed Capacity Estimate	11
Phased Offshore Wind Projects	13
Metered Output / Metering	19
Market Reference Price (MRP)	23
Change in Law	26
Qualifying Shutdown Events	33
Balancing and Network charges (BSUoS/TLM)	34
Curtailment	36
Termination Events	37
Direct Agreement	40
Credit Support / Collateral	42
Limited Recourse Arrangements, Undertakings and Acknowledgements	44
Intellectual Property	46
Generation Tax	47
Fuel Measurement and Sampling (FMS)	48
Annex A: Differences between Investment Contracts and generic CfD	54
Annex B: Metered Output Arrangements	55
Annex C: RQM and CHP Calculation Methodology	59

Introduction

Electricity Market Reform

1. The Electricity Market Reform (EMR) programme will provide incentives to support investment in secure, low-carbon electricity generation, while improving affordability for consumers. The electricity sector is a critical part of the UK economy, is an important driver of growth, and is key to meeting the UK's commitment to reduce its emissions of carbon dioxide.
2. The key elements of this market reform will be delivered through two new mechanisms: Contracts for Difference (CfDs) and the Capacity Market. CfDs will provide long-term revenue stabilisation to low-carbon Generators, allowing investment to come forward at a lower cost of capital and therefore at a lower cost to consumers. The Capacity Market will provide a regular retainer payment to reliable forms of capacity (both demand and supply side), in return for such capacity being available when electricity supply is squeezed. This will reduce the risk of blackouts due to insufficient capacity on the system.
3. CfDs will support new investment in all forms of low-carbon generation (renewables, nuclear power and Carbon Capture and Storage (CCS)) and have been designed to provide efficient and cost-effective revenue stabilisation for new generation, by reducing exposure to the volatile wholesale electricity price. CfDs require Generators to sell energy into the market as usual but, to reduce this exposure to electricity prices, CfDs provide a variable top-up from the market price to a pre-agreed 'strike price'. At times of high market prices, these payments reverse and the Generator is required to pay back the difference between the market price and the strike price thus protecting consumers from over-payment. The CfD will be implemented through a bilateral contract between the Generator and the CfD Counterparty Company Ltd (the 'CfD Counterparty').
4. More information on the EMR programme, including the CfD and Capacity Market, can be found in the recent Consultation on Proposals for Implementation¹.

Purpose

5. This document explains the key elements of the updated draft CfD and highlights where there have been changes since the publication of the draft CfD clauses in August 2013. This includes full exposure drafting on Collateral, the Direct Agreement, Generation Tax, Curtailment, the treatment of Balancing Services Use of System (BSUoS) and Transmission Loss Multiplier (TLM) costs and Fuel Measurement and Sampling Procedures. It also amends the drafting on the Baseload Market Reference Price and Intermittent Reference Price and Change in Law.
6. This document also sets out the Government's policies on those aspects of the CfD contractual framework which have not yet been published in full-form contractual drafting. In this respect, the document sets out the detailed policy approach to phased offshore wind projects and also explains how the sustainability requirements applying under the Renewables Obligation will be implemented into the CfD for certain eligible technologies.

¹ <https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform>

It also contains the definition that will be applied to determine when a Qualifying Shutdown Event (QSE) has occurred. The full form drafting for the compensation mechanic that is to be applied in the event of a QSE will be provided in due course.

7. Government has engaged extensively with a range of stakeholders on the development and implementation of its policy approach in developing the CfD. This policy will now be implemented through the CfD as set out in the December Draft.
8. We are aware that in respect to the treatment of: BSUoS and TLM costs; adjustments for Generation Taxes; Qualifying Shutdown Events; Curtailment; the Direct Agreement; and the Fuel Measurement and Sampling Procedures, Collateral and the policy on Phasing that some stakeholders have had limited opportunity to comment on the drafting. For these areas, stakeholders are therefore invited to provide comments on how the policy has been given effect in the detailed drafting, by 27 January 2014. These comments should be sent to emrcfdesign@decc.gsi.gov.uk and be submitted using the template set out at <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>.

Background

9. Government has developed the CfD over the last 18 months, working closely with stakeholders. In particular, we set out proposals for the structure of the CfD in the Draft Operational Framework², published in May 2012. Reflecting the comments received, we then set out the Final Operational Framework in November 2012³, which was accompanied by a 'Heads of Terms' for the CfD. In June 2013, Government set out draft Strike Prices and the policy decisions for the CfD contract terms⁴. This was followed, in August 2013, by the publication of draft CfD contract clauses; accompanied by a policy narrative and explanatory notes.⁵ Stakeholders were invited to comment on the drafting set out in these draft clauses.
10. Since we published the Draft CfD clauses in August, we have engaged with a range of stakeholders including through a series of stakeholder events held shortly after their publication⁶. There has also been engagement through the EMR Collaborative Development Process, our work with the EMR Expert Groups⁷, and through a series of workshops and other bilateral engagement with stakeholders.

Related publications

11. Readers should read this document alongside the Draft CfD Agreement and Standard Terms and Conditions, the Delivery Plan Document, supporting annexes⁸ and

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48373/5358-annex-b-feedin-tariff-with-contracts-for-differe.pdf

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/65635/7077-electricity-market-reform-annex-a.pdf

⁴ <https://www.gov.uk/government/publications/electricity-market-reform-delivering-uk-investment>

⁵ <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

⁶ <https://www.gov.uk/government/publications/engaging-with-decc-on-electricity-market-reform/engaging-with-decc-on-electricity-market-reform>

⁷ <https://www.gov.uk/government/publications/engaging-with-decc-on-electricity-market-reform/engaging-with-decc-on-electricity-market-reform>

⁸ <https://www.gov.uk/government/publications/electricity-market-reform-delivery-plan>

consultation on regulations in relation to the CfD Agreement⁹, all published on 19 December.

Structure of the CfD

12. Readers should note the structure of the CfD has changed since it was published in August which, in part, reflects the amendments to the Energy Bill that were introduced into Parliament in October 2013 and which are discussed in more detail in the consultation on the CfD Regulations (also published today).
13. The CfD is now structured in two parts. First, there is a shorter section of clauses that tailor the CfD to the specific circumstances of the project (the 'CfD Agreement'), for example by specifying the Strike Price, project location, and the length of the Target Commissioning Window. Second, there is a longer section of generic clauses that apply to all projects (the Terms and Conditions, referred to in this document as the 'Conditions') which includes the contractual rights and obligations applying to a CfD signatory. More details of this change are set out in the following section on 'Contract Structure'.

FID-Enabling for Renewables

14. The draft CfD Agreement and the Terms and Conditions (the 'Conditions') that are published today also form the basis of Investment Contracts that may be signed as part as the Final Investment Decision Enabling for Renewable (FiDeR) process. Investment Contracts have been sent to applicants who passed the Minimum Threshold Criteria. The differences between the CfD Terms and Conditions and the Investment Contracts Terms and Conditions are set out in Annex A.

⁹ <https://www.gov.uk/government/consultations/consultation-on-regulations-for-contracts-for-difference-standard-terms-and-modifications>

Contract Structure

Summary

15. Amendments agreed in the House of Lords on 28 October introduced four new Bill clauses specifying how CfDs will be given legal effect. Following Royal Assent these sections provide investors, Generators and consumer groups with greater clarity and transparency regarding the CfD regime. The sections provide a mechanism for Government to: determine the rules that apply to the allocation of CfDs by the Delivery Body (in the 'Allocation Framework'); determine the contract Conditions that should be included in all future CfDs and set out the process for the Delivery Body to provide information to the CfD Counterparty needed for it to enter into CfDs with Generators.
16. More information on the proposals for regulations under these sections can be found in the Consultation on Regulations for Contracts for Difference (Standard Terms and Modifications), published alongside this publication¹⁰.
17. Reflecting this change in structure, and to provide greater clarity between the project-specific and generic Conditions, a Contract for Difference will now consist of a single instrument split into two integral components: the CfD Agreement and the CfD Terms and Conditions.

The CfD Agreement

18. The Generator and the CfD Counterparty will each sign the CfD Agreement. It will contain a number of elements to be inserted according to the specific nature of the project, and reflecting the outcome of the CfD allocation process.
19. Examples of details specified within the CfD Agreement include:
 - a. the technology employed by the Generator; and
 - b. the strike price to be used throughout the term of the contract.
20. By signing the CfD Agreement, the Generator and the CfD Counterparty will also agree to be bound by the Conditions.
21. In this way, the detail included in the CfD Agreement, when combined with the Conditions gives effect to the CfD and, as appropriate, tailor the Conditions to the individual circumstances of the project and reflect the outcome of the CfD allocation process.

Terms and Conditions (Conditions)

22. The Conditions will be a set of standardised contract conditions which will be consistent across all comparable CfDs. The operation of certain Conditions will alter according to the details specified in the CfD Agreement. For example, the initial strike price is determined by the year in which the CfD is entered into, whilst the future strike price Consumer Price Index (CPI) adjustment is governed by the Conditions, and together they determine the price against which difference payments are calculated.

¹⁰ <https://www.gov.uk/government/consultations/consultation-on-regulations-for-contracts-for-difference-standard-terms-and-modifications>

23. Both of these elements will be published together, form the 'Standard Terms and Conditions' that the Secretary of State is empowered to publish within section 11 of the Energy Act.

Milestone Requirement

Purpose

24. In August, the Allocation Methodology for Renewable Generation¹¹ set out that each CfD project will be subject to a Milestone Requirement at which point Generators will have to provide evidence of substantial commitment to investment in a project, within one year of contract signature. This provides protection against the CfD budget being allocated to 'speculative' projects, discourages speculative bidding for CfDs, and allows the CfD Budget to be recycled to other viable projects if projects fail to meet the Milestone Requirement.

Final Position

25. Drawing on stakeholder and Expert Group feedback, we have revised the position that we set out in the Allocation Methodology. The revised position will require Generators to demonstrate that they have met the Milestone Requirement in one of two ways:
 - a. that the Generator has spent 10 per cent or more of the estimated Total Project Costs, as specified by DECC; or
 - b. that the Generator can provide evidence of progress towards timely commissioning, such as evidence of an appropriate construction and supply agreements in respect of the facility.
26. This evidence is to be provided to the CfD Counterparty by the 'Milestone Delivery Date', which will be set for each technology type and will be within one year from the Agreement Date. Reflecting the variation across technology types, the nature of the evidence that is required to satisfy the second of the above tests will vary for each technology, and requires a supporting Directors certificate to confirm that the evidence provided is true, complete and accurate. Failure to demonstrate that the SFC has been met in one of the two ways would be expected to result in termination of the CfD by the CfD Counterparty¹².
27. The details of project-specific Milestone Requirements are set out in the CfD Agreement.

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226976/Allocation_Methodology_-_MASTER_-_6_Aug_v_FINAL.pdf

¹² In respect of the generic CfDs, we are considering whether there is a need for further assurance that the Directors' certificates are true, complete, accurate and are not misleading.

Revision of the Installed Capacity Estimate

Purpose

28. CfD application is likely to be before many Generators reach financial close and typically some period before construction commences and so the precise characteristics of a project may need to be refined over the project development lifecycle. Reflecting this, the Conditions allow Generators to adjust their estimated capacity (the 'Installed Capacity Estimate') to reflect the challenges associated with committing to deliver a precise level of capacity at the point they apply for the Standard Terms and Conditions.
29. This requirement for flexibility has to be balanced against the need for Government to encourage timely delivery of renewable generation in a way that meets its decarbonisation targets. It is also important that the Government is able to deal with budget uncertainty in a way that manages the available budget for CfDs (and the Levy Control Framework) effectively and mitigates the risk that projects over-apply for capacity and prevent the allocated financial resource being released in a timely way to alternative projects.

August position

30. The Allocation Methodology published in August indicated that projects would be able to amend capacity by five per cent at each of the Milestone Delivery Date and by the Longstop Date without incurring any financial penalty.
31. The CfD Counterparty would notify the Delivery Body of the quantity of capacity released so that the CfD budget available for other applicants could be adjusted.
32. In addition, to the ten per cent of 'cost free' adjustment, the adjustment provisions allowed for a further adjustment of up to 20 per cent of the initial project capacity before a potential termination event was triggered, albeit at a cost to the Generator. If a project reduced its contracted capacity by more than the amount permitted for free, the project's strike price would have been reduced in proportion to the extent of the under-delivery (e.g. a 0.5 percentage point reduction for each percentage point of under delivery against the adjusted contract capacity).
33. Where the strike price was reduced, a process was envisaged whereby a Generator could periodically revise their delivered capacity upwards, as later capacity additions commissioned. However, these variations could only take place before the Longstop Date, after which the capacity delivered could not be increased.

Final Position

34. Stakeholders expressed a clear view that the majority of projects face a period where there is a degree of uncertainty as to the amount of capacity that they will deliver. Stakeholders also made clear that once plans have been refined and financial close is achieved, there is little variation to the installed capacity estimate.
35. Stakeholders also noted that making the majority of flexibility to amend capacity available earlier in a project's development would provide flexibility when Generators most need it,

and that such an approach would more effectively address the challenges inherent in building renewable energy generation facilities. In discussion, it was also noted that this approach would make it easier for it to make best use of the available budget, allowing more rapid recycling of the CfD budget and so maximising the prospects of achieving binding Government targets. Stakeholders also made the case that the amount by which the capacity could be amended should be greater than five per cent.

36. Following feedback from stakeholders, the capacity adjustment rules have been amended in a way that provides greater flexibility earlier, but which then requires Generators to commit to deliver capacity within a tighter window once the Milestone Requirement has been met.
37. As a result the revised capacity adjustment mechanism allows Generators to amend the capacity at the Milestone Delivery Date by up to 25 per cent of the total installed capacity estimate (the 'revised capacity estimate'). This gives Generators more flexibility at the point in their project's development where there is most uncertainty over the amount of capacity which will be delivered. It also provides them with enough flexibility to deal with changes in capacity enforced by site specific characteristics which only emerge after application and CfD signature but which are revealed through the additional work undertaken ahead of financial close.
38. Once a Generator notifies the CfD Counterparty that it intends to make use of flexibility available at the Milestone Delivery Date, the contract capacity is adjusted downwards and the difference payments are then capped at the new (lower) level.
39. To trigger the Start Date and the flow of difference payments Generators will have to meet the Condition Precedent that requires the Generator to deliver 95 per cent of the revised capacity estimate.
40. Reflecting the updated approach to capacity adjustment and, in particular, the more limited flexibility allowed after the Milestone Delivery Date, the inclusion of a strike price reduction (to provide an additional incentive for capacity delivery) is now largely redundant. Consequently, the risks associated with the strike price reduction no longer appear justified, and this mechanism has been removed. As a result, providing that Generators deliver at least 95 per cent of the contract capacity (as adjusted at the Milestone Delivery Date) they will receive the strike price in full.
41. However, it remains important that Generators deliver the capacity that they have agreed under the Conditions (subject to the flexibilities outlined above), so that applications for Standard Terms and Conditions are made on a realistic basis and in order to make best use of the available budget for CfDs. Consequently, should a Generator fail to deliver at least 95 per cent of the adjusted capacity by the Longstop Date, the CfD Counterparty's will have a right to terminate the CfD Agreement.

Phased Offshore Wind Projects

Purpose

42. Government recognises that larger offshore wind projects are likely to be built in a series of stages, as is the case under the Renewables Obligation. This is particularly the case for Round 2 and Round 3 offshore wind projects.
43. Following further stakeholder engagement, we have made a number of adjustments to our approach so that it reflects the characteristics of large phased projects whilst retaining appropriate protections for Government and ensuring value for money for consumers.

August position

44. In August the 'Allocation Methodology for Renewable Generation' set out the proposed policy for phased offshore wind projects that commission within the Levy Control Framework as set out under the Delivery Plan.
45. The Allocation Methodology for Renewable Generation set out that each phase of a multi-phase project would receive the same Strike Price, and that this would be determined by the Target Commissioning Date of the first phase. It was also stated that the project would be held to account against an appropriate Milestone Delivery Date, Target Commissioning Dates, Target Commissioning Windows and Longstop Dates.
46. The following criteria were also proposed for phased offshore wind projects:
 - a. the total capacity of the project must not exceed 1500MW;
 - b. the first phase must be at least 25 per cent of the total project capacity;
 - c. all phases of the project must be within the same Crown Estate lease area, i.e. offshore wind development with the same owner/operator which are in different parts of the country would not be eligible for phasing;
 - d. termination rights for late/non-delivery would only be attached to the first phase of a project and later phases would not be subject to potential termination as the project would, having commissioned at least 25 per cent of its capacity, face very strong financial incentives to complete later phases;
 - e. the Target Commissioning Date for the first phase must be no later than 31 March 2019 and for the final phase must be the earlier of the following:
 - i. no later than two years after the target commissioning date of the first phase; and
 - ii. no later than 31 March 2021.
47. The 'Allocation Methodology for Renewable Generation' also set out that the same capacity adjustment rules that apply to a non-phased CfD project would apply to each phase of a phased project.

Final Position

48. Drawing on stakeholder feedback, the approach to phased projects has been revised to provide greater flexibility to Generators of phased projects and in order to reflect better the practical constraints of developing these projects. In addition, we are considering a revised approach to structuring the Conditions for phased projects that takes into account specific financing, construction and cross-default risks across phases. The purpose of this is to provide greater flexibility for those Generators who wish to ‘recycle’ the capital deployed in the construction of the first phase, to support the construction of later phases. This reduces the financing cost of these projects, reducing costs to consumers. We will be shortly engaging with interested stakeholders on the proposed approach set out below.

Contract Structure

49. Generators will wish to have the certainty that the CfD (i.e. the Conditions) are in place for the entirety of a phased project, whilst also allowing for the potential utilisation of discrete project companies for the individual phases and the possibility that, at a suitable point in the life of a phased project, Generators may wish to have separate CfDs (i.e. Conditions) in place for each individual phase.
50. Providing each phase with a separate (albeit initially linked) set of Conditions will provide greater flexibility to take account of Generators’ financing structures, and the differing operational and construction risks that may apply to individual phases of a multi-phase project. As such, it is considered that such a structure will enhance the delivery of eligible generation whilst providing project benefits through a reduced cost of capital and improved project viability. This approach is under development and will be shared with interested stakeholders in early 2014.
51. In order to achieve this flexibility we are considering developing the CfD Agreement so that it can be modified for phased projects. In particular, the CfD Agreement for phased projects may be drafted as an “umbrella contract” which could set out the conditions that need to be met for the project as a whole, as well as some specifics in relation to each phase (e.g. the requisite capacity for Phase 1 that must be delivered). If followed, we believe this structure will provide Generators with the ability – under certain circumstances – to restructure the Standard Terms and Conditions into three separate contracts, each of which could then be refinanced (again, subject to certain conditions, such as the CfD’s ‘stapling’ obligations).
52. In delivering this approach there may also be a need to make a number of further adjustments to reflect the additional complexities of phased projects, such as: cross default arrangements (as noted above); metering arrangements; completion of milestones; capacity adjustment mechanics; Force Majeure; Relevant Geological Issues; Change in Law; and Termination events. In general terms, the approach to these issues will seek to apply the same tests for these events to a phased project as a non-phased project, unless specific circumstances are identified which rule this out.

Contract obligations

53. In light of the comments received in response to the August publication and further stakeholder engagement we are proposing to provide for phased offshore wind requirements in the following way.

Minimum Capacity of First Phase

54. The first phase of a phased offshore project is an important indication of the commitment to the overall project, not least as it determines – through the Target Commissioning Date of this phase – the Strike Price to be applied to the whole project.
55. It is, therefore, important to ensure that the first phase represents a significant proportion of the overall project capacity, but also allows projects to be phased in an efficient manner. Reflecting this we intend that the first phase will need to deliver 25 per cent of the total (adjusted) project capacity (rather than the 35 per cent set out in August).
56. The requirement to have at least 25 per cent of the overall capacity in the first phase will need to be met at application (when the initial installed capacity estimate will be defined) and also after any election to adjust the installed capacity estimate prior to the Milestone Delivery Date.

Strike Price adjustments

57. The strike price adjustment mechanism linked to Installed Capacity adjustments has been removed for non-phased projects and the same approach will apply to phased projects. This provides certainty that all eligible capacity delivered will be subject to a single Strike Price.

Land Rights

58. In order to mitigate the risk that projects in different Crown Estate Zones seek support as a single phased project, it is the intention that all phases of the project must be within the same project area for which development consent has been granted under the relevant planning regime. This will allow projects to be spread over more than one lease, but will ensure they are within the same Zone.

Metering

59. Metering arrangements for phased projects are currently under development. Annex B - Metered Output Arrangements sets out an outline of the Government's current approach to metering.

Change in Law (CiL)

60. It is intended that the CiL provisions in the Conditions will apply to each phase independently, as each phase could be considered distinct from the other phases. The appropriate compensation mechanics would therefore be applied by taking into account the distinct impacts the CiL event has had on each phase. It is, however, recognised that phased projects may present different scenarios to a single phase project and CiL protection will look to take these into account as appropriate.

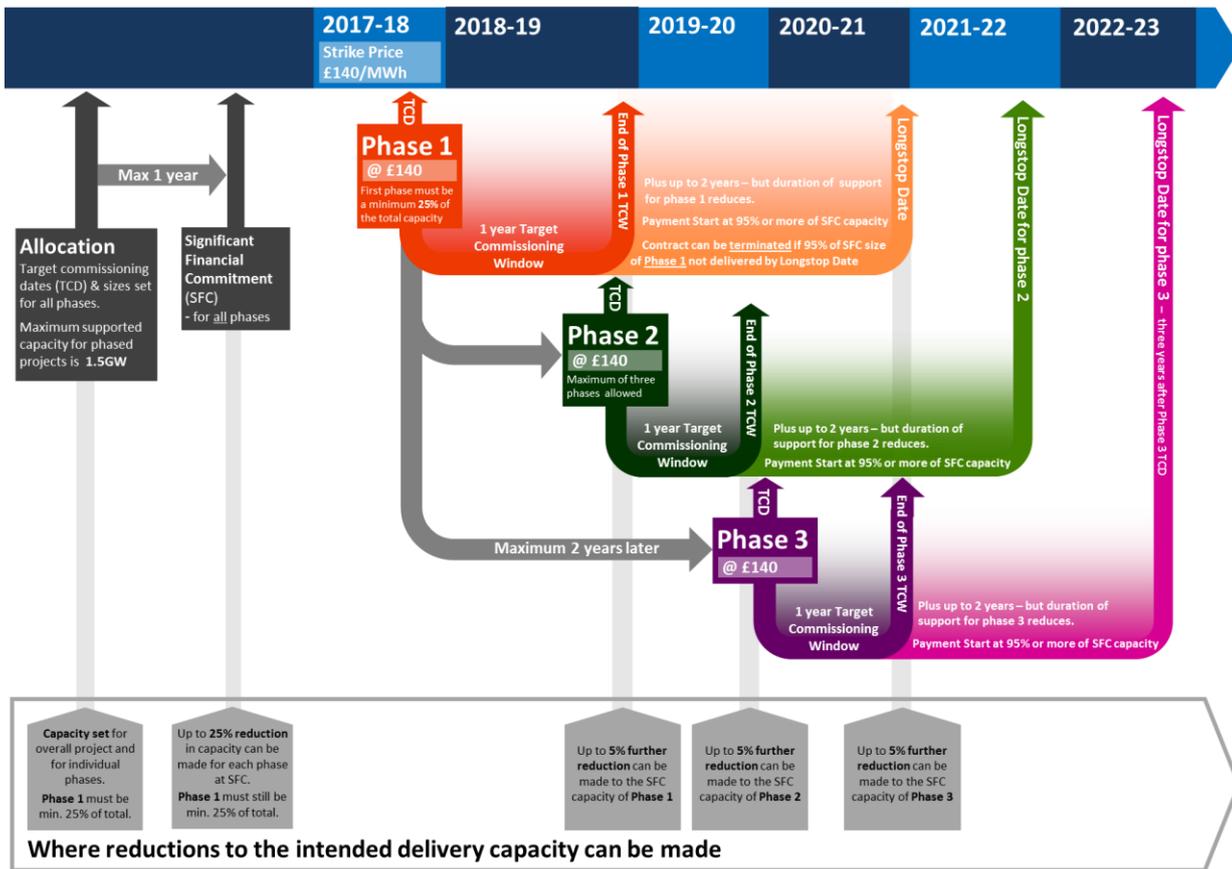
Termination

61. As noted above, the provisions for termination for failure to meet the Milestone Delivery Date or the Long Stop will be adjusted so that if the provisions relating to the respective dates are not met by the first phase then the CfD Counterparty will have the right to terminate the CfD Agreement for all three phases.
62. Other termination rights will follow a similar approach to those set out in the Conditions.

Process overview

63. The following section sets out the high-level approach that is envisaged will apply to a phased project.

Figure 1: Indicative Chart of the Possible Phasing Approach for Offshore Wind Projects



64. The key stages of a phased project are envisaged to be:

- a. Each phased project will be subject to a single milestone where evidence of a ‘substantial financial commitment’ is required that demonstrates sufficient commitment to complete all phases of the project;
- b. Specific Target Commissioning Dates (TCD), Target Commissioning, Windows and Longstop Dates (LSD) would be set out for each phase in the application for a CfD;
- c. The TCD of the first phase will determine the Strike Price to be applied to all three phases;
- d. Each phase’s ‘Installed Eligible Capacity Estimate’ can be adjusted in line with standard rules i.e. the project capacity can be reduced by a maximum of 25 per cent prior to the Milestone Delivery Date. This capacity reduction can be applied flexibly across the three phases, provided that the installed Eligible Capacity Estimate of first phase remains at least 25 per cent of the adjusted overall project capacity;

- e. The requirement that Phase 1 must comprise 25 per cent of the total project capacity must be satisfied both on application for the CfD and also if the Generator elects to use the flexibility to adjust the installed capacity of the project between signing of the CfD and satisfaction of the Milestone Delivery Date;
- f. The Relevant Geological Issue (RGI) and Force Majeure conditions will be applied to each phase separately. Should an RGI apply to Phase 1 then the requirement of that phase constituting 25 per cent of the total capacity will be amended in line with adjusted capacity relating to this clause.
- g. Payments for each phase can start after the start of the Target Commissioning Window once 95 per cent of the capacity committed to in respect of that phase at the Milestone Delivery Date is delivered;
- h. The 15 years of support for each phase will commence from the Start Date of each phase;
- i. A 'Maximum Contract Capacity' metric will be defined for each phase based on the MW delivered in that phase.

Summary of key proposals for phased offshore wind projects

65. Reflecting the above, the proposals that a phased project will need to meet, and the key criteria that will apply, are:
- a. The Target Commissioning Date of the first phase must be no later than 31 March 2019 and the Target Commissioning Date of the final phase must be the earlier of the following:
 - i. no later than two years after the target commissioning date of the first phase; and
 - ii. no later than 31 March 2021.
 - b. The Target Commissioning Date of each phase must be in a separate delivery year;
 - c. The Generator must deliver 25 per cent of total project capacity in the first phase;
 - d. Payments will commence once 95 per cent of the capacity committed to in respect of that phase at the Milestone Delivery Date is delivered;
 - e. The project must be completed in no more than three phases;
 - f. The time between CfD signature and SFC will remain at one year in duration at a maximum;
 - g. The length of the Target Commissioning Window will remain at one year in duration;
 - h. Each phase will have a separate Target Commissioning Date, Target Commissioning Window and Longstop Date;

- i. Each phase must have a separate meter (only measuring the output from capacity relating to that phase);
- j. Termination in relation to the delivery of capacity at less than 95 per cent of the installed eligible capacity estimate by the Longstop Date will only apply to the first phase;
- k. Each subsequent phase will receive the same strike price as the first phase.

Metered Output / Metering

Purpose

66. Metered Output is one of the key variables used to calculate difference payments. It is therefore important to meter accurately output and, together with the provisions for fuel measurement, the metering provisions ensure that the CfD only pays for eligible, low-carbon electricity.
67. All calculations are based on a Generator's BM Unit Metered Volume, adjusted for transmission electricity losses according to the procedures developed under the Balancing and Settlement Code (BSC).
68. The Conditions set out the Loss Adjusted Metered Output (LAMO) calculation for all Generators engaged in the trade of electricity on the public system. This includes those who are directly connected to the transmission and distribution networks, and those who are embedded Generators.
69. Separate arrangements are being developed for Generators operating on private wire networks, and are therefore not covered by the Conditions published today. These Conditions will be developed in the first quarter of 2014; however a copy of the metering policy applicable to private wire generators can be found on the Department's CfD Expert Group on Metering webpage¹³.

August Position

70. The August publication confirmed that Metered Output was defined as Loss Adjusted Metered Output (LAMO), and that different payments would only be made by (or paid back to) the CfD Counterparty on the amount of net electrical output of the Facility deemed to be low carbon. For baseload technologies, the Renewable Qualifying Multiplier (RQM) concept was introduced.
71. The publication also proposed an Estimated LAMO procedure, to address periods where LAMO had not been received by the BSCCo (and therefore provided for CfD Settlement). Under these circumstances, the draft contract stated that the CfD Settlement Services Provider would derive an estimate for the relevant Settlement Period in accordance with the estimation procedures outlined under the BSC (i.e. BSC Procedure 03 for CVA metering systems and BSC Procedure 502 for SVA metering systems). Once the BSCCo had received the actual data, these estimates would be reconciled noting that:
 - a. disputes with regard to Metered Data should be resolved through the existing BSC procedure for Trading Disputes; and
 - b. that the metering requirements set out as Further Conditions Precedent would continue to be imposed as an on-going obligation on the Generator for the duration of the term of the CfD. Where a breach of any of these obligations had occurred due to the fault or negligence of the Generator, a 20 business day grace period

¹³ <https://www.gov.uk/government/policy-advisory-groups/contracts-for-difference-expert-sub-group-on-metering>

would be provided by the CfD Counterparty to the Generator to resolve the issue and therefore reinstate their compliance. During this grace period, the CfD Counterparty also had the right (but not the obligation) to either withhold or suspend payment until such time where the issue had been resolved to its satisfaction. In any instance where the issue had not been resolved within the grace period provided, the CfD Counterparty would also have the right (but not obligation) to terminate the CfD Agreement. Non-compliance was to be addressed following the process set out under the BSC Procedure 27.

Final Position

72. Whilst the methodology and mechanics for the calculation of Metered Output for Generators trading on public networks has not changed substantially, further detail on the metering arrangements for specific Generator groups has been added.
73. For example, it is intended that exemptible embedded Generators will be required under their Conditions (yet to be developed) to provide the CfD Counterparty with a minimum of three months' notice prior to entering into (or moving between) market supply agreements with an offtaker (i.e. licensed Supplier). This obligation will provide the CfD Settlement Services Provider with sufficient time to register the Additional Balancing Mechanism Unit (A.BMU) necessary to keep the Generator's Metered Output volumes distinct and separate from the offtaker's Base BM Unit, and accurately inform CfD settlement.
74. A summary of the metering arrangements is included at Annex B – Metered Output Arrangements, while a more comprehensive outline is available at the <https://www.gov.uk/government/policy-advisory-groups/contracts-for-difference-expert-sub-group-on-metering>.

Renewable Qualifying Multiplier/ Combined Heat and Power Qualifying Multiplier

75. The calculation of the RQM has been revised to reflect more accurately the mechanics of the Fuel Measurement and Sampling arrangements in the Conditions. In addition, the concept of a Combined Heat and Power (CHP) Multiplier has been added which will apply only to those baseload technologies where CHP form part of their operations.
76. The Fuel Measurement and Sampling section contains further detailed on the calculation methodology for the RQM and CHP Multiplier.

Estimated and Missing Loss Adjusted Metered Output

77. The Conditions no longer provide the CfD Counterparty with the ability to estimate LAMO where Metered Output volumes have not been received by the BSCCo. Where estimation is necessary, BSCCo will undertake this procedure and as such all Metered Output volumes received by the CfD Settlement Services Provider from the BSCCo will, for the purposes of CfD Settlement, be treated as accurate (validated) metered data.
78. Any errors with respect to the calculation of difference payments, resulting from the use of estimated metered data will be corrected and reconciled by the CfD Settlement Services Provider, as updated estimates or actual metered data volumes are provided by the BSCCo in accordance with the settlement run provisions set out in the BSC.
79. The CfD Counterparty will only undertake an estimation process procedure where it has not received any metered data from BSCCo (i.e. the Metered Output volumes necessary for CfD Settlement are missing) for any reason. Under these circumstances, the

Conditions require the CfD Counterparty to employ the specific estimation technique for baseload and intermittent technologies using the process described below:

- a. Baseload technologies - Metered Output volumes would be calculated by applying the last known Metered Output volume to all missing Settlement Units, until BSC Metered Output volumes are received;
- b. Intermittent technologies - Metered Output volumes would be calculated by determining the equivalent Settlement Units for the last seven Billing Periods and taking the average of these values. This process would be replicated until BSC Metered Output volumes are received.

80. Once the BSCCo recommenced sending Metered Output volumes, the estimated volumes would be reconciled by the CfD Counterparty.

Metering Disputes

81. The Conditions have been revised to clarify that the BSC's Trading Disputes procedure will be used for a Metering Dispute which had an impact on CfD Settlement.
82. All decisions taken by the BSC's Trading Disputes Panel with regard to a Metering Dispute will be final and binding, and the result will be passed onto the CfD Counterparty for reconciliation.

Metering Undertakings

83. In response to stakeholder feedback on the operation of the Metering Undertakings, we have redeveloped the mechanism to provide greater clarity and flexibility.
84. Key amendments include:
 - a. removal of the CfD Counterparty's right to withhold payment, although the right to suspend payment under specific circumstances has been retained (outlined below);
 - b. providing greater clarity around how payment suspension and/or termination, would work individually and together;
 - c. removal of reference to BSC Procedure 27, because it could only be applicable where non-compliance was discovered through an inspection by the Technical Assurance Agent (a BSC Agent) and not where the CfD Counterparty (or another party) had identified the non-compliance; and
 - d. the Metering Undertakings have now been split into three specific obligations, with consequences that are more in line with the severity and type of non-compliance. The three obligations are: Metering (Technical) Compliance; Electrical Schematic (Informational) Compliance; and Meter Access (and Testing).

Metering (Technical) Compliance obligation

85. The Generator is obliged to maintain their metering and information systems (i.e. the Facility Metering Equipment) on an on-going basis. The obligation is limited to significant occurrences of non-compliance and is only triggered where:

- a. the BSCCo has sought rectification of the non-compliance issue for BSC Settlement; and/or
 - b. the issue has a direct impact on the quality or accuracy of metered data for settlement purposes.
86. The Generator is allowed 60 business days without penalty (from the point at which their Metering Remediation Plan is approved by the BSCCo) to resolve the non-compliance issue. However, if the issue is not resolved on the 61st business day, the CfD Counterparty will have the right (but not the obligation) to terminate the CfD Agreement.
87. A copy of the BSC-approved Metering Remediation Plan must be provided to the CfD Counterparty as soon as is reasonably practicable.

Electrical Schematic (Informational) Compliance obligation

88. The Generator is obliged to ensure that the CfD Counterparty has an up-to-date copy of the Facility's electrical schematic. Where it undertakes a Metering Change it must advise the CfD Counterparty immediately and provide an updated schematic within ten business days.
89. All electrical schematic diagrams must be date and time stamped, and signed off by the Director (or a suitable representative).
90. Where the Generator is not compliant with this obligation, the CfD Counterparty will have the right to apply a full payment suspension from the 11th business day. This suspension would continue until an updated schematic had been provided.
91. In this instance no termination right is provided to the CfD Counterparty.

Metering Access (and testing) Right

92. The Generator, on request from the CfD Counterparty must provide access to its metering and information management systems within a specific period of time. The time allowed will depend who has ownership of the Generator's metering system under the BSC. Where the Generator is:
- a. The registrant - 10 business days;
 - b. Not the registrant (i.e. embedded Generators) - 15 business days.
93. Where access has not been provided within the specific time period designated above, the CfD Counterparty will have the right to apply a full payment suspension commencing at the beginning of the following business day (i.e. the 11th business day if the Generator is the Registrant or the 16th business day where the Generator is not the Registrant).
94. The Generator is then given a further 20 business days to provide access (with the payment suspension in place). If access has still not been provided at the end of this period, the CfD Counterparty will then have the right (but not the obligation) to terminate the CfD Agreement.
95. A Metering Access Right will always include a right, where applicable, to conduct testing of the Facility Metering Equipment. Any costs associated with testing rights will be resolved in accordance with the BSC.

Market Reference Price (MRP)

Purpose

96. The Market Reference Price is a measure of the wholesale price of electricity. It is one of the key parameters in the CfD; together with the strike price, it determines the level of payments due to / owed by Generators. There is a different reference price for baseload and intermittent plant, recognising the different levels of control Generators have over their output.

August Position

Intermittent Reference Price

97. In August we said that the Intermittent Reference Price will be the GB day-ahead hourly price published under the European market coupling arrangements. The draft CfD published in August¹⁴ indicated that where the GB day-ahead price is not available (which is expected to be a rare occurrence) then the CfD provides for alternative measures for calculating the Intermittent Reference Price, which involve utilising prices from the constituent auction platforms of APX and N2Ex.

Baseload Reference Price

98. In August we said that the Baseload Reference Price will initially be calculated from forward season indices of actual trades representing significant volumes of the market. Once market conditions allow, the Baseload Reference Price will move to be calculated on a year-ahead basis.

Changes to the Market Reference Price

99. Recognising that the Market Reference Price may need to change over time, to ensure it continues to be an appropriate measure of the wholesale price of electricity, the draft CfD published in August¹⁵ stated that any such changes would apply to all CfDs but that as far as possible, any changes would be deterministic in nature and specified in the contract. However, we noted that in certain cases there may be a need for limited discretion.

Final Position

Intermittent Reference Price

100. This document confirms the Market Reference Price for intermittent generation facilities and the fall back processes when the GB day-ahead price is not available. In the event that neither auction platform is issuing a price, the CfD Counterparty would use historical price information to calculate the Intermittent Reference Price. This mirrors the process used under the BSC where metering data is not available, and enables Generators to have certainty that in the case of any disruption, however remote the possibility, that there will always be a known Market Reference Price.

¹⁴ <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

¹⁵ <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

Baseload Reference Price

101. Working with stakeholders, further detail on how the Baseload Reference Price will be set has been developed. This includes:
- a. removal of weighting factors in the formula, to avoid undue complexity in price setting and hedging;
 - b. the initial price sources have been specified as LEBA and Nasdaq, as these sources both provide transactional data;
 - c. a fall back price drawn from broker quotes will apply where there has been no trading on the initial price sources for five days¹⁶; and
 - d. clarity has been given so that Generators who sign a CfD Agreement with a season-ahead Baseload Reference Price will not automatically be forced to switch to one with a year-ahead Baseload Reference Price, but instead will have an option to switch when such a Baseload Reference Price is introduced. This avoids undue complexity in the contract (which could have affected PPA conditions with associated cost and financing implications) and allows Generators to make their own choice over whether to change to the new Market Reference Price or remain with their existing one.
102. Concerns have been raised as to whether smaller, independent baseload Generators would be able to achieve the Baseload Reference Price. In response to these concerns a number of measures are being considered which might reduce the reference price risks faced by smaller baseload Generators (in particular those less than 5MW). To inform our assessment we would welcome evidence of the impact that the baseload reference price would have on such Generators. We will continue to engage with stakeholders on the potential need for and design of any measures in Q1 2014.

Changes to the Market Reference Price

103. The Intermittent Reference Price and Baseload Reference Price will be calculated in accordance with the formulae set out in the Terms and Conditions.
104. The process for changing the Market Reference Price (for both baseload and intermittent plant) has now been set out; this information on when and how the reference price might change is important for assessing revenue certainty.
105. It will only be possible to change the Market Reference Price if one of a number of contractually specified events occurs. These cover circumstances where the weight of the market has shifted away from the existing Market Reference Price, or other events such as market splitting influence the validity of the price. Where 30 per cent of Generators (by number or volume) raise a concern with the Market Reference Price, this will trigger a review. The CfD Counterparty would also be able to trigger a review where it believes that the Market Reference Price is no longer reflective of market prices, such that it is systematically over-compensating Generators and increasing costs to consumers.

¹⁶ We envisage that the formula may need to be revised slightly to enable the price to be correctly calculated in these circumstances. Where this is the case this will be reflected in the final Conditions.

106. In these circumstances, the CfD Counterparty would apply the process in the Conditions to assess the Market Reference Price. Generators would have an opportunity to input evidence on the issues under consideration. Where the Conditions set out clear rules on the changes e.g. to include a new price source if it has attracted a sustained level of trading, these will be applied. Where it is not possible to determine in advance exactly what changes will be necessary, the CfD Counterparty will take a principles-based approach to determine whether any changes to the Market Reference Price are required.
107. These principles are set out in the Conditions and reflect the key aims of the Market Reference Price e.g. that it should be robust against manipulation, based on actual trades, and a reasonable approximation of the market price of electricity. This provides certainty to Generators and investors that the Market Reference Price can only be changed in accordance with a clear, contractually agreed process which will deliver a fair Market Reference Price.
108. If Generators are unhappy with the way the process has been followed, then the new Market Reference Price can be disputed, subject to a threshold of thirty per cent of Generators raising a concern (to avoid frustration of the process by a small minority). The dispute would go to an Expert for determination and the result of the dispute would then be imposed on all baseload or intermittent CfD holders as applicable.

Change in Law

Purpose

109. The Change in Law (CiL) provisions are designed to provide the CfD holder with an element of protection so that the long-term price stability afforded to CfD holders is not undermined by certain legislative and regulatory changes.
110. Including such arrangements in the CfD will represent better overall value for money for consumers, as the alternative approach would see investors seeking higher strike prices to compensate for a range of potential future risks which may in fact not materialise. The aim of the compensation mechanic is to put the Generator in a “no better, no worse” position than had the change in law not occurred. The provisions are two-way, so that any qualifying changes in law which are to the benefit of a Generator should lead to compensation being provided to the CfD Counterparty.

August Position

111. The draft CfD published in August¹⁷ set out the categories of change in law for which the Generator or Counterparty would be entitled to compensation where such changes in law lead to Generator costs/savings. Such changes in law were defined in Clause 22.1 (Definitions and Interpretation) as “Qualifying Changes in Law” (QCIL) of the August draft CfD.
112. To be a QCIL the change would have to:
- a. match the definition of CiL;
 - b. be unforeseeable; and
 - c. fall into either the discriminatory, specific or ‘other’ CiL classification.
113. A CiL was defined as:
- a. Acts of Parliament and regulations;
 - b. Directives issued by relevant bodies e.g. Ofgem;
 - c. Industry documents e.g. BSC; and
 - d. Required Authorisations e.g. generation licences
114. It excluded:
- a. CiL due to breach or default of the relevant law by the Generator or its Representatives;
 - b. CiL due to failure of the Generator or its Representatives to act to a Reasonable and Prudent Standard;

¹⁷ <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

c. CiL which is a continued development of standards.

115. There were three CiL classifications, as discussed in turn below.

116. Specific CiL – where the change specifically applies only to:

- a. one technology;
- b. CfD holders;
- c. CfD holders of a certain technology;
- d. holding of interests in companies or organisations involved in facilities covered by one of the definitions above.

117. Discriminatory CiL – where the change only affects:

- a. the project;
- b. the Facility; or
- c. the Generator.

118. Other CiL – where the change has been:

- a. instigated by the UK Government; and
- b. had an undue, not objectively justifiable, discriminatory effect on actual costs incurred compared with those incurred by:
 - i. Material Generation Technologies (i.e. Generation Technologies that account, from time to time, for at least 1% of all installed generation capacity in MW in the UK);
 - ii. all other Generators of the same technology type.

119. The clause also set out the way in which the level of compensation, to which the Generator/CfD Counterparty was entitled where a Qualifying Change in Law occurs, is calculated.

120. There were three types of compensation and formula included in the draft CfD published in August:

- a. Operation Expenditure (OPEX) – where the QCiL increases or reduces the Generator's operational costs. This was calculated using the net present value of costs for the remaining term of the CfD, against projected generation;
- b. Capital Expenditure (CAPEX) – where the QCiL increases or reduces Generator's capital costs. This was calculated in the same way as operation expenditure but while the Generator would receive full compensation up to year 12 based on the hurdle rate and projected generation, compensation for the remainder of the term would taper; and

- c. Lost Revenues Adjustment – where the QCiL reduced the Generator’s output for a period of time. Compensation was provided for revenue reduction in this reduced output period. The draft CfD published in August noted that DECC was considering a payment mechanic from the Generator to the CfD Counterparty where a QCiL caused the Generator a revenue increase.
121. Compensation for a, b and c above would depend on whether the amount was above a materiality threshold. This was purposely undefined in the contract in order to explore the concept with industry.
122. The draft CfD published in August also envisaged compensation for circumstances where a QCiL prevented the completion of construction or permanently prevented the operation of the Facility. However the scope and mechanics of these types of compensation were not published on the understanding they would be developed following stakeholder engagement.
123. The draft CfD published in August also stated that QCiL compensation would be paid through an adjustment to the Strike Price but also that it may be paid via a lump sum or staged payments at the Counterparty’s discretion.
124. Finally, it set out that where the Generator was due compensation from the CfD Counterparty it would have to comply with the obligation to minimise the costs resulting from the QCiL (‘mitigation’) as well as act to a Reasonable and Prudent Standard. Also the Generator would be obliged to pay all of the CfD Counterparty’s out-of-pocket costs that it would not have incurred if a QCiL Notice had not been given by either Party.

Final Position

125. The Conditions will provide Generators with protection against specific and discriminatory changes in law and for changes in law that have an unjustifiable discriminatory effect. It will not protect against other general changes in law which are considered to be usual business risks that Generators already take in the existing market without compensation.
126. Compensation will take a number of different forms depending on the impact on operational costs, capital costs and revenues. Compensation mechanics have been tailored in this way to reflect the impact of the change during the course of the term. There is also still an obligation on Generators to mitigate the impact of the change in law and act to a Reasonable and Prudent Standard in order to reduce the burden of extra cost on suppliers and consumers and provide better value for money by avoiding over compensating Generators.

CiL definition

127. Since August, stakeholders have queried the meaning of ‘improvement or development of standards’ in regards to what is excluded from qualifying as a CiL. Drawing on these comments the CiL definition has been revised to clarify that this carve out relates to updates to processes and practices that occur through the usual course of improvements e.g. good practice guidelines on how to store fuel in order to reduce fire risks.
128. The definition of Representatives has also been revised so as to limit the definition to those who are (i) directors, officers or employees of the Generator or (ii) contractors, agents, consultants and advisers acting for and/or on behalf of the Generator in relation to the Facility or the Conditions. A change will not be considered for CiL protection where it has arisen from or in connection with the Generator or any of its Representatives

breaching a Law, Directive, Industry Document or Required Authorisation. Tightening the definition of Representatives therefore limits the range of people who may have been involved in the breach and thus widening the scope of what could qualify for CiL protection.

Foreseeable CiL definition

129. The draft CfD published in August stated that where the Generator received a document that gave rise to CiL under the definition of Foreseeable CiL, they would not be entitled to seek compensation under this Clause. Following feedback from stakeholders we have amended the text to limit this scope to only those documents that have been published. Therefore in cases where the Generator received a copy of a draft document which includes information on the change that has been made this would not be deemed as foreseeable for the sake of this definition if it was not published.
130. Furthermore where a consultation is either open, responses being considered or closed before the Agreement Date, only the preferred proposal (if stated) is defined as foreseeable and if no preferred proposal is stated then none of the options are foreseeable. This further limits the chance of a change in law being foreseeable and provides a greater level of protection to the Generator.

Other CiL classification

131. It was clear from the feedback received on the draft CfD published in August that there was some confusion over comparators to Material Generation Technologies. It is not the intention to rule out Generators who are not a Material Generation Technology; rather every Generator will need to compare the impact of the CiL on its costs to the impact on costs for a Material Generation Technology (as defined in the contract).
132. The scope of qualification for a CiL event has been increased by extending comparator groups to include all non-CfD Generators and all Generators with technology types different to that of the Generator.
133. Following the publication of the draft CfD in August there was some misunderstanding as to what was meant by 'discriminatory effect'. We have now refined this definition so that to be eligible for compensation under this classification the CiL needs to have an undue, discriminatory effect on costs incurred or saved by the Generator which is not objectively justifiable.

Compensation

134. The final forms of compensation for a QCiL are described below.

Construction Payment

135. Where a QCiL prevents the completion of the construction of a whole Facility by making the Facility and/or its generation illegal the CfD Agreement will be automatically terminated. Under such a scenario compensation will cover the Generator's:
- a. pre-agreement costs;
 - b. pre- development costs;
 - c. construction costs;

- d. decommissioning costs;
- e. break costs (financial and contractual).

136. These costs will be net of:

- a. operational costs saved;
- b. tax relief;
- c. insurance proceeds;
- d. other compensation received.

137. The compensation amount will be inflated to the QCiL compensation date as appropriate (based on project hurdle rate, taken from the hurdle rates used to calculate strike prices).

Operations Cessation Payment

138. The Generator will be entitled to this payment when a QCiL permanently prevents the operation of the whole Facility by making the Facility and/or its generation illegal. In such circumstances the CfD Agreement will be automatically terminated and the Generator compensated for any losses on future revenue streams by multiplying the Strike Price by the Effective Projected Generation to the end of the contract term, including break costs and other costs incurred that can be evidenced.

139. These costs will be net of any reduced costs or savings made as a result of the early shutdown of the Facility. The compensation amount will be discounted to the QCiL compensation date as appropriate (based on project hurdle rate, taken from the hurdle rates used to calculate strike prices).

Adjusted Revenues Payment

140. The draft CfD published in August said that the Government was considering a QCiL compensation mechanic for circumstances where a QCiL leads to increased revenues for the Generator. Given the principle of CiL compensation is to put the Generator into a 'no better, no worse' position as if the QCiL had not occurred, a mechanism in which compensation will flow from the Generator to the CfD Counterparty is considered appropriate to achieve this and has been included in the CiL provision.

Capital Expenditure (CAPEX) and Operational Expenditure (OPEX) Payments

141. Where there are net OPEX costs/savings or net CAPEX costs/savings, the Generator (or CfD Counterparty) will receive payments in order to put the Generator in the position it would have been had the QCiL not occurred.

Materiality threshold for compensation payments

142. The draft CfD published in August indicated that compensation for OPEX and CAPEX costs/savings and Lost Revenues would only apply where the amount was above a materiality threshold. In consideration of stakeholder feedback this provision has been removed due to the complexity of identifying a standard materiality threshold that could be applied to a range of Generators of different technology type and size. As a result where compensation is due it will be paid subject to the Generator mitigating costs and acting to a Reasonable and Prudent Standard.

Payment of compensation

143. The draft CfD published in August said that DECC was considering whether a Strike Price adjustment was appropriate in all compensation circumstances. Having considered the need to strike a balance between minimising volatile payment demands on the Supplier Obligation whilst seeking to ensure that Generators can meet their financing arrangements we are now of the view that for:

- a. QCiL Capex Payments - the CfD Counterparty, after consultation with the Generator to determine when costs crystallise, has the option to decide whether payments should be by way of a lump sum, or daily payment. This compensation will apply for QCiLs that affect capex costs pre and post the Start Date;
- b. QCiL Opex Payment – these payments will be made via adjustments to the Strike Price and will be paid over the contract life. Opex compensation will apply post Start Date once the Generator has started receiving CfD payments. Where Opex costs or savings occur at the same time as the Generator’s output increases or decreases and have not been captured in a Strike Price Adjustment, the Opex amount will be taken into account in the Adjusted Revenues Payment;
- c. Adjusted Revenues Payment – this will be paid by way of a daily payment. This is a change from a Strike Price adjustment as we acknowledge that some Generators may find it financially difficult to wait to receive compensation in circumstances where a CiL temporarily prevents generation (and therefore CfD payments will also cease temporarily). Therefore if a QCiL temporarily prevents the Generator from generating, it will not have to wait for payments to begin again before it receives compensation. This compensation will apply on the first day of the relevant Adjusted Output Period; and
- d. Construction Payment and Operations Cessation Payment – compensation will be provided to the Generator by way of a lump sum. The CfD Agreement will be automatically terminated if either a Construction or Operations Cessation Event occur therefore it is not appropriate to offer a Strike Price Adjustment. However, given the potentially large payment demand a lump sum payment may place on the Supplier Obligation, the Government is considering whether there should be an option for the CfD Counterparty to pay Construction and Operation Cessation Payments by way of a staged payment e.g. a lump sum payment but spread over a set period of time.

Generator paying CfD Counterparty fees

144. The draft CfD published in August stated that the Generator would pay the CfD Counterparty’s out of pocket fees in all CiL cases. In recognition that this was too strict on Generators this has been amended so that Generators will only meet the Counterparty’s costs where the Generator is the one putting forward a QCiL claim. This is an appropriate balance of responsibility given the materiality threshold for compensation payments have been removed.

True Up

145. The draft CfD published in August discussed the concept of a True Up mechanism occurring after compensation has been paid in order to try to better reflect actual costs incurred or saved by the Generator because of the QCiL.

146. Stakeholder feedback was in favour of this and as such the Conditions now include one true up following the initial compensation at a date to be determined by the Generator and the Counterparty. However the True Up can be waived if both Parties agree to waive it. For example, if a QCiL required on-shore wind Generators to increase their monitoring obligations which had an impact of increasing costs by £1/MWh for the rest of the duration of the CfD Agreement then both Parties may decide that this is nominal and therefore it would be unnecessarily burdensome to conduct a True Up.

Excluded Losses

147. The Excluded Losses and Liabilities provision under Clause 38 of the draft CfD published in August specified that neither party could claim any consequential losses because of the Termination of a CfD Agreement. This general rule did not apply to a Termination Payment which was outstanding at the date of Termination. In response to stakeholder comments the exception has been expanded to include QCiL compensation.

Qualifying Shutdown Events

Purpose

148. In June we stated that the CfD will provide some protection against political decisions to shut down a Generator.

Final Position

149. The Conditions published on 19 December define a Qualifying Shutdown Event (QSE) as one that results from a change in law that permanently shuts down the whole facility or is where the government refuses to allow the facility to commence generation after a period of twenty four months.

150. It shall not be a QSE where the shut-down is in connection with health and safety, security, environmental factors or damage to property. Nor shall it apply where the shut-down is a result of the Generator (or its representatives) not acting to a Reasonable and Prudent Standard or where it arises out of the fault of negligence or breach of the Generator. Neither shall a QSE apply as a result of the government having to comply with a State Aid decision or any other EU or international law.

151. The scope and form of compensation that a Generator may be entitled in the event that a QSE occurs is still being developed and will be provided in due course.

Balancing and Network charges (BSUoS/TLM)

Purpose

152. In June we stated that Generators would be compensated for increases in Balancing Service Use of System (BSUoS) / Residual Cashflow Reallocation Cashflow (RCRC) and Transmission Loss Multiplier (TLM) charges. The purpose of this was to ensure parity with a non-CfD holder who would be able to pass these costs through to the consumer.

Final Position: BSUoS

153. BSUoS charges recover the costs incurred by National Grid to balance the Transmission Network. BSUoS is levied at a flat tariff across Generators and suppliers.

154. RCRC represents any excess or shortfall in cashflow after all BSC Parties have paid their Imbalance Charges, and is redistributed amongst BSC Parties on a scale proportional to their volume of non-interconnector Credited Energy.

155. The Conditions will provide cover for Generators incurring a charge based on the net of total BSUoS and RCRC charges applying to each MWh.

156. Every year, the CfD Counterparty will use published data to set out the average 'Balancing system charge' incurred per MWh in Great Britain for the previous year.

157. For each year, the calculation will first calculate the average actual charges, as follows:

$$= (\text{total BSUoS charges} - \text{total RCRC credits}) / (\text{total qualifying generation for that year (in MWh)})$$

where: 'total qualifying generation' does not include any generation by embedded generators.

158. The CfD Counterparty shall then compare the average 'Balancing System charge' against an indexed value applicable to that year (based on the BSUoS Charge as set out in the Agreement) and calculate an adjustment to the strike price for the following 12 month period. This will be equal to the difference (in £/MWh) between the assumed and the actual amounts.

159. If BSUoS or RCRC has been replaced by an alternative system in future years, there will be a requirement for the CfD Counterparty to produce a report that will produce a figure for the costs of the balancing system consistent with the items as specified in the Balancing Code according to the then current methodology.

Final Position: TLM

160. The Transmission Loss Multiplier (TLM) recovers the cost of the energy lost between generation and supply, due to transmission losses. It is set as a fixed rate for all GB Generators, and applied as adjustments to Metered Output.

161. Every year, the CfD Counterparty shall produce a TLM Charge report. This TLM Charge Report shall be sourced from published data from BSC Company and will set out the

Actual Transmission Loss Multiplier charge determined in accordance with the BSC for BM Units belonging to delivering Trading Units. If TLM has been replaced by an alternative system in future years, a figure for the percentage of losses attributable to Generators which is consistent with the TLM methodology as currently defined will be applied.

162. The CfD Counterparty shall then calculate the difference between the percentages of the 'Actual TLM charge' and the amount of TLM already included in the Strike Price, the 'Initial TLM charge'. A 'TLM Charges Percentage Difference' will then be calculated and any difference will lead to an adjustment to the Strike Price in £/MWh for the following 12 month period.

Curtailment

Purpose

163. In June we said that the CfD will provide some protection against the risk to the Generator of changes in law that limit a Generator's ability to either deliver its output or to receive appropriate compensation where it is curtailed.

Final Position

164. To qualify for such protection the Generator must provide the CfD Counterparty with evidence of the occurrence of a Qualifying Curtailment Event (or events). This evidence must be accepted by the CfD Counterparty (or resolved through the dispute resolution process) before a Generator will be entitled to compensation, which shall be in the form of a lump sum payment or series of payments.
165. A "Qualifying Curtailment Event" will only arise if a change of law is made after the Agreement which results in the transmission system being no longer operated at least in an economical, efficient and co-ordinated manner.
166. To qualify for compensation the Generator will have to show either that it was prevented from making a bid under the Balancing Mechanism in relation to the Facility or that it placed a bid but the operation of the bid-offer regime meant that it did not receive the level of compensation it was entitled to. The Generator may also be entitled to compensation if there is no longer a Balancing Mechanism or it was prevented from making a bid.
167. The calculation of the compensation shall be equal to the lost generation revenue plus any additional costs directly attributable to the curtailment event as well as the reasonable costs of meeting any shortfall in the Generator's Energy Credited Volume as a direct result of such curtailment. Any costs saved or avoided by the Generator and any other income or gains received or made by the Generator relating to the curtailment will be taken into account in the net compensation due.

Termination Events

Purpose

168. The Government's ultimate objective is that low-carbon generation should be built in a timely manner and should operate for the full term of the contract. As such the termination provisions are intended to provide an appropriate and proportionate approach to contract enforcement in order to ensure projects are efficient and deliver value for money.
169. The breaches that could give rise to the CfD Counterparty exercising its right to terminate the contract are those events which are fundamental to the objectives and operation of the CfD Agreement such as the legitimate functioning of the Generator and the efficient and accurate flow of payments. It is not appropriate for a Generator to continue to benefit from the CfD Agreement if it is in default and unable to perform these fundamental obligations. However, some of these breaches may be remediable. As such the Conditions provide realistic and practical remedy periods for certain events in order to offer Generators the opportunity to move back into a position of compliance. This limits the risk faced by Generators.
170. The Government has considered whether termination rights should also be available to the Generator as a result of CfD Counterparty default. The Government's position is that such rights would not be appropriate as the legislative underpinning of the scheme, together with the restrictive purpose of the CfD Counterparty (that is, to enter into CfD Agreements with low-carbon Generators) should provide sufficient comfort to investors that the CfD Counterparty will perform its obligations under the contract..

Previous Position

171. The draft CfD published in August provided for the CfD Counterparty with a right, but not an obligation, to terminate the CfD Agreement in a defined list of circumstances:
 - a. If the Generator failed to satisfy the Initial Conditions Precedent (including within an undefined remedy period);
 - b. If the Generator failed to satisfy the Milestone (including within an undefined remedy period);
 - c. If the Generator failed to satisfy the Further Conditions Precedent;
 - d. Where a Qualifying Change in Law prevents the completion of construction or permanently prevents generation;
 - e. Where the Generator is insolvent;
 - f. Where the Generator fails to pay difference or non-difference payments owed to the CfD Counterparty (including a 5 day and a 28 day remedy period respectively). Where there is a Disruption Event (as defined in the Contract) the cure period will last as long as that event goes on for);
 - g. If the Generator breaches the Transfer provisions in the contract;
 - h. If the Generator breaches its Ownership undertaking;

- i. If any director, officer or other senior manager of the Generator aids, abets, counsels, procures or commits fraud in relation to the agreement;
- j. If the Generator defaults its Credit Support obligations (including a 5 day remedy period);
- k. If the Generator or its Representatives breach its metering obligations (including a remedy period).

172. Where a CfD Agreement is terminated the Generator would be required to pay the CfD Counterparty a Termination Payment upon termination of the contract in order to compensate consumers for their losses on future difference payments from the Generator. Pre-start date termination events, however, would not incur a Termination Payment given that payment flows would not yet have commenced. The Termination Payment formula was set out in Schedule 3 and was a calculation of the net present value of expected difference payments from the Generator to the CfD Counterparty over the remaining life of the contract.

Final Position

Failure to meet the Milestone

173. A termination right remains if the Generator fails to submit its evidence by its Milestone Delivery Date; if it does submit evidence but the CfD Counterparty is not satisfied with it then the Generator has a further ten days to resubmit evidence. This remedy period was undefined in the draft CfD published in August and the Government considers ten days an appropriate length of time given the Generator will be well aware of the deadline before contract signature and have a long lead up time to the Milestone Delivery Date to prepare the evidence required.

Further Conditions Precedent

174. The CfD Counterparty has the right to terminate the CfD Agreement if the Generator does not satisfy the Further Conditions Precedent (Schedule 1 Part B) by the Long Stop Date. The requirements on the Generator to fulfil this includes having in place the appropriate metering equipment and processes (including Fuel Management System Procedures) as well as complying with the maximum capacity adjustment permitted by the Long Stop Date. These requirements are important to satisfy before the Generator can receive payments under the contract as they concern the ability and legitimacy of the Generator to operate under the contract.

Insolvency

175. In consideration of stakeholder feedback the CfD Counterparty will not have a right to terminate if Generator insolvency occurs due to non-payment by the CfD Counterparty. This is justified as in this circumstance the CfD Counterparty is responsible for the breach, where it can be proved that the non-payment of the difference payment triggered the insolvency.

Non-payment by the Generator

176. Where a Generator fails to pay a difference payment to the CfD Counterparty, it will have ten business days from the payment due date to pay the full amount. This has been extended from five working days and is appropriate given the circumstances when the Generator will owe the difference payments to the CfD Counterparty will at times be unpredictable.

Credit Support Default

177. The CfD Counterparty's right to terminate due to a Generator defaulting on its credit support has been revised to be in line with the new collateral provisions (see the 'Credit Support/Collateral' section on page 47). The CfD Counterparty has the right to terminate the CfD Agreement if the Generator has missed its payment due date three times and:
- a. it has not posted the Collateral Sum by the Collateral Posting Date specified in the CfD Counterparty's Collateral Posting Notice (i.e. within ten business days of the Notice); or
 - b. after five business days from receipt of the Collateral Correction Notice, the Generator posts collateral that is less than the Collateral Amount or the Generator has not posted collateral which the Counterparty can draw down; or
 - c. the CfD Counterparty sends the Generator a Posted Collateral Demand e.g. because the Generator has failed to procure the extension of a Letter of Credit, and the Generator does not replace the drawn collateral with Acceptable Collateral within two business days, the CfD Counterparty has the right to terminate.

Metering

178. The draft CfD published in August set out that if the Generator is in breach of its metering obligations, due to its own fault or negligence or that of its Representatives, the CfD Counterparty would have a right to terminate the contract if the breach had not been remedied in accordance with BSC Procedure 27. Clause 11.15(A) also stated that the CfD Counterparty may withhold or suspend CfD a payment if a metering breach occurs which is due to the fault or negligence of the Generator or its Representatives.
179. Further consideration of BSC Procedure 27 has found that it is not a suitable process, , because it could only be applicable where non-compliance was discovered through an inspection by the Technical Assurance Agent (a BSC Agent) and not where the CfD Counterparty (or another party) had identified the non-compliance.
180. This provides a more flexible and risk balanced approach to the metering termination event than was set out in the draft CfD published in August. Further detail on this is provided in the section Metered Output/Metering.

Direct Agreement

Purpose

181. The CfD Conditions aim to provide an incentive mechanism that is suitable for projects that are financed in a wide variety of ways. In line with this aim, the Conditions make a prescribed-form Direct Agreement available to senior secured debt providers.
182. The proposed form of Direct Agreement is incorporated at Annex 3 to the Conditions, and the contractual commitment by the CfD Counterparty to enter into the prescribed form Direct Agreement is included at Condition 71.6(B). Where a Direct Agreement is applicable, it is intended to be entered into by the CfD Counterparty, the Generator and the security trustee on behalf of the secured creditors.
183. The terms of the Direct Agreement provide that the secured creditors have an opportunity to appoint a representative to step into the role of the Generator and/or to permanently transfer the CfD to a new Generator, in circumstances where the CfD Counterparty plans to exercise a right to terminate the CfD, suspend payment under the CfD, or to take insolvency proceedings against the Generator. These rights are also provided to the secured creditors consequent upon acceleration of the debt or the occurrence of an event of default, as the case may be, pursuant to their facilities agreement in respect of the project.
184. The Direct Agreement, and the step-in/transfer rights afforded by it, is intended to strengthen the position of secured creditors in a way which is familiar to the market and legally robust.

Previous Position

185. The draft CfD published in August indicated that a prescribed form Direct Agreement would be available to funders. However, it did not provide drafting of the terms of the Direct Agreement itself or clarity on precisely which funders it would be available to.

Final Position

186. The draft CfD terms published alongside this document provide the full prescribed form Direct Agreement and updated drafting in the Conditions itself that makes it clear with which types of funders the CfD Counterparty will enter into a Direct Agreement (as set out in the cross references set out above).
187. The Direct Agreement will be available to banks/financial institutions (excluding affiliates of the Generator) to whom the rights and benefits of the CfD Agreement are assigned by way of security and who are providing debt financing or refinancing of the Facility secured by at least first ranking security over all or substantially all of the assets of the Generator (including the Facility itself).
188. The full terms of the Direct Agreement are set out in the Conditions. However, key points of which to be aware are as follows:
 - a. a right for the creditors to appoint a representative to (a) step-into the Generator's role or (b) permanently transfer the CfD to a new Generator is provided for in circumstances where (1) the CfD Counterparty plans to exercise a right to terminate, or suspend payment under, the Standard Terms or to take insolvency

- proceedings against the Generator, and where (2) the relevant creditors have given notice accelerating their debt or an event of default has occurred, as the case may be, under their facilities agreement;
- b. pursuant to the Direct Agreement the relevant creditors are provided with a 120 day period to decide whether to step into the CfD. During the decision period, the CfD Counterparty is not permitted to take the relevant enforcement action – we view this time period as appropriate in length for creditors to take the necessary decisions;
 - c. the definition of “Representative” included within the prescribed form Direct Agreement sets out which parties are suitable representatives to step in to the Generator’s role;
 - d. once a right of step-in is exercised, there is a period of three business days for the representative to remedy Generator non-payments and a period of ten business days for the representative to remedy any other outstanding Generator performance obligations. Where this is not complied with (or indeed the creditors opt to not exercise their right of step-in at all) the CfD Counterparty’s enforcement rights under the Standard Terms once again become available to the CfD Counterparty; and
 - e. once a right of step-in has been exercised, or during the 120 day period for deciding whether to step-in, the security trustee also has the option to permanently transfer the CfD to a new Generator. In this circumstance, in-line with the stapling principle under the Conditions more generally, ownership of the Facility itself must also pass to the party to whom the CfD is transferred. In addition, under Clause 9.3 of the prescribed form Direct Agreement certain administrative requirements/notifications are required in respect of the proposed substitute Generator.

Credit Support / Collateral

Purpose

189. The provision of credit support / collateral is a mechanism by which the CfD Counterparty can manage the risk of late and/or non-payment by the Generator against the obligations set out in the contract.
190. The draft CfD published in August provided high level drafting only, and contained a footnote for Generators stating “DECC is considering the appropriate collateral mechanisms including the period of coverage, quality, permitted types and treatment of collateral”.
191. In effect, Clause 31 of the August publication provided:
- a. a broad acknowledgement that Generators would be required to post collateral for a given period when the reference price was likely to be greater than the strike price;
 - b. acknowledgement that collateral would be able to be posted in cash or Letter of Credit (LC) from a qualifying issuer, along with the requirements for posting an LC;
 - c. that in the event of a failure to pay on the behalf of the Generator, or where a letter of credit wasn't replaced, the CfD Counterparty was entitled to make a demand on collateral; and
 - d. a general carve-out for payment disruption events.

Final Position

192. However following feedback this approach has been amended as under the original proposal:
- a. For project-financed Generators, this would have had high cost implications (estimated at 2-3 per cent of total costs) even before any collateral facility has been drawn down on (i.e. for the availability of the facility as needed); and
 - b. For equity-funded Generators, the ability to provide liquid collateral in substantial volumes on request is limited.
193. As a result it was concluded that the original approach could have made the CfD un-attractive or make financing unattainable, undermining the primary aims of the CfD, and ultimately increasing costs to consumers.
194. The principles driving the requirement for the posting of collateral were to:
- a. provide confidence that a Generator would be incentivised to comply with its payment obligations under the Conditions;
 - b. provide protection for consumers from “engineered” termination at times where difference payments were payable by the Generator;
 - c. provide clearly sizeable collateral on day one of the CfD;

- d. provide collateral that can be configured in a way that ensures costs are kept to a minimum; and
- e. not detract from the overall aims of the CfD Agreement.

195. In general when the strike price is above the reference price, a Generator is required to make difference payments to the Counterparty on the payment date. Where a Generator misses a payment date, a ten day cure period is available for the Generator to “make good” on their obligations under the CfD prior to the Counterparty being able to take any enforcement action against the Generator.
196. Under the revised approach to collateral, where a Generator makes a payment during the cure period, the CfD Counterparty will note this “strike” against the Generator but will take no further action. On the second such “strike” in any rolling 12 month period, the CfD Counterparty will issue a notice to the Generator advising them of the breach and notifying them that two strikes have been incurred. On the third such “strike” in any rolling 12 month period, the CfD Counterparty will issue a collateral notice to the Generator requiring them to post collateral equal to £10 multiplied by the expected output (in MWh) of the Facility over the 33 day payment period.
197. The collateral must remain until the Generator is without a “strike” for 12 consecutive months.
198. Collateral will be accepted as cash or an irrevocable standby Letter of Credit (LC) from at least an A-1 rated financial institution (Standard and Poor’s short term rating), or equivalent.

Limited Recourse Arrangements, Undertakings and Acknowledgements

Purpose

199. The draft CfD published in August set out that the liability of the CfD Counterparty under the Draft CfD Terms is limited where the CfD Counterparty's is prevented from meeting the relevant liability due to what has been made available to the CfD Counterparty pursuant to the Supplier Obligation. It also set out the limited circumstances in which the Generator or the CfD Counterparty may transfer its rights and/or obligations under the CfD to another party.

Final Position

200. Following engagement with stakeholders, under the Conditions the CfD Counterparty now undertakes to make requests to the electricity suppliers (using regulations made under the Energy Act 2013) to ensure that it has sufficient funds to meet its payments to Generators under the CfD Agreement.

201. Furthermore the CfD Counterparty now undertakes to: take the steps necessary to issue to and enforce notices on electricity suppliers requiring the provision and/or payment of financial collateral; take such action (including the taking and prosecution of legal proceedings) against electricity suppliers; pursue any electricity supplier which has defaulted in making payment under regulations; and take such action (including the taking and prosecution of legal proceedings) to recover and receive from other sources of funds.

202. The CfD Counterparty will also notify the Generator of any action it is undertaking in relation to any call upon the Electricity Suppliers insolvency reserve fund.

203. Where the CfD Counterparty fails to pay an amount due to the Generator, the Generator is able to pursue certain remedies in relation to any amount owed.

204. With regard to transfers the Secretary of State will have the power under the Act to make transfer schemes to enable the transfer of property, rights and liabilities to a new counterparty. In addition, where a CFD Counterparty ceases to be designated as such, the Secretary of State is under an obligation to transfer (by means of a scheme), the rights and liabilities under CFDs of that counterparty to a new CFD counterparty.

205. The Secretary of State is able to designate more than one Counterparty but only if the Secretary of State considers it necessary to meet one of a number of tests prescribed under the Energy Act 2013. These include ensuring that liabilities under CFDs are met.

206. It is not the intention that there should be more than one counterparty holding different contracts in the long term. However, it is important to retain the flexibility to deal with future scenarios, and if that were the best way to ensure that all payments for all CfDs, whether historical or future, continued to be met, it would be possible to do so. It is not the intention to operate the powers under the Act to make transfer schemes to strand liabilities with a CFD counterparty in circumstances where it is apparent that it would be unable to meet those stranded liabilities, and we take the view that doing so would be likely to be unlawful.

207. It proposed that under regulations, any CFD Counterparty will have the same rights to collect the supplier obligation. In addition, the Energy Act will impose on each CFD Counterparty, a duty to ensure that it exercises its functions to ensure it can meet its liabilities under any CFD to which it is party.

Intellectual Property

Purpose

208. Intellectual Property drafting is incorporated at Condition 70 of the Standard Terms and Conditions. This is designed to ensure that to the extent intellectual property is created pursuant to the Conditions by either party to the CfD Agreement, this is licensed (on a royalty-free basis) to the other party for certain contractually specified permitted purposes.

Final Position

209. The position in the draft CfD published in August has been developed to fully set-out the licensing and cross indemnity position.

210. The key features of this drafting are as follows:

- a. as set out above, licensing of IP to the other party is only provided for in circumstances where intellectual property is created pursuant to the Conditions; and
- b. where such IP is created, licensing is on a royalty-free non-transferable basis and only applies in respect of IP owned by the relevant party or licensed to the relevant party on terms that permit sub-licensing);

211. IP that is licensed in accordance with to the Conditions of the CfD may only be used by the party to whom it is licensed for contractually specified purposes (defined as the CfD Counterparty Permitted Purpose and Generator Permitted Purpose respectively) and broadly speaking relating to fulfilling the CfD and complying with law; and

212. Each party to the CfD Agreement indemnifies the other for instances where use of the indemnifying party's IP leads to the party to whom IP is licensed incurring a loss as a result of breaching a third party's IP.

Generation Tax

Purpose

213. This clause provides for a strike price adjustment mechanism where a 'Generation Tax' has been levied and the CfD holder is unable to 'pass through' that cost to the consumer. This is necessary because whilst a non-CfD holder might be able to pass these costs through to the consumer via the wholesale price of electricity, CfD holders could face these costs whilst not being able to benefit from any increase in the market price, by virtue of holding a CfD.

Final Position

214. If a Generator can demonstrate that it has suffered an increase in cost as a result of a tax on generation it can issue a notice to the CfD Counterparty setting out the evidence for the loss that it believes it has incurred. The CfD Counterparty can also issue a notice to the Generator if it believes a change in tax on Generators has resulted in a gain to the Generator.

215. If the CfD Counterparty receives such a notice and agrees with the Generator's assessment of the impact of the Generation Tax or the CfD Counterparty issues a notice to the Generator, or it is so determined by arbitration or expert determination, the CfD Counterparty shall procure a report from an Energy Consultant which will set out the amount by which a non-CfD holder has been able to 'pass-through' the generation tax; and the amount by which strike prices should be amended to reflect the impact of the tax liability on the CfD holder.

216. The author of the report will be required to disregard any increase or decrease in the operating costs, expenses or revenues of electricity Generators selling into the markets from which the Market Reference Price is derived which has been passed into that price but which is not referable to the Generation Tax Change in Law.

217. In the event that the Generation Tax is reversed then the strike price adjustment will be reversed.

218. Generators will be required to quantify the new tax liability it has incurred as a result of the imposition of the Generation Tax (and provide supporting evidence), and also to demonstrate that other Generators who do not have a CfD have successfully passed some or all of that liability into the wholesale price.

219. In the event that there is a dispute as to whether or not (a) the Generator has been impacted by a generation tax or (b) a dispute as the size of the new tax liability then the Dispute Resolution Procedure as set out in the CfD Agreement will apply.

Fuel Measurement and Sampling (FMS)

Purpose

220. FMS ensures that fuelled renewable Generators only receive payment for that proportion of their output that relates to qualifying, low-carbon generation. It is a process that these Generators will have to undertake on a monthly basis in order to determine the Renewable Qualifying Multiplier, which forms part of the calculation of difference payments under the Conditions.

Previous Position

221. Annex 7 of the draft CfD published in August marked out a placeholder for a FMS Agreement. This section sets out those detailed arrangements.

Final Position

222. We have sought to mirror, where applicable and practical, procedures which already operate under the Renewables Obligation Order, in order to give the renewable energy sector certainty and continuity and in response to overwhelming feedback that this is what the industry wants.

223. Nevertheless, there are differences between the RO and the CfD Agreement, the most obvious being that the CfD Agreement is a bilateral, legal agreement with contractual obligations on both sides. With this in mind, there are differences between the two schemes which sometimes necessitate a different approach and which will be highlighted where appropriate.

224. It is also our intention to ensure that Generators entering into a CfD Agreement comply with the same sustainability requirements as apply to Generators under the RO (now and in the future).

225. The details of the FMS Procedures are set out below.

FMS Procedures

226. Annex 7 of the Conditions contains important definitions, which refer wholly or at least significantly to the agreement of FMS Procedures and/or the calculation of the Renewable Qualifying Multiplier (RQM). Definitions such as 'FMS Exempted Procedures' and 'FMS Exemption Criteria' introduce the potential for some input fuel(s) to be deemed to be wholly renewable. Where this is the case, the Renewable Qualifying Multiplier will therefore be deemed to be 1 (unless a Generator is using 'Qualifying Waste'). It also sets out the 'Full FMS Procedures' which require the Generator to measure fully, sample and test input fuel(s) with the Renewable Qualifying Multiplier to be determined according to agreed, full, FMS procedures.

227. The 'Renewable Qualifying Multiplier' is defined in a mathematical formula, and forms the focus of Part C of this Annex. It sets out the instances where the RQM is deemed and instances where it is calculated using fuelling data gathered and submitted in accordance with the agreed procedures.

FMS Arrangements

228. The FMS Arrangements define the process by which the Generator enters into discussion with the CfD Counterparty to set down the exact methods to be used for the measurement, sampling and testing of its input fuel(s).
229. In reality, every Generator will have to agree 'Full FMS Procedures' before payments can commence under the CfD Agreement, but those Generators that consider themselves 'FMS Exempted Generators', should be able to agree 'FMS Exempted Procedures' in addition to the 'Full FMS Procedures'. This is to ensure that 'FMS Exempted Generators' will be able to fall back on the full procedures if and when they are needed, e.g. when a Landfill Gas Generator needs to burn fossil fuel for ignition purposes. This, in turn, will ensure that 'FMS Exempted Generators' will not need to urgently discuss and agree procedures to be followed when its fuelling arrangements change at short notice, and will ensure a seamless transition without interrupting the accurate determination of the renewable content of its fuel.
230. Eligibility for 'FMS Exempted Procedures' removes the obligation on the Generator to sample and test its input fuel(s) and deems all of its generated electricity to be renewable. The consequence of this is that the 'Renewable Qualifying Multiplier' (RQM) is deemed to be '1', until such time as the Generator informs the Counterparty that Exempted Procedures no longer apply, or that the CfD Counterparty discovers that they should not apply.
231. It is important that there is a clear process to determine how agreement is reached on FMS Procedures. When FMS Procedures have been agreed between the Generator and the CfD Counterparty, an important Further Condition Precedent of the Contract will have been fulfilled.
232. We recognise that FMS Procedures are a dynamic and potentially changeable process, since fuel supply arrangements may change, the configuration of a generating plant may be modified, and advances may be made in measuring, sampling and testing techniques. It is, therefore, essential that there is transparency and an on-going dialogue between the Generator and the CfD Counterparty, when developing the FMS Procedures.

Obligations under the FMS Procedures

233. The procedures set out a number of obligations to be met by the Generator under the CfD Agreement, relating to:
- a. the way in which FMS procedures are carried out;
 - b. the requirement to submit monthly fuelling data (The 'FMS Report') to the CfD Counterparty; and
 - c. the flow of information generally from the Generator to the CfD Counterparty.
234. The annex sets out that the Generator may sub-contract the implementation of agreed measurement, sampling and testing procedures, and that, for instance, laboratory test results ('FMS Data') must be sent to the CfD Counterparty as well as to the Generator. This latter requirement is in some cases a departure from normal procedure under the RO, but is an understandable requirement in any private law bilateral contract, and supports effective monitoring and compliance under the contract.

235. Submission of fuelling data by the Generator to the CfD Counterparty or its agent takes place with the same regularity as under the RO, namely by the end of the second calendar month (M+2) following the month of generation (M). The data submitted refers to a whole calendar month of electricity generation (month M), whereby the 'Renewable Qualifying Multiplier' so calculated is applicable to all billing periods in that month M.
236. Once again, we have sought to replicate procedures already in place under the RO, in order to provide a framework which is familiar and which works.
237. The Generator has a duty to answer promptly any questions the CfD Counterparty has about the way in which it carries out its agreed FMS Procedures. The Generator must report against any relevant sustainability criteria and must supply accurate and reliable fuelling data on a monthly basis. It must inform the CfD Counterparty if a third party it has engaged for FMS functions has failed to comply with any aspect of the agreed procedures.
238. It is the Generator's responsibility to provide accurate information about the sources of its electricity generation, and to be pro-active in informing the CfD Counterparty if circumstances relating to fuelling change. The financial consequences of not respecting fuelling parameters set down in the CfD Agreement, and of minor and more serious instances of non-compliance with agreed FMS Procedures, are designed to encourage an open and on-going dialogue between the Generator and the CfD Counterparty in respect of the determination of how much electricity generated is renewable.

Audits

239. The CfD Counterparty or a suitably-qualified person nominated by it must also be allowed access to the generating station with CfD at least 1 business day's written notice for the purposes of auditing agreed FMS processes at the Facility. To ensure compliance with such access rights, payments from the CfD Counterparty to the Generator will be suspended (without interest) until such time as access is granted.
240. These access rights, while more stringent than those generally agreed under the RO, are again justified by the fact that payments which are envisaged generally to flow from the CfD Counterparty to the Generator, are doing so in the framework of a commercial contract, under which it should be expected that the CfD Counterparty be accorded some reasonable measure of control and supervision.
241. Under the FMS Procedures any Generator who ceases to be eligible for 'FMS Exempted Procedures' must inform the CfD Counterparty immediately, and must implement the 'Full FMS Procedures' which will have been agreed prior to the Start Date.
242. Relevant Generators will also be required to meet the sustainability criteria, in terms of monthly data submission, annual audits, and the consequences of non-compliance brought to light by such annual audits. It is our intention to mirror as closely as possible the procedures in place under the Renewables Obligation, and to monitor compliance with the same RO sustainability criteria.

RQM Calculations

243. The Renewable Qualifying Multiplier, as defined at the beginning of the procedures, is calculated for each calendar month of electricity generation, and is applied to any 'Settlement Units' falling in that calendar month.

244. It should be noted that different applications of the RQM will be applied, i.e.
- a. deemed at 1 if the Generator is 'FMS Exempted';
 - b. deemed at 1 or at the 'Assumed RQM' if the Strike Price is below the Market Reference Price and the Generator breaches Relevant Fuelling Criteria, or breaches FMS Procedures, or fails to submit the 'FMS Report'; and
 - c. deemed at (currently) 0.5 if the Generator is using 'Qualifying Waste' and the CfD Counterparty accepts such deeming.
245. If none of the above apply, then the RQM will be determined, firstly by using actual fuel data if that data has been submitted; and secondly by using the last known RQM if no data is available; or using any other mutually agreed value or the 'Assumed RQM' stated in the CfD Agreement, if no actual fuel data is available and there is no last known RQM or in any other circumstance agreed.
246. In addition to the RQM calculations above, there will or may be revisions to RQM values particularly but not exclusively when actual FMS data is 'truing-up' provisional values which may have been a last known RQM, when an 'Assumed RQM' had been used, or when a value has been mutually agreed on a Billing Statement some two months previously.
247. Where breaches of Relevant Fuelling Criteria or of Generator's FMS obligations have occurred, adjustments may also be made to the RQM.
248. It should be noted that where an 'Exempted Generator' is no longer 'Exempt', or a 'Qualifying Waste' no longer qualifies, or where the CfD Counterparty has deemed the RQM at 1 or at the 'Assumed RQM' and wishes to correct that, actual FMS data will adjust the value used in earlier Billing Statements.
249. In situations where the Strike Price is lower than the Market Reference Price, CfD Counterparty must be protected from accidental or deliberate actions by the Generator which lower the RQM and thereby reduce the level of payment differences from the Generator to the CfD Counterparty. Such actions could include breaches of 'Relevant Fuelling Criteria', breaches of FMS Procedures, and failure to provide the 'FMS Report' two months after the relevant generating month.
250. Under such circumstances, the CfD Counterparty may, at its discretion, apply a RQM of 1 or the 'Assumed RQM' in the CfD Agreement.

Municipal Waste

251. As is the case under the RO, a Generator using unprocessed, municipal Waste, who is able to provide the CfD Counterparty with sufficient supporting documentation from, for instance, a Local Authority, that the fossil fuel derived content of its Waste is unlikely to exceed 50 per cent, may prefer to deem the renewable content rather than have it sampled and tested.
252. If that is the case, the CfD Counterparty must decide whether to accept the evidence supporting the Generator's request and agree to deem the renewable content at 50% (currently), and the RQM therefore at 0.5, or to insist on sampling and testing.

253. The flexibility granted to the CfD Counterparty in respect of varying the level at which the renewable fraction is deemed is consistent with the RO, where the renewable element may at some point in the future be lowered to 40 per cent and then 35 per cent.

Fuelling Criteria

254. Regulations under the Energy Act 2013 will set out technology definitions which will determine whether a particular generating station is an eligible Generator as defined. The CfD Agreement for its part sets out any fuelling criteria which apply in relation to the technology which is being allocated a CfD. Annex 7 deals with the consequences of not meeting those fuelling criteria on an on-going basis, once the CfD is operational.

255. Where payments are due to be made under the CfD from the CfD Counterparty to the Generator, the first failure to meet fuelling criteria may result in a multiplier of 0.9 being applied to the 'Renewable Qualifying Multiplier', the second failure in a multiplier of 0.8 being applied, and the third in the 'Renewable Qualifying Multiplier' being reduced to zero, meaning that the third and any subsequent infringement in any 12 month rolling period will result in no electricity generation for the month in question being eligible for payment.

256. In practical terms, and by way of example, a first instance of non-compliance by a Biomass Conversion plant which has fuelled its plant during a calendar month with 85 per cent biomass (below the 90 per cent threshold), and has used a small quantity of fossil fuel only for 'Permitted Ancillary Activities' which did not result in electricity generation, would see its RQM of 0.85 (85 per cent) reduced to 0.765 after application of the 0.9 multiplier (0.9×0.85). If the Generator uses 83 per cent biomass in the following month, the RQM will be reduced to 0.664 (0.8×0.83). A third infringement, five months later, of any of the 'Relevant Fuelling Criteria', would result in no electricity generated for the month of that third breach being supported by the difference payments under the CfD.

257. This system of progressive sanctions for non-compliance is intended to avoid a 'cliff-edge' scenario whereby a Generator could lose all support as a result of a one-off fuelling error, but to ensure that there is sufficient incentive for contractual fuelling requirements to be respected. Again, there are similarities with the RO scheme, where, for instance, similar fuelling misdemeanours could result in dropping to a lower band and payment of less ROCs for electricity generated. Where payments are due to be made however from the Generator to the CfD Counterparty, even for a first offence, failure to meet fuelling criteria may elicit a deemed 'Renewable Qualifying Multiplier' of 1, in other words payment back to the CfD Counterparty will be calculated on 100 per cent of the Metered Output for the month, as already mentioned in these notes and detailed in paragraph 3.2 (A) of Part B of Annex 7. This is intended to head off the otherwise perverse incentive, which would exist when electricity market prices are higher than the relevant strike price, to fuel for instance a biomass plant with unusually high quantities of fossil fuel in order to reduce the RQM and any payments back to the CfD Counterparty.

Failure to Comply with FMS Procedures

258. Whereas breaches of fuelling criteria incur financial adjustments which are irreversible, failure to comply with FMS Procedures incurs a suspension of payments to the Generator, until such time as any instance of non-compliance is remedied.

259. Minor or accidental breaches, which do not have a material effect on the RQM, may incur adjustments to the RQM in exactly the same manner as detailed above in relation to

paragraph 5, i.e. a 'three strikes regime'. Other, more serious breaches, however, may result in the RQM being immediately reduced to zero.

260. Since the CfD Counterparty recognises that the majority of breaches of FMS Procedures are likely to be involuntary lapses, the RQM will be recalculated once the breach is corrected and payments will resume. No interest will be paid on such payments which are effectively withheld, in order to retain an incentive to follow procedures and to correct promptly any non-compliance with those procedures.

Submission of Data

261. The submission of data relating to input fuel(s) is critical in order to be able to determine the 'Renewable Qualifying Multiplier', and failure by the Generator to deliver the required data in a timely manner, which could potentially frustrate the calculation of the RQM, may trigger a suspension of difference payments, with payments to resume (without compensatory or default interest), once data is made available and the actual RQM can be calculated. Failures to deliver FMS Reports are handled therefore in exactly the same way as more serious breaches of FMS Procedures.

Annex A: Differences between Investment Contracts and generic CfD

As referred in paragraph 14, Investment Contracts will align with the CfD Standard Terms and Conditions in so far as this is possible. The following table outlines some areas in which the Conditions to be incorporated into Investment Contracts will differ from the CfD Standard Terms and Conditions and the nature of these changes.

Investment Contract Term	Description
Phasing	<p>Phasing under Investment Contracts will adopt broadly the same policy as the enduring regime, however:</p> <p>Phasing under Investment Contracts will differ in the following 3 ways:</p> <ul style="list-style-type: none"> • The project may comprise up to 5 phases • The Generator must deliver 20% of total project capacity in the first phase • All phases will be required to be within the same Crown Lease Area.
Counterparty	<p>Under the Investment Contract, the counterparty will be the Secretary of State until the Investment Contract is transferred to a designated CfD Counterparty. This is necessitated by the early nature of the FID Enabling for Renewables scheme.</p>
Conditions Precedent	<ul style="list-style-type: none"> • The Investment Contract contains additional Conditions Precedent. The Contract as a whole is conditional on being laid before Parliament as required by the Energy Act. The Start Date for payments is conditional on State Aid approval being received. <p>The Investment Contract also provides options for Generators, in the event that there is a deviation from DECC's expected timelines with regard to obtaining State aid approval. These include:</p> <ul style="list-style-type: none"> • Generators may terminate the Contract, during August 2014 or August 2015, if State Aid clearance has not been received by then. • Projects that terminate because of a delay in State Aid clearance will not be considered to have made their "choice of scheme". • Generators that stay in the Investment Contract may extend their Target Commissioning Window (thus deferring the Longstop Date for delivery of Generator conditions precedent) and defer their Milestone Delivery Date by the number of days elapsed between 1 August, 2014 and the date State Aid approval is received. • The key value terms agreed in the Investment Contract are unchanged by any extension of the Target Commissioning Window following delay in State Aid approval.

Annex B: Metered Output Arrangements

1. In accordance with their trading licence, Generators (excluding private-wire generators) are required to be party to the Balancing and Settlement Code (BSC), which defines their public trading arrangements on the transmission and distribution networks (i.e. together defined as the Total System).
2. To participate in the CfD scheme, all public-trading Generators must install a BSC registered and compliant metering system (unless a metering dispensation has been approved). Once registered with the BSCCo, their metering system will be assigned a Balancing Mechanism Unit/s (BMUs). These BMUs will capture and record net Metered Output for each Settlement Unit.
3. Net Metered Output volumes are collected at the BSC Boundary Point (i.e. the point at which the Generator's metering system connects to the Total System) and are the product of gross metered output less all gross metered inputs (i.e. input electricity). Once adjusted for electrical losses on the distribution network (i.e. the Line Loss Multiplier), it is known as BM Unit Metered Volume.
4. This BM Unit Metered Volume is further adjusted by the BSCCo for transmission electricity losses as appropriate, to derive the final volume used in CfD Settlement. This final volume is known under the contract as Loss Adjusted Metered Output (LAMO).
5. For CfD purposes 'input electricity' is defined as:
 - a. Electricity produced by the Generator, used in its operations, including essential services;
 - b. Electricity imported by the Generator from the Total System used in its operations;
 - c. Standby generation electricity used on site
6. To calculate Metered Output the following base formula is applied:

Metered Output per Settlement Unit = LAMO

Where:

LAMO

= BM Unit Metered Volume x TLM

7. Two additional multipliers are added to the Metered Output calculation, where applicable:

- a. The Renewable Qualifying Multiplier (RQM) is applied to those technologies which may at some point be fuelled with fuels containing variable renewable content or where there is a possibility that fossil fuels could contribute to electricity generation. The RQM can be applied with or without the CHPQM. The RQM is only applied to baseload technologies

$$\text{Metered Output per Settlement Unit} = \text{LAMO} \times \text{RQM}$$

- b. The Combined Heat and Power (CHP) Qualifying Multiplier (CHPQM) is applied to CHP generation stations in accordance with the CHPQM Calculation Methodology outlined in the CfD Standard Terms. The CHPQM is only applicable to baseload technologies

$$\text{Metered Output per Settlement Unit} = \text{LAMO} \times \text{RQM} \times \text{CHPQM}$$

Specific Metering Arrangements - Finalised

8. DECC has published detailed metering arrangements for a specific set of generation types. A summary has been provided below:
- a. Embedded Exemptible Generators – Metered Output will be calculated using the base formula above. However, to support the participation of embedded Generators changes to the BSC code will be made (through CfD Regulations¹⁸) to obligate Suppliers to register an Additional Balancing Mechanism Unit when entering into market supply agreements with a CfD-supported Generator. This mechanism will ensure that the Generator’s Metered Output is kept distinct and separate for CfD settlement.
 - b. Private Wire Generators – Metered Output will be calculated using the base formula for CfD settlement purposes. However, there are several distinct differences:
 - i. Generators will need to (or may engage a third-party to) provide their gross metered output and gross metered input data volumes to the CfD Counterparty for settlement. Irrespective of their chosen delivery method, ultimate responsibility for the provision of data will remain with the Generator;
 - ii. Specific rules on data collection and data quality must be adhered;
 - iii. Generators may choose the frequency (i.e. daily or weekly) by which they provide metered data volumes for settlement; and
 - iv. Loss adjustment calculations will be applied by the CfD Settlement Services Provider.

¹⁸ Draft regulations will be consulted with stakeholders in Quarter 1, 2014.

9. Note - these arrangements will not apply to private wire generators selling all of their Metered Output to a licensed BSC Party. In this case, the output would be deemed as “owned” by the BSC Party and be treated as if the Metered Output was generated by that party.

Specific Metering Arrangements – Under Development

10. Metering arrangements for the following types of Generators are still under development, although the intention of the Government’s policy for each is noted below:

Phased Projects

11. DECC is aware that a number of complexities exist in the development of phased projects which may impact on the way in which the project and each of its phases are metered. As such, we are considering whether it may be necessary to agree the detailed metering arrangements on a project-by-project basis.
12. A set of high level metering principles for phased projects will be developed and tested with industry in early 2014. This document will act as a technology-specific Conditions Precedent, outlining the minimum requirements/system abilities that must be met to ensure the integrity of the Developer’s metering system, for CfD settlement purposes, is maintained. It is also likely that at least one of the principles will look to maintain consistency with the calculation of Metered Output.

Dual Scheme Facilities

13. This refers to Generators with existing capacity under the Renewables Obligation scheme, and additional (but separate) capacity under the CfD scheme. Metered output will be calculated using the generic LAMO formula for CfD settlement purposes, and where applicable the RQM and/or CHPQM will be applied.
14. However, due to the complexity associated with aligning the requirements of the RO and CfD schemes, specific metering arrangements are being designed for Generators that fall under this policy.
15. Government is currently testing draft policy with the Department’s CfD Expert Group on Metering with the aim of finalising the policy in early 2014.

Multiple Technology Sites

16. This refers to a Developer’s investment decision to build more than one generating station utilising different technologies on the same site, where the associated grid connection agreement supports this arrangement.
17. Developer’s looking to undertake this type of arrangement and seeking CfD support for each generating station, will need to complete separate CfD applications (which met the applicable eligibility criteria for the relevant technology) and sign separate Standard Terms.
18. All (or some – together equalling more than one generation station sharing a grid connection) CfD-supported generation stations built on the same site will be treated under this policy for metering purposes.

19. A draft metering policy will be tested with the Department's CfD Expert Group on Metering in early 2014. It is likely that the approach taken will align with Dual Scheme Facilities metering policy.

Annex C: RQM and CHP Calculation Methodology

RQM Methodology

1. The 'Renewable Qualifying Multiplier' only applies to fuelled generating stations, and will be applicable if it is expressed as such in the CfD Agreement.
2. There are four different ways in which a RQM can be determined, which are, in order of application:-
 - a. Deemed, if applicable, in accordance with clause 3 below (if an FMS Exempted Generator);
 - b. Calculated according to fuel data received following FMS Procedures;
 - c. If neither of the above apply, by application of the last-known RQM;
 - d. If none of the above apply, by a deemed value agreed between the contractual parties;
3. It is fundamentally important that there is absolute clarity on how the CfD Counterparty arrives at the RQM, which is a vital element in the calculation to determine the amount of generated electricity eligible for payment.
4. The CfD Agreement will set out in which circumstances the renewable content of fuels is to be deemed, rather than determined through FMS Procedures.
5. The first instance where deeming is possible is where a 'FMS Exempted Generator' is understood to be generating electricity from 100% renewable fuel, such as a Dedicated Biomass plant using 100 per cent uncontaminated biomass and where no fossil fuel is used for Ancillary Activities to generate electricity. The renewable content is deemed to be 100 per cent and the 'Renewable Qualifying Multiplier' 1.
6. The second instance is where a Generator fuels its generating station with untreated municipal waste and wishes to deem the renewable content rather than sample and test the waste. Here, just as under the RO, the CfD Counterparty recognises the impracticality of sampling and testing some forms of waste, and may, if adequate supporting documentation is provided, be willing to deem the renewable content (currently at 50 per cent) and therefore the 'Renewable Qualifying Multiplier' (at 0.5). The flexibility granted to the CfD Counterparty in respect of lowering or raising the level at which the renewable fraction is deemed is to allow the CfD Counterparty to align itself with the RO, where the renewable element may at some point in the future be lowered to 40 per cent and then 35 per cent. Flexibility is in fact granted on both sides, since the CfD Counterparty is not obliged to deem at all, at any level, and the Generator is not obliged to accept the deemed percentage offered either. If the CfD CfD Counterparty fixes the renewable element at an unacceptable level, or insists on supporting documentation which the Generator is unwilling or unable to provide, the Generator may prefer to trust its FMS procedures instead, however great the inconvenience.

CHP Calculation Procedures

7. CHP Calculation Procedures only apply if referenced in the applicable CfD Agreement.

Definition

8. The definition of 'CHPQA' refers to the Combined Heat and Power Quality Assurance Standard, to which CHP plants will need to be accredited, whether partially or fully qualified, in order to be eligible for the CfD. Accreditation is also necessary in order to request and obtain the 'CHPQA Guidance Note 44 Certificate', which is itself necessary for CfD payment purposes in that it contains the 'CHP Qualifying Multiplier'.
9. CHP plants will need to maintain their CHPQA certification annually once operating and for the duration of any CfD offered in order to continue to receive support. In respect of Dedicated Biomass and Energy from Waste plants, we propose to offer support under the CfD on the proportion of their metered electrical output assessed by the CHPQA Standard to be Qualifying Power Output (QPO) only, i.e. the portion of electrical output that can be considered 'good quality', and this 'good quality' is expressed as a decimal fraction on the GN44 Certificate as the 'CHP Qualifying Multiplier'. This is to ensure that support is provided for genuine CHP projects only, in line with our decision not to support electricity-only dedicated biomass and in line with the requirements of the new Energy Efficiency Directive.
10. For any plants using technologies such as Advanced Conversion Technology with CHP and Anaerobic Digestion with CHP, guarantors will be paid on the basis of Total Power Output (TPO) rather than QPO, so Annex 6 will not apply to these two technologies. This is due to the fact that we are offering the same strike price for ACT and AD plants, irrespective of whether they are CHP plants or not, with the effect that any linkage to the QPO would simply prevent such plants coming forward with CHP when we do in fact intend to incentivise CHP generation through additional revenue for some or all of the heat element of their generation under the RHI scheme.
11. The 'CHP Guidance Note 44 Certificate', which provides the 'CHP Qualifying Multiplier' for payment purposes, is required annually from the Start Date in the case of Energy from Waste with CHP. For 'Dedicated Biomass with CHP' however, mindful that any CHP plant could lose heat customers through no fault of its own, which in turn would result in a lower QPO and reduced CfD support, we have introduced a safeguard in that payments will be made by the CfD Counterparty for the first five years of the CfD against the GN44 certificate issued on the basis of the plant's 'F3' design submission. Subject to a first year operational audit, this effectively 'fixes' the QPO for the first five years for Dedicated Biomass and removes considerable uncertainty for investors and Generators themselves. Thereafter, i.e. from year six onwards, Dedicated Biomass falls into line with Energy from Waste and is paid on the basis of the QPO recorded on the annual operational GN44 Certificate.

CHP Qualifying Multiplier

12. The 'CHP Qualifying Multiplier' is expressed as a decimal fraction on the 'CHPQA Guidance Note 44 Certificate' and is applied, in the case of Dedicated Biomass and Energy from Waste plants, to the 'Loss Adjusted Metered Output' of a plant (in addition to the RQM) to determine the amount of electricity generated eligible for support.

© Crown copyright 2013

Department of Energy & Climate Change
3 Whitehall Place
London SW1A 2HD
www.decc.gov.uk

URN 13D/334