



Department
of Energy &
Climate Change

Electricity Market Reform – Contracts for Difference

Consultation on changes to the CFD Contract & CFD Regulations

URN: 15D/092

March 2015



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For further information on this consultation, contact:

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The consultation can be found on DECC's website:

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

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General information

Purpose of this consultation:

The Government is seeking views on proposed amendments to the Contract for Difference and Electricity Market Reform secondary legislation, are intended to apply to future (Summer 2015 onwards) CFD allocation rounds.

Issued: 9 March 2015

Respond by: 20 April 2015

Enquiries to:

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Consultation reference: URN: 15D/092 – Electricity Market Reform – Contracts for Difference Consultation on changes to the CFD Contract & CFD Regulations

Territorial extent:

Some of the sets of Regulations governing Contracts for Difference formally extend to the whole of the United Kingdom. However, in practice the Contract for Difference regime currently extends to Great Britain only.

How to respond:

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Electronic responses should be emailed to the above address.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/electricity-market-reform-contracts-for-difference-consultation-on-changes-to-the-cfd-contract-cfd-regulations>

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator
3 Whitehall Place
London SW1A 2AW
Email: consultation.coordinator@decc.gsi.gov.uk

1. Executive Summary

1. The EMR programme went live in August 2014, with the implementing secondary legislation coming into force and the independent EMR delivery bodies becoming fully designated and operational. Subsequently, the first Capacity Market auction was held in December 2014 with the first Contracts for Difference (CFD) allocation concluding in March 2015.
2. This consultation covers a number of proposed policy changes that would require changes to EMR's secondary legislation to implement. These changes are intended to apply to future (Summer 2015 onwards) CFD allocation rounds. For the proposed legislative changes, the main instruments affected are the Contracts for Difference (Allocation) Regulations 2014, the Contracts for Difference (Standard Terms) Regulations 2014 and the Contracts for Difference (Definition of Eligible Generator) Regulations 2014, however other EMR secondary legislation may be impacted dependent of final policy positions post consultation.
3. This consultation also includes proposed changes to the CFD contract. These changes cover:
 - Negative pricing
 - Unincorporated joint ventures
 - Minor, technical or clarifying amendments

Following consultation and review, these amendments will be incorporated into the CFD to be used in the next Allocation Round.

4. Following the close of the consultation, responses will be analysed before final decisions are set out in a Government response. We intend to publish the Government response when the amending secondary legislation is laid in Parliament, which we expect will be in summer this year (2015).
5. The changes set out in the consultation are focused on refining the CFD framework, not making fundamental changes to it. We expect to consider more substantive, long-term changes to the regime later in the year, with a view to potentially applying them to subsequent rounds.

2. Overview of Electricity Market Reform (EMR)

6. The Government's reforms to the electricity market have been designed to drive up to £100bn of private sector investment in our electricity infrastructure between 2014 and 2020. Securing this investment will help to deliver on the Government's objectives for the electricity market:
 - maintaining security of supply, ensuring that the lights will stay on;
 - making progress towards our decarbonisation and renewables targets; and
 - ensuring that consumers pay a fair price for low carbon electricity.
7. EMR will support a range of forms of low carbon generation and thus diversify our domestic energy supply, whilst helping to improve our energy security and reduce reliance on energy imports. This will help to avoid blackouts, whilst also protecting consumers against global spikes in fossil fuel prices.
8. EMR will also ensure that the UK remains a leading destination for investment in low carbon electricity – boosting our economy and generating skills, expertise and hundreds of thousands of jobs in this sector.
9. Further information on the objectives and benefits of EMR can be found on the DECC website.¹

The EMR framework

10. This section provides an overview of the framework which has been put in place to allow the new arrangements to operate. This includes:
 - The legal framework: The Energy Act 2013 provides the Secretary of State with the powers needed to implement the reforms. The Secretary of State has exercised powers through secondary legislation (statutory instruments known as regulations), in rules, in an Allocation Framework and also through code and licence modifications. Therefore, the suite of EMR implementing legislation contains various instruments which must be considered together in order to get a complete picture of how the reforms operate.
 - The Levy Control Framework (LCF): The LCF sets annual limits on the overall costs of all DECC's low carbon electricity levy-funded policies to control public expenditure paid for through consumer energy bills. The LCF was extended to 2020/21 specifically for low carbon electricity policies to inform decisions on new mechanisms.

¹ <https://www.gov.uk/government/policies/maintaining-uk-energy-security--2/supporting-pages/electricity-market-reform>

- The institutional framework: As well as the Government, the organisations involved in the delivery of CFDs include existing bodies such as Ofgem; the System Operator, National Grid; ELEXON, as well as a new institution: the Low Carbon Contracts Company (LCCC).
- EMR supporting measures: The reforms will work alongside other Government energy market measures, including an Emissions Performance Standard to limit emissions from newly built fossil fuel power stations, the Carbon Price Floor, and a package of reforms to encourage market liquidity and new entrants.

11. Each of these areas is discussed in more detail in the *Implementing EMR* publication, published June 2014².

Contracts for Difference (CFDs)

12. One of the mechanisms created through the reforms provides long-term price stabilisation to incentivise investment in low carbon generation – Contracts for Difference (CFDs). CFDs will help to ensure that we secure the necessary investment in low carbon electricity generation.
13. A CFD is a private law contract between a low carbon electricity generator and the Low Carbon Contracts Company (LCCC), a Government-owned company. A CFD holder is paid the difference between the ‘strike price’, a price for electricity reflecting the cost of investing in a particular low carbon technology, and the ‘reference price’, a measure of the average market price for electricity in the GB market. It gives greater price stability to electricity generators by reducing their exposure to volatile wholesale prices, whilst protecting consumers from paying for higher support costs when electricity prices are high. In this way, CFDs provide efficient long-term support for all forms of low carbon generation. Full background and details on how CFDs are intended to operate, including the detail of contract terms and conditions can be found on the Government website.³
14. The cost of CFDs will be met by electricity consumers via the supplier obligation, a levy on electricity suppliers.
15. The process for allocating CFDs will be overseen by the EMR Delivery Body, National Grid, who will notify the LCCC of the projects that have been successful in an allocation round. The LCCC will then offer a CFD based on a set of standard terms, with some limited scope to make minor and necessary modifications to these terms. The Government retains a power to direct the LCCC to enter into CFDs outside of these procedures.

² See pages 16-23 at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324176/Implementing_Electricity_Market_Reform.pdf

³ <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

CFD Regulations

16. The necessary powers to introduce Contracts for Difference can be found under Part 2 of the Energy Act 2013⁴.
17. Subsequent to the Energy Act 2013 receiving Royal Assent in December 2013, five statutory instruments were drafted forming the implementing secondary legislation for CFDs. These entered into force in August 2014 and are listed below:
 - a) *The Contracts For Difference (Allocation) Regulations 2014*⁵
 - b) *The Contracts For Difference (Definition of Eligible Generator) Regulations 2014*⁶
 - c) *The Contracts For Difference (Standard Terms) Regulations 2014*⁷
 - d) *The Contracts For Difference (Electricity Supplier Obligations) Regulations 2014*⁸
 - e) *The Electricity Market Reform (General) Regulations 2014*⁹
18. In addition to the above, a further instrument, *The Power Purchase Agreement Regulations 2014*¹⁰, came into force in October 2014. Further draft amendments to a), d) and e) in the list above were laid before Parliament in January / February 2015 and are awaiting Parliamentary approval at the time of publication.
19. The proposed policy changes in this document principally impact the first three regulations named in the list above, however, the others may be affected depending on the final policy position post consultation.

EMR Evaluation

20. There is an on-going independent external evaluation of EMR. The evaluation, which began in October 2014, is looking at processes as well as the extent to which the early outcomes of key mechanisms are supporting policy objectives. The evaluation will deliver its final report in summer 2015. Therefore, this external evaluation has not provided any conclusions which have informed the content of this consultation.

Next steps

21. Following the close of the consultation, we will analyse responses and set out final decisions in a Government response. We intend to publish the Government response when the amending secondary legislation is laid in Parliament, which we expect will be in summer this year.
22. The response to the consultation will set out the decisions the Government has taken and provide a summary of the views expressed. This document will be published on the www.gov.uk website.

⁴<http://www.legislation.gov.uk/ukpga/2013/32/contents/enacted/data.htm>

⁵<http://www.legislation.gov.uk/uksi/2014/2011/contents/made>

⁶<http://www.legislation.gov.uk/uksi/2014/2010/contents/made>

⁷<http://www.legislation.gov.uk/uksi/2014/2012/contents/made>

⁸<http://www.legislation.gov.uk/uksi/2014/2014/contents/made>

⁹<http://www.legislation.gov.uk/uksi/2014/2013/contents/made>

¹⁰<http://www.legislation.gov.uk/uksi/2014/2511/made>

3. CFD Contract Changes

23. Since publication in August 2014 the CFD contract has remained under review in order to ensure that its drafting and implementation are consistent with the policy previously published and consulted upon by DECC. The proposals that follow should be read in conjunction with the amended CFD Contract documents published alongside this consultation.
24. The CFD Contract is composed of two elements, the CFD Agreement and the CFD Standard Terms and Conditions. The CFD Agreement is the document that a successful Generator will sign and contains project-specific information, while the CFD Standard Terms and Conditions remain consistent across all projects. There are also a number of variants to the CFD Agreement drafted for specific circumstances, in particular phased offshore wind projects ('Phasing Agreements') and Private Network Generators ('Private Network Agreements').
25. A key element of the structure of the CFD regime is the certainty presented by the terms that are offered at the time of allocation. The revision of the CFD contract terms offered by the LCCC following any future Allocation Round will not alter the terms that have already been entered into by CFD Generators in previous rounds.
26. Separately, the existing terms permit the LCCC to propose amendments to these existing signed CFD contracts. Certain of the amendments proposed below may be put forward for this process, constrained by the requirements by the CFD Contract, though there is no obligation on the LCCC to do so.

Unincorporated joint ventures

Background

27. A key design consideration within the CFD is the relationship that exists between the LCCC, as the body responsible for administering the CFD Contract, and the project that is to receive support. Any given CFD represents a significant sum of money over its life, whatever its Strike Price, and the simplest means of assuring comfort and security (for both the Generator and the LCCC) is to provide clarity on the rights, responsibilities and liabilities that arise under it.
28. To this end, the existing CFD Contract anticipates that a single party (i.e. the Generator), will sign the CFD Agreement with the LCCC. Under this assumption, this sole party should be capable of fulfilling all of the obligations as the sole holder of the generation licence and owner of all other assets relevant to the project and necessary for compliance with the CFD terms.
29. DECC is aware that certain projects may choose to operate under different structures whereby the rights and obligations relating to the CFD contract are separated out across different parties. Such arrangements may arise for a variety of reasons and are termed unincorporated joint ventures (UJVs) for the purposes of the proposals that follow.

Proposals

30. In order to ensure that the CFD is workable for projects structured as a UJV, the proposed CFD Contract now includes an additional CFD Agreement in the form of a 'UJV Agreement' that contains a number of alterations to the functioning of the remainder of the CFD Contract.
31. Due to the potential for separation of various assets, and any subsequent division of liabilities, a number of UJV-specific changes are required to ensure that the CFD functions as intended. Below is a summary of the principal changes to the standard terms of the CFD Contract proposed for UJVs.

General Joint and Several Liability

32. The UJV Agreement ensures that all liabilities normally held by a sole generator are held jointly and severally by each party to the UJV. In the event that one party of the UJV fails to comply with its obligations under the contract, all parties may be held responsible.
33. Whilst it is the policy intent to enable UJV participation, DECC considers that it is equally important that the LCCC, acting always to minimise cost to consumers, has certainty that it is able to hold all relevant parties to account in the event that the terms of the CFD are breached.

UJV Representative

34. The parties to the UJV shall appoint one representative (the UJV Representative) which shall have the full authority to bind all the parties to the UJV for the purposes of the CFD Agreement. In addition, the rights and powers of the parties to the UJV may only be exercised by the UJV Representative and may not be exercised by any other party to the UJV. Furthermore, the UJV Representative shall be the only party which can serve and receive notices on behalf of the UJV for the purposes of the CFD Agreement.
35. This concept is intended to provide the LCCC with certainty with respect to its dealings with the parties to the UJV in relation to the CFD Agreement.

Force Majeure

36. Force Majeure protection in the CFD provides flexibility to developers such as extensions of key deadlines, such as the Milestone Delivery Date and the Target Commissioning Window. The proposed amendments to the FM provisions ensure that UJVs receive an equivalent level of protection to a developer that signs the CFD as a single party.
37. The UJV Agreement modifies the definition of Force Majeure, to ensure that no party to the UJV has the capacity to prevent the event leading to the FM event. This amendment has been introduced to mitigate the risk of a single UJV party allowing for an FM event to occur, even though it had the opportunity to intervene and prevent it.

Termination

38. In order to ensure greater compatibility with the structure of a UJV, the UJV Agreement expands the conditions relating to Termination to allow for such Termination Events to be triggered by the actions of a single UJV party.
39. As a result, the LCCC will have the right to terminate the CFD if, for example, only one of the UJV parties were to go into insolvency or where an individual UJV party is responsible for not complying with a condition which has a termination right attached, such as the Metering Access Right. Equal termination terms, irrespective of operating structure, are critical in the CFD achieving an equivalent balance of risk and reward for all developers.

Representations and Warranties

40. In order to better reflect the nature of a UJV operating structure, the UJV Agreement amends certain Representations and Warranties so that the provisions refer to each individual UJV party. For example, the Agreement Date representation of “status” has been amended to ensure that it recognises that the contract may be applicable to multiple parties.
41. Other Warranties retain the concept of a single “Generator” because the obligation applies to all UJV parties collectively. DECC considers that certain Warranties, such as those in relation to the ownership of the Facility and the holding of correct permits and authorisations, should apply to all UJV parties.

Billing and Payment

42. The Billing and Payment provisions are amended so to ensure that the UJV Representative is nominated to receive payments. This will provide that the payment process remains unhindered. DECC expects that the UJV parties should resolve this issue amongst themselves, and nominate an appropriate party to receive payment, rather than the LCCC having to make multiple payments. This process would be mirrored for when payments are flowing from the Generator to the LCCC.
43. In the event the nominated party for receiving or making payments fails to fulfil its payment obligations, the liability is shared across all UJV parties. Similar to the provisions relating to Termination and Force Majeure, any inconsistency in treatment of generators relating to the fulfilment of payment obligations would constitute a shift in the risk and reward apportionment of the CFD, and that maintaining this balance is critical objective for DECC.

Change in Law

44. In the existing CFD Contract, Change in Law compensation would not be paid if that change had been deemed to be foreseeable by the Generator. In order to make this provision compatible for developers operating as part of a UJV, it has been necessary to extend the test of foreseeability so that it applies to any and all of the UJV parties.
45. DECC considers that this expansion mitigates the risk that the ignorance of a single UJV party leads to the project being granted Change in Law compensation.

Disputes

46. Similar to the payment provisions, the proposed CFD drafting requires that only one party, the UJV Representative, be responsible for the submission of dispute notices (and conducting the resulting dispute process). DECC considers that providing UJV parties with the responsibility of organising themselves for the purposes of Dispute proceedings will support the unhindered operation of the CFD Dispute process and ensure certainty for the LCCC on the joint nature of a dispute.
47. Further, DECC considers that by ensuring that a single UJV party would be the point of contact during Dispute proceedings it will make it less onerous for the LCCC to effectively manage the process.

Directors' Certificate

48. The provisions around Directors' Certificates have also been modified to ensure they are suitable for UJVs. In the event that a UJV structure is in place, Directors' Certificates will need to be signed by representatives of all of the UJV Parties.

Consultation Question	
1.	Do you believe that the terms within the UJV Agreement effectively enable the participation of UJV projects without materially altering the balance of risk and reward represented by the CFD? Please provide evidence.
2.	Do you know of UJV project structures for which the approach present particular difficulty? Please provide evidence.

Negative pricing

Background

49. Negative pricing is a phenomenon that occurs when the price of electricity is less than zero (i.e. negative). This arises due to an inability to store electricity in large quantities coupled with an oversupply, and may be driven by a number of factors. Such prices have yet to occur in the British day-ahead market, but have begun to develop across continental Europe, e.g. in Germany.

50. Under the existing CFD Contract provisions a Generator's difference payments are capped at their Strike Price. However, in granting State Aid approval in respect of the CFD for Renewables programme, the European Commission went on to require that:

“By the beginning of 2016, the UK will modify the Contract for Difference to include provision ensuring that generators do not have an incentive to generate electricity under negative prices. If the day-ahead power auction hourly price is below zero support will be capped at the strike price Moreover, if prices remain negative throughout a six-hour period or longer then the difference amount under the CFD contract will be set to zero for the entirety of that period.”¹¹

51. This condition applies to all renewable technologies, encompassing both intermittent and baseload generators that sign a CFD Contract from 1 January 2016. This does not alter the basis on which baseload CFD Contracts are settled, and the CFD continues to look to the season-ahead market in determining the Baseload Market Reference Price.

52. The condition does not apply to those that have already signed CFD Contracts (holders of Investment Contracts or CFDs signed following the conclusion of the first CFD Allocation Round).

Proposals

53. The overall proposal is to insert conditions that prevent difference payments being paid where the hour in which they occur has a price for electricity in the day-ahead market that is negative, but only where this has persisted for six consecutive hours or longer.

54. This is achieved through additions to Part 5A and B, which now define 'Negative Pricing Rolling Periods' as any period of six hours or longer during which the Intermittent

¹¹ http://ec.europa.eu/competition/state_aid/cases/253263/253263_1583351_110_2.pdf, at recital 31

Reference Price has been below zero throughout the whole of that period. If the Intermittent Reference Price is amended through an IMRP Principles Review, this reference will follow.

55. The definitions for both Baseload and Intermittent Difference Amounts within the proposed CFD Contract have been revised to prevent difference payments being accrued for a Billing Period where they fall within a Negative Pricing Rolling Period.
56. An additional limb has been added to Condition 22.5. This ensures that any Reconciliation Amount will now include those difference amounts already paid that are attributable to a Rolling Period. This may arise where a Rolling Period breaks across more than one Billing Period (i.e. a day).

Consultation Question	
3.	Do you have any views in relation to the above proposals or the drafting itself?
4.	Do you have any views or evidence in relation to any alternative arrangements that may be made while still aligning with the Commission's condition?

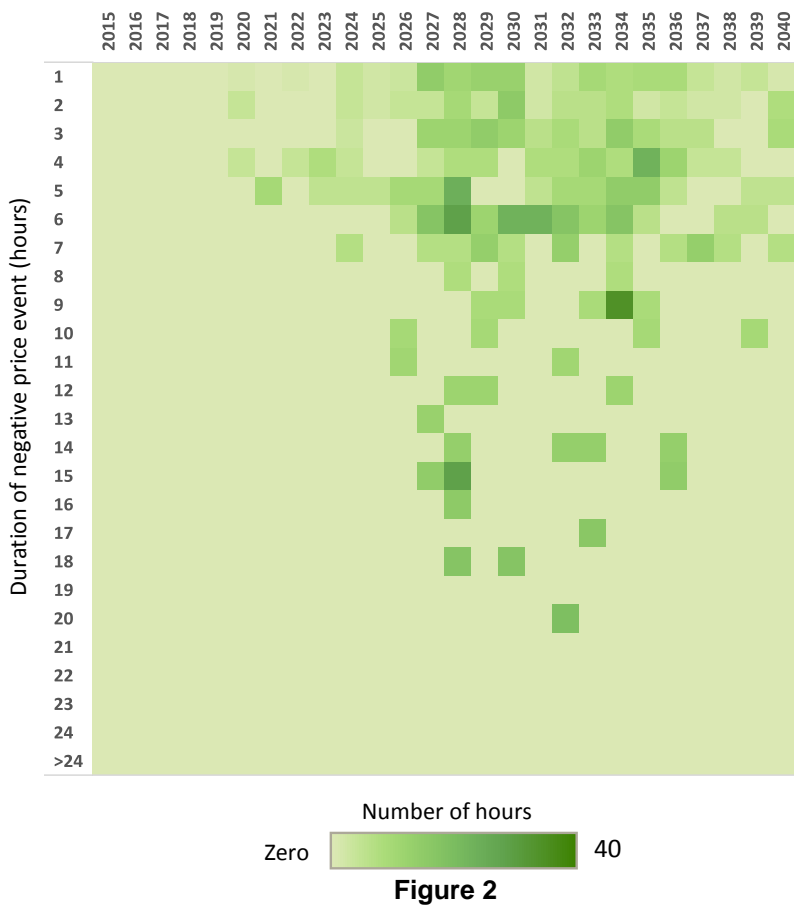
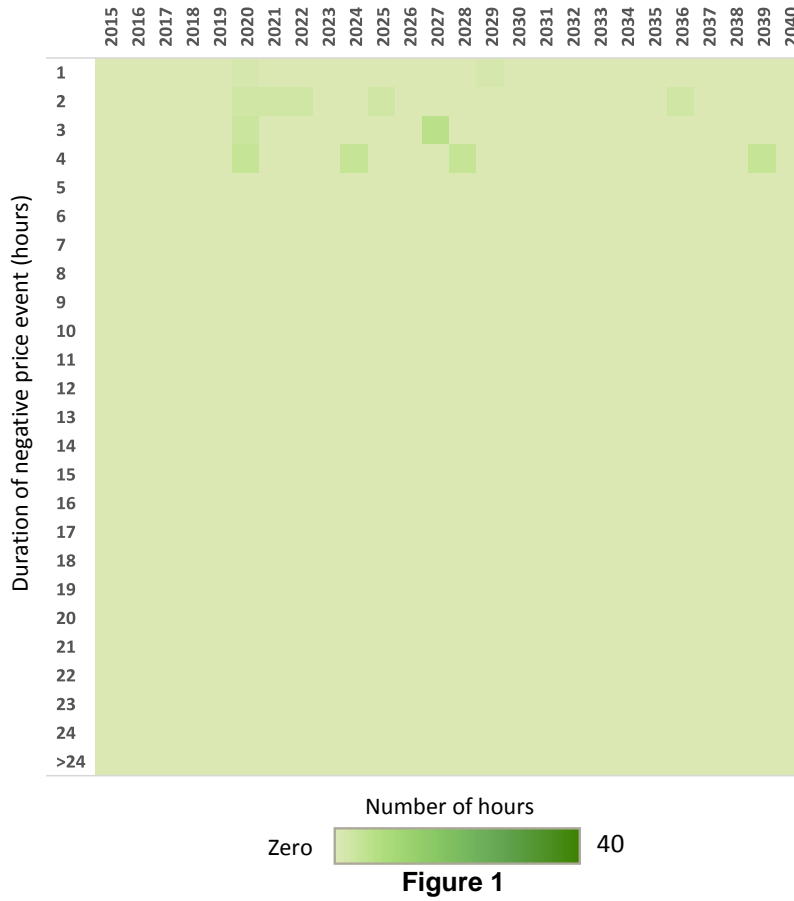
Analysis

57. Within the GB day-ahead power auction referred to by the State aid decision and which comprises the Intermittent Reference Price (IMRP), negative prices have not yet occurred. The perceived impact of the requirement to implement this measure clearly depends greatly upon when one anticipates that such events will begin to occur, how deeply and with what frequency and duration.
58. Negative pricing as a phenomenon has been considered twice previously in analysis conducted on behalf of DECC and other EMR delivery partners. Analysis conducted in May 2012 by LCP included an estimate that, in 2030, slightly more than 600 half-hourly prices traded day-ahead would clear below £0/MWh.¹² Subsequent analysis produced by Redpoint on behalf of National Grid forecasted 160 hours of negative prices in the same year. Importantly, neither study sought to forecast when negative prices may begin to occur, nor their frequency thereafter.
59. Owing to the novelty, complexity and potential importance of the issue, DECC ran an open procurement to obtain advice and analysis to aid in its understanding of the causes, implications and influencers of negative pricing in the context of the GB electricity market. DECC sought to understand when these events might first begin to develop and how their frequency, depth and duration might change over time, and the potential influence of:
- EMR and other subsidy;
 - Intermittent deployment;
 - Baseload deployment;
 - Changes in the nature of the baseload fleet over time (e.g. flexibility);

¹² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48443/5693-lcp-assessment-of-the-dispatch-distortions-under-t.pdf

- Demand-side reduction / storage capacity;
- Interconnection; and
- Commodity prices.

60. Following the conclusion of the tendering process, DECC appointed Baringa Partners to undertake this analysis. The work is structured around two scenarios, one consistent with DECC's own policy goals and assumptions as articulated within the 2014 UEP (**figure 2**) and another provided by Baringa at arms' length as a central, market-view scenario (**figure 1**).
61. The analysis is on-going and will result in a report, for publication, describing the results, assumptions and any inherent limitations in the analysis carried out and will seek to explore a number of sensitivities and their impact on the results of the forecast.
62. However, given how closely the output of this work is connected to the proposals below, Baringa have prepared preliminary analysis presented in the form of heat maps visualising forecasted negative pricing over time under each of the above scenarios, with increased colour intensity indicating an increase in frequency in that year. This shows that there is a range in the duration and frequency of negative price events forecasted between the two sets of analysis.
63. However understanding the duration and frequency of these events is to a large extent dependent on the assumptions used in determining the outcomes of the modelling. This is further compounded by the difficulties in trying to assess how the market might respond not just to the risk of negative pricing but also wider market developments, such as the uptake of storage and actions undertaken by the System Operator during periods of negative pricing.
64. For these reasons the reporting and analysis produced by Baringa will explore in detail the impact of negative pricing beyond the day-ahead market upon which it is based (looking in particular at the intra-day market and how it might be distorted), and will consider the influence that different assumptions, policy decisions or changes to infrastructure may have upon negative pricing as an evolving phenomenon.



Consultation Question	
5.	Do you have any evidence or views in relation to the incidence, impact and evolution of negative pricing?

Minor, technical or clarificatory amendments

65. DECC has also identified a number of minor, technical or clarificatory changes that it considers will enhance the CFD. The changes extend across a variety of conditions and have been proposed to ensure greater clarity is provided to generators and that the policy behind the obligations is better reflected. Further, some technical amendments have been proposed to ensure that any industry standards stated in the CFD are up-to-date.
66. These are set out below, divided between the relevant portions of the CFD Contract. Each section is followed by a standard-form question seeking views on the proposed amendment.

Definitions

Condition	Condition Number
“Directors’ Certificate” formulation	1.1, Definitions
Language has been added to the definition of “Directors’ Certificate” to make it clear what it is expected to certify. The definition now states that a Directors’ Certificate certifies that all information enclosed with it is true, complete and accurate. The new definition also states that the same conditions apply to information provided by third parties.	
“Directive”	1.1, Definitions
A small amendment has been made to limb (B) of the definition to cover circumstances in which the Generator is endeavouring to comply with the relevant Directive. This change better reflects DECC’s intention for the definition.	
“Excluded Information”	1.1, Definitions
Sustainability Profiling Information has now been included within this defined term so that such information may be published by DECC, in line with the current approach under the Renewables Obligation.	
“BSC Definitions”	1.2, BSC Definitions

Amendments have been made to state that all BSC definitions used in the CFD are without prejudice to the application of Change in Law. DECC is minded that it was never the intention for BSC definitions to avoid Change in Law protection.

Consultation Question

6.	Do you have any views on the above amendments in relation to Definitions, given the stated intent?
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Milestone Requirements

Condition	Condition Number
Milestone Requirement Notice	4.1 (B)
<p>Wording has been inserted to provide additional clarity that any Project Commitments should demonstrate to the LCCC that the agreements submitted constitute a significant financial commitment being made.</p> <p>DECC believes that this provides useful guidance to generators of what the Project Commitments are intended to validate.</p>	
Effectiveness of Milestone Requirement	New 4.8
<p>A condition has been inserted to ensure that where the Generator submits a Milestone Requirement Notice before its Milestone Delivery Date which the LCCC deems to be ineffective, it will be allowed to resubmit a further notice.</p> <p>DECC is minded that this amendment better reflects how the policy was intended to work in practice.</p>	

Consultation Question

7.	Do you have any views on the above amendments in relation to Milestone Requirements, given the stated intent?
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Metered Output

Condition	Condition Number
Metered Output	10.1(A), 18.3
<p>Condition 10.1(A) has been amended to clarify the arrangements for how Dual Scheme Facilities' metered data will be submitted for CFD Settlement. DECC is comfortable making this amendment on the basis that it continues to enable the participation of Dual Scheme Facilities in the CFD scheme.</p>	

Consultation Question	
8.	Do you have any views on the above amendment in relation to Metered Output, given the stated intent?

Representations and Warranties

Condition	Condition Number
Required Authorisations	28.1 (E)
<p>Both 28.1 (E) (i) and (ii) have been amended to clarify that all the Required Authorisations that need to be satisfied or repeated by the Generator are those necessary at the Agreement Date.</p>	
Litigation	28.1 (G)
<p>This amendment expands the definition of “pending” litigation and “threatened litigation” to provide clarity to generators regarding what would be considered to constitute either of the aforementioned.</p> <p>DECC believes that this provides more certainty to generators regarding the type of events that might prevent it from fulfilling this representation.</p>	
Non-conflict with	N/A

authorisations, licences etc.	
<p>A new provision has been introduced which obligates the LCCC to represent that the entry into any “CFD Documents”, does not conflict with any authorisation, permit or consent (or other similar instruments).</p> <p>This provision mirrors the existing representation made by Generators.</p>	

Consultation Question	
9.	Do you have any views on the above amendments in relation to Representations and Warranties, given the stated intent?

Undertakings

Condition	Condition Number
Compliance with Laws and Directives	30.1 (A)
<p>A minor amendment has been made to ensure that at all times the Generator complies with all Laws and Directives “to which it may be subject”.</p> <p>DECC considers that this change clarifies the original policy intent.</p>	
Facility Metering Equipment	31.1 (B) (i)
<p>The condition has been amended to clarify what “BM Unit Metered Volume” is expected to comprise. This change is an enhancement on the previous wording, removing any ambiguity.</p>	
Provision of information in relation to litigation	N/A
<p>A provision has been introduced obligating the Generator to notify the LCCC of any details of any litigation or similar proceedings that are current or pending that is likely to have Material Adverse Effect.</p> <p>DECC believes that this provision strengthens the existing relationship between the Generator and the LCCC in relation to litigation against them.</p>	

Consultation Question

10. Do you have any views on the above amendments in relation to Undertakings, given the stated intent?

Qualifying Change in Law

Condition	Condition Number
Qualifying Change in Law: Effective Date and Payment	35.2(C)
<p>The timeframe for commencement of payments of daily / staged QCiL Compensation has been reduced from 20 Business Days to 10 Business Days, removing an inconsistency between the timelines for QCiL Compensation and other amounts.</p>	

Consultation Question

11. Do you have any views on the above amendment in relation to Change in Law, given the stated intent?

Generation Tax

Condition	Condition Number
Generator GT Notice	42.2
<p>The definition of Generator GT Claim Notice has been expanded to include more detail so that each Notice must now include each element of and each computation referred to in the Notice. DECC believes that this provides more clarity to Generators of what they will be expected to submit if they believes a GT Change in Law has been implemented.</p>	
CFD Counterparty GT Notice	42.10
<p>This amendment clarifies that the LCCC’s Generation Tax Notice will state either the Generation Tax Effective Date or the expected date. This mirrors the content of a Generator GT Notice.</p>	

Disputes in relation to Generation Tax Preliminary Matters	42.8
The Generation Tax disputes condition has been extended to allow for the Generator to dispute any Supporting Information which is associated with the Generation Tax Preliminary Matters.	
Reversal of GT Strike Price Adjustment	44.1 (A)
An amendment has been made to make clear that the Generator is entitled to retain any compensation paid to it prior to the decisions to repeal the relevant Generation Tax. DECC believes that this better reflects the original policy intent.	
Reversal of GT Strike Price Adjustment: Retrospective Effect	44.1 (B)
In order to provide clarity to generators the new drafting states that the Strike Price will only be adjusted to account for “relevant amounts” of compensation paid to the generator.	

Consultation Question

- | | |
|-----|---|
| 12. | Do you have any views on the above amendments in relation to Generation Tax, given the stated intent? |
|-----|---|

Collateral

Condition	Condition Number
Return of collateral	56.12
The wording relating to the transfer of the Posted Collateral by the LCCC to the Generator has been clarified without altering its function.	

Consultation Question

13.	Do you have any views on the above amendment in relation to Collateral, given the stated intent?
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Dispute Resolution

Condition	Condition Number
Expert Determination Procedure	59.5 (B) (ii) (d)
<p>Wording has been inserted to ensure that the appointed Expert does not open or revise an earlier, resolved Dispute.</p> <p>DECC believes that this better reflects the original intent of the provision.</p>	

Consultation Question	
14.	Do you have any views on the above amendments in relation to Dispute Resolution, given the stated intent?

Confidentiality

Condition	Condition Number
Obligations of the CFD Counterparty	72.4 (A) (iv) (b)
<p>This amendment amends the limited ability for LCCC to disclose Generator Confidential Information deriving from 'CFD Documents' to Government Entities on a confidential basis, rather than only the Contract for Difference itself.</p> <p>DECC believes that the aforementioned amendment is likely to have little or no additional impact on Generators while ensuring that a lacuna does not exist inappropriately.</p>	
Obligations of the CFD Counterparty	72.4 (A) (v)
<p>Similar to the above amendment, this change sees that CFD Documents containing Generator Confidential Information can be disclosed by the LCCC to the Transmission System Operator, Transmission Licensee and the CFD Settlement Services Provider, amongst others, to allow those bodies to fulfil their functions.</p>	

Consultation Question	
15.	Do you have any views on the above amendments in relation to Confidentiality, given the stated intent?

Intellectual Property

Condition	Condition Number
Retention of Intellectual Property Rights	75.1
<p>This amendment extends the Intellectual Property Rights provisions to accommodate rights which are acquired by a party, and not just those it has developed. This extension also now applies if the rights were acquired or developed before or during the CFD period.</p> <p>DECC believes that this change better reflects the policy intent, whilst also providing greater certainty to generators.</p>	

Consultation Question	
16.	Do you have any views on the above amendments in relation to Intellectual Property, given the stated intent?

Notices

Condition	Condition Number
Form of notices	80.1
<p>All notices may now be dispatched via email. By allowing generators to submit notices by emails, DECC believes that generators and the LCCC will benefit from greater flexibility.</p>	

Consultation Question	
17.	Do you have any views on the above amendment in relation to Notices, given the stated intent?

General Provisions

Condition	Condition Number
Provision of Information	Various
<p>A general change to all conditions that require the Generator to provide information. The existing drafting expects information to be provided “promptly”, whereas the wording has been amended to request information “as soon as reasonably practicable”.</p> <p>DECC believes that the new wording provides more clarity to generators regarding when information should be provided to the LCCC.</p>	

Consultation Question	
18.	Do you have any views on the above amendment, given the stated intent?

Annex 4 – Market Reference Price

Condition	Condition Number
BMRP Principles Review	2.2
<p>This clause has been amended to give generators the option to respond to a BMRP Principles Request Notice, rather than obligating them to do so.</p> <p>DECC believes that this better reflects the original policy intent and provides more flexibility for generators.</p>	

Consultation Question	
19.	Do you have any views on the above amendment in relation to Annex 4, given the stated intent?

CFD Agreement

Condition	Condition Number
Milestone	4.1
<p>This clause has been changed to refer to both limbs (A) and (B) of Condition 4.1 of the Standard Terms (Milestone Requirement Notice), rather than only limb (B).</p> <p>DECC considers that any costs relating to the Offshore Transmission System should be excluded from both options for fulfilling the Milestone Requirements, rather than solely the Project Commitments limb.</p>	

Consultation Question	
20.	Do you have any views on the above amendment in relation to the CFD Agreement, given the stated intent?

Annex 7 - Fuel Measurement and Sampling

Condition	Condition Number
Mix of consignments	N/A
<p>This is an amendment to make clear that generators using woodfuel may report their compliance with the Land Criteria either on a single consignment or on a mix of consignments basis.</p> <p>DECC believes that this is an important and beneficial amendment that strengthens the original policy intent and links directly to payment. It removes any uncertainty as to whether a wood pellet, which may be made up of several individual 'consignments', meets the Land Criteria in circumstances where one of those individual consignments fails to meet the Land Criteria but the overall 'mix' does not.</p>	

Consultation Question	
21.	Do you have any views on the above amendment in relation to Annex 7, given the stated intent?

Metering Operational Framework and Technical System Requirements

67. A number of minor amendments have also been made to the Private Network Metering Operational Framework and Technical System Requirements in order to ensure that the two documents refer to the most up-to-date and relevant industry standards. Alongside the updated industry standards, where necessary, new accuracy and tolerance requirements have been introduced.
68. As well as updating to industry standards, provisions have also been introduced to afford Private Network generators greater flexibility with regard to extending the lifetime of its Metering Equipment. DECC is minded that these changes better align the MOF and the TSR without unreasonably increasing the burden on affected generators.

Consultation Question	
22.	Do you have any views on the above amendments in relation to the MOF and TSR, given the stated intent?

4. Contracts for Difference Regulations

69. Following a review of the first allocation round, a number of minor changes to the regulatory structure and administrative process surrounding allocation rounds have been identified.

70. The proposed changes are set out below.

Running each pot as a separate allocation round

71. The existing Contracts for Difference (Allocation) Regulations 2014 (the ‘Allocation Regulations’) do not enable different pots to be run to differing allocation timetables.

72. The timings in respect of the first allocation round were based on maximum end dates for each stage in the allocation process. DECC is aware that it is possible that different pots may be subject to differing circumstances. For example, there may be a qualification review in one pot but not another.

Proposal

73. In order to ensure maximum flexibility and allow separate pots to be run to separate timetables, the proposal is to run each pot as a separate round. This is an administrative change and would not require a change to regulations. It will allow pots to progress through the allocation process at differing rates and will prevent delays to the award of CFDs. Stakeholder communications will set out how the process progresses in respect of each round / for each pot.

Consultation Question	
23.	Do you agree that running each pot as a separate round is an effective means of achieving the policy objective? If not, are there any regulatory changes you would suggest to achieve the policy objective?

Applications to participate in the Capacity Market Auction

74. Existing policy is to prevent an applicant receiving a subsidy from more than one government support scheme, captured in part by regulation 14(10) of the Allocation Regulations.

Proposal

75. An amendment to the Allocation Regulations is proposed in order to ensure that an application cannot be made in respect of a CFD where an application has been made to the Capacity Market support scheme in respect of the same unit.

76. We intend to prevent projects applying for a CFD, where at the time of application for a CFD, in relation to the same project there is (a) a pending application to the Capacity

Market or (b) support has been secured under the Capacity Market scheme. We intend the same restriction to apply for a Capacity Market application where the project has applied for or has secured a CFD. A project which fails to secure support in either the CFD scheme or the Capacity Market scheme can participate in future rounds for either scheme.

Consultation Question	
24.	Do you have any views in relation to the above proposed amendment?

Excluded Applications

77. Regulation 14(5) of the Allocation Regulations excludes CFD Units which are to be “altered” and are in receipt of funding from the Renewables Obligation from being eligible to apply for a CFD.

Proposal

78. An amendment is proposed which makes clear the exclusion in regulation 14(5) applies to any CFD unit which is being “established or altered”.

Consultation Question	
25.	Do you have any views on the above amendments in relation to Excluded Applications, given the stated policy intent?

Sealed Bid Non-Pricing Information

79. Regulation 54(3) of the Allocation Regulations currently provides that, where the allocation process has included a competitive process in which sealed bids have been submitted, the Delivery Body cannot be directed to make available to the Secretary of State information in respect of those sealed bids.

80. The policy intention has always been to keep confidential the commercially sensitive price information contained in an applicant’s sealed bid. This remains the policy priority and sensitive price information submitted as part of a sealed bid in the allocation process will not be shared with the Secretary of State.

81. However, descriptive data which quantitatively describes how the auction participants have interacted with auction rules is useful in evaluating and refining the auction mechanic for future allocation rounds. Such data may include counts, distributions and ratios around key auction features such as flexible bids, delivery years, successful projects and unsuccessful projects, split by technology, pot and delivery year.

Proposal

82. It is intended to revise the regulations to distinguish between price sensitive sealed bid information and non-price related information.
83. Price sensitive information will be kept confidential and the regulations will continue to prevent a Secretary of State direction being used to obtain such information.
84. It is proposed to allow non-price related bid information to be shared with the Secretary of State and any contractors appointed by the Secretary of State for evaluation purposes.

Consultation Question	
26.	Do you have any views in relation to the proposal to distinguish between sensitive price information and non-price information contained in an applicant's sealed bid submission?
27.	Do you have any views on the proposal to allow non-price bid information as described above to be shared with the Secretary of State and used for evaluation purposes?

Qualifying Applicants

85. Regulation 17(3) of the Allocation Regulations sets out the requirements an applicant to the CFD allocation process must satisfy in order for an application to be a qualifying application. Regulation 17(4) sets out the information an applicant must supply with the CFD application.

Proposal

86. It is proposed to amend regulations to capture the policy intention that an application is not a qualifying application unless an applicant provides with the application all of the information required by Regulation 17(4).

Consultation Question	
28.	Do you have any views on the amendment proposed above?

Qualification Requirements: Direct Connections, Partial Connections or where no Direct or Partial Connection applies

87. The existing qualification requirements in respect of those applicants who have a direct or a partial connection to the national transmission or distribution system, or where no direct or partial connection applies, were set out in Rule 4 of the Allocation Framework for the October 2014 Allocation Round.

Proposal

88. It is proposed to transpose the requirements currently set out in the Allocation Framework into the Allocation Regulations as these are key qualification requirements for applicants who connect to the grid in this way. This will provide greater certainty to generators who have a direct or partial connection to the national transmission or distribution system in advance of a future allocation round.

Consultation Question	
29.	Do you have any views in relation to the above proposed amendment, given that it directly transposes existing qualification requirements?

Pending Applications that become Qualifying Applications after the allocation process has commenced

89. Regulation 33(5) of the Allocation Regulations currently sets out a process for dealing with applicants whose qualification appeals were determined before the allocation process commenced. Regulation 51(3) addresses the situation where a qualification determination is made by the Authority after CFD Notifications have been issued.

Proposal

90. The proposed amendment is to include in the regulations a process setting out how the Delivery Body is to treat applicants whose qualification appeals have not been determined at the point the CFD allocation process has commenced, but is determined before the point of CFD Notification.

Consultation Question	
30.	Do you have any views on this proposed amendment?

Minor, technical amendments

91. DECC has also identified a number of minor technical changes.

92. These are itemised below, along with an indication of any regulation(s) that are likely to be relevant to each proposed change. Each section is followed by a standard-form question seeking views on each proposal.

Reviews and Appeals

Existing Regulation	Proposed Amendment
32(1)	Additional drafting is proposed to ensure that the notice setting out the number of review notices received by the Delivery Body is sent to the Appeal Body as well as to the Secretary of State.
45	Additional drafting is proposed enabling the Authority to request from the Delivery Body further information necessary to determine a qualification appeal.

Consultation Question	
31.	Do you have any views on the above proposed amendments relating to Reviews and Appeals?

Pending Applications

Existing Regulation	Proposed Amendment
51(3)	Additional drafting is proposed to clarify that a determination under 51(3) is to be made by the Delivery Body in accordance with the rules set out in the Allocation Framework.
51(7)	Minor drafting amendment is proposed to ensure that the Delivery Body is obliged to consider any flexible bid when making a determination under 51(3). The current wording excludes flexible bids from being considered but the intention is to include them.
51(10)(a)	This provision ought to refer to the submitted target commissioning

	date rather than first delivery year being a date which is on or after the target commissioning date set out in the original application. Minor drafting amendment is proposed.
51(10)(b)	The provision ought to refer to the amount of electricity to be generated as an amount which is no greater than the amount set out in an applicant's application. The current drafting provides it should be an amount which is less than that which is set out in the application. Minor drafting amendment is proposed.

Consultation Question

32.	Do you have any views on the above amendments relating to Pending Applications?
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Delays

34(2)	A minor amendment is proposed so that the Secretary of State can only issue a notice permitting delay of target dates by an applicant where there is a delay to the commencement of the allocation process and where Regulation 34 applies.
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Consultation Question

33.	Do you have any views on the above amendment in relation to delays to the allocation process?
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Negative pricing

93. The proposed changes to the CFD contract described above within paragraphs 53 to 56 require amendments to be made to the Contracts for Difference (Standard Terms) Regulations 2014. These regulations list the content that must be contained within any published CFD contract.¹³ At present, this list requires provision for the LCCC to pay the Generator whenever the Market Reference Price is below that CFD’s strike price, and for the Generator to pay the LCCC whenever the reverse is true.
94. The proposal is to include within this list of provisions a narrow exception to the above requirement solely to enable the contract provision described in paragraphs 53 to 56 above.
95. As noted in paragraph 512 above, provision relating to negative pricing will only impact CFD Contracts signed following any future CFD Allocation Round. Consistent with this, these amendments apply only to terms that are to be published in future and will not retroactively alter existing, signed CFD Contracts or Investment Contracts.

Consultation Question	
34.	Do you believe that the above proposal in relation to Negative Pricing achieves its purpose appropriately? In either case, please provide evidence.

Unincorporated joint ventures

Background

96. In order to provide the support for unincorporated joint ventures (UJVs) described in greater detail within paragraphs 27-48 above, certain amendments to secondary legislation will be necessary. These amendments may span a number of the sets of regulations governing CFDs.
97. The policy intent in making these amendments is to ensure that a collection of two or more corporate entities wishing to apply and compete for a CFD is treated on an equivalent basis to those other applicants operating either alone or through the use of a specially incorporated joint venture.

Proposal

98. The overarching intent is to amend the various regulations governing CFDs so far as necessary to ensure that a group of corporate persons wishing to undertake a project with one another can participate in the CFD regime through the form of CFD Contract proposed in paragraphs 27 to 48.
99. The general proposal is to enable projects represented by UJV participants to apply as a collective and for them to be treated as a collective throughout. This is beneficial both to generators, offering a clearer means for such projects to participate, and for the bodies

¹³ The Contracts for Difference (Standard Terms) Regulations 2014, regulation 3

responsible for managing the various processes defined in Regulation, providing administrative simplicity.

100. It may not be appropriate for certain processes in the affected legislation to follow the above approach. Where this is so, the proposal is to treat the members of the UJV individually for the purposes of that provision. An example of this may be the power of the delivery body to require information from a generator who is party to a CFD, enforced as a licence condition.¹⁴

Consultation Question	
35.	Do you agree with the proposal to treat UJV parties collectively for most purposes in the CFD regime?
36.	Do you agree that UJV parties may need to be treated individually rather than collectively under certain circumstances? Are there circumstances where this would be appropriate?

Sustainability Directions

Background

101. The Energy Act 2013 requires that the CFD regime be for the purpose of “encouraging low carbon electricity generation.”¹⁵ Although certain eligible technologies, such as offshore wind, are unlikely to ever fall outside this requirement, other eligible technologies make use of fuel in their generation and are subject to minimum standards relating to the sustainability of this material (‘Sustainability Criteria’).
102. These standards may vary throughout the life of a CFD Contract as the available evidence and resulting Government policy evolves and develops. In order to ensure that these projects continue to align with the requirements of the Energy Act 2013, the CFD Contract issued in August 2014 contains provision allowing for its amendment if the portions of the document relating to sustainability criteria are revised by the Secretary of State.¹⁶
103. The CFD contract provisions anticipate that the Secretary of State may require the LCCC to incorporate the amendment into existing contracts.

Proposal

104. The policy proposal is to enable the Secretary of State to issue a direction to the LCCC requiring the amendment of existing CFD Contracts, though only where a revision to the CFD Contract Sustainability Criteria has occurred, putting in place the framework anticipated within the August 2014 CFD Contract. This policy is limited to these

¹⁴ The Electricity Market Reform (General) Regulations 2014, regulation 7

¹⁵ *Energy Act 2013*, s. 6

¹⁶ Annex 7, Part D, Clause 4

circumstances and is not intended to allow for the alteration of fuelled CFD Contracts for other reasons, nor is it proposed that other non-fuelled technologies be impacted.

Consultation Question	
37.	Do you believe that the above proposal in relation to Sustainability Directions achieves its purpose appropriately? In either case, please provide evidence.
38.	Do you agree that the requirement on the LCCC to amend existing contracts should be at the discretion of the Secretary of State on a case-by-case basis, rather than automatically incorporating any and all amended Sustainability Criteria?

Amendments to Standard Terms Notices

Background

105. The Standard Terms Notice¹⁷ is issued alongside the announcement of a CFD future Allocation Round and serves two purposes. It lists:

- The terms that are available for offer by the CFD Counterparty to those applicants successful in an Allocation Round (serving also to provide a clear signal to those seeking minor and necessary modifications); and
- Tables of non-project specific information necessary for the CFD Counterparty to complete those terms.

Proposal

106. The policy proposal is to allow for manifest errors within the CFD Standard Terms notice issued at the announcement of an Allocation Round to be corrected up to one calendar month before the opening of that Round. Although by their nature they are impossible to predict, a ‘manifest error’ in this context would encapsulate numerical errors within the above-described tables or drafting errors within the CFD Contract itself that render an existing provision non-functional. It is not proposed to allow for wholly new provision to be introduced, whether through changes to the data within the notice itself or the introduction of new drafting to the CFD Contract, noting that any amendment to the CFD Contract would itself require consultation before adoption.

107. At present, this notice is published only once without any mechanism for amendment for any reason.¹⁸ In recognition of its time sensitivity in advance of an Allocation Round and the importance that is attached to the content of the notice, the proposal is to constrain this power such that alterations may be made only where at least twenty working days remain before to the opening of the relevant Allocation Round.

¹⁷ The Contracts for Difference (Standard Terms) Regulations 2014, regulation 9

¹⁸ The existing Standard Terms Notice may be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/348202/The_Contracts_for_Difference_Standard_Terms_Regulations_2014_-_CFD_Standard_Terms_Notice_29_August_2014_.pdf

Consultation Question	
39.	Do you agree with the proposal to allow for the amendment of the Standard Terms Notice in certain circumstances?
40.	Do you agree with the use of twenty working days as a guaranteed period between the last possible amendment to the Standard Terms Notice and the opening of the Allocation Round
41.	Is the use of a minimum 'manifest error' sufficient to safeguard against unnecessary changes?
42.	Do you have any other views on the above proposal?

Harmonisation of 'working day' definitions

Background

108. At present, a different definition of 'working day' is employed within each of the various sets of Regulations governing CFDs. Public holidays are disregarded in the calculation of working days, but whether bank holidays within only one part of the United Kingdom are included in or excluded from the scope of public holidays is inconsistent. This may introduce uncertainty where a regional bank holiday is accounted for or anticipated by one party affected by a deadline or other timeline and not others.
109. Currently, public holidays in the following instruments include bank holidays taking place in part only of the United Kingdom (for example those that only take place in Scotland):
- The Contracts for Difference (Standard Terms) Regulations 2014 - including requests for minor and necessary modifications and for the offer and acceptance of a CFD Contract following an Allocation Round.
 - The Contracts for Difference (Allocation) Regulations 2014 - various deadlines relating to Allocation Rounds, appeals and auctions.
 - The Electricity Market Reform (General) Regulations 2014 - including deadlines relating to the submission of supply chain plans by generators and the provision of information by various parties.
110. The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 excludes bank holidays that take place outside England and Wales. These regulations contain a number of timeframes relating to the setting and collection of the levies that make up the supplier obligation itself.
111. The CFD Contract itself also excludes bank holidays that take place outside England and Wales. The contract includes many different time periods and deadlines for both the LCCC and the Generator.

Proposal

112. The proposal is to amend the instruments in paragraph 111 to ensure that only those bank holidays observed within England and Wales are considered within the definition of ‘working days’ for the purposes of the various CFD Regulations.
113. The proposal to focus upon a single jurisdiction to define a working day allows for consistency of time periods and deadlines throughout the CFD regime. Although where possible the bodies responsible make clear the deadlines that apply, there is no guarantee that this will remain the case, nor that all parties will take note of the information provided.
114. The choice of England and Wales as the relevant jurisdiction on which to base the definition reflects the approach already taken within the CFD Contract, already signed in its initial form and with its initial definition by a number of developers, and within the Supplier Obligation regulations, ensuring least disruption for the greatest number of affected parties given the sustained year-round payment obligations that flow from those provisions.

Consultation Question	
43.	Do you agree with the proposal to exclude only those Bank Holidays that occur in England and Wales from the definition of ‘working day’?

5. Catalogue of consultation questions

Chapter 3: CFD Contract Changes

1.	Do you believe that the terms within the UJV Agreement effectively enable the participation of UJV projects without materially altering the balance of risk and reward represented by the CFD? Please provide evidence.
2.	Do you know of UJV project structures for which the approach present particular difficulty? Please provide evidence.
3.	Do you have any evidence or views in relation to the incidence, impact and evolution of negative pricing?
4.	Do you have any views in relation to the above (negative pricing) proposals or the drafting itself?
5.	Do you have any views or evidence in relation to any alternative (negative pricing) arrangements that may be made while still aligning with the Commission's condition?
6.	Do you have any views on the above amendments in relation to Definitions, given the stated intent?
7.	Do you have any views on the above amendments in relation to Milestone Requirements, given the stated intent?
8.	Do you have any views on the above amendment in relation to Metered Output, given the stated intent?
9.	Do you have any views on the above amendments in relation to Representations and Warranties, given the stated intent?
10.	Do you have any views on the above amendments in relation to Undertakings, given the stated intent?
11.	Do you have any views on the above amendment in relation to Change in Law, given the stated intent?
12.	Do you have any views on the above amendments in relation to Generation Tax, given the stated intent?

13.	Do you have any views on the above amendment in relation to Collateral, given the stated intent?
14.	Do you have any views on the above amendments in relation to Dispute Resolution, given the stated intent?
15.	Do you have any views on the above amendments in relation to Confidentiality, given the stated intent?
16.	Do you have any views on the above amendments in relation to Intellectual Property, given the stated intent?
17.	Do you have any views on the above amendment in relation to Notices, given the stated intent?
18.	Do you have any views on the above amendment (general provisions), given the stated intent?
19.	Do you have any views on the above amendment in relation to Annex 4 (Market Reference Price), given the stated intent?
20.	Do you have any views on the above amendment in relation to the CFD Agreement, given the stated intent?
21.	Do you have any views on the above amendment in relation to Annex 7 (Fuel Measurement and Sampling), given the stated intent?
22.	Do you have any views on the above amendments in relation to the MOF and TSR, given the stated intent?

Chapter 4: Contracts For Difference Regulations

23.	Do you agree that running each pot as a separate round is an effective means of achieving the policy objective? If not, are there any other regulatory changes you would suggest to achieve the policy objective?
24.	Do you have any views in relation to the above proposed amendment (Applications to participate in the Capacity Market Auction)?
25.	Do you have any views on the above amendments in relation to Excluded Applications, given the stated policy intent?

26.	Do you have any views in relation to the proposal to distinguish between sensitive price information and non-price information contained in an applicant's sealed bid submission?
27.	Do you have any views on the proposal to allow non-price bid information as described above to be shared with the Secretary of State and used for evaluation purposes?
28.	Do you have any views on the amendment proposed above (Qualifying Applicants)?
29.	Do you have any views in relation to the above proposed amendment, given that it directly transposes existing qualification requirements?
30.	Do you have any views on this proposed amendment (Pending Applications)?
31.	Do you have any views on the above proposed amendments relating to Reviews and Appeals?
32.	Do you have any views on the above amendments relating to Pending Applications?
33.	Do you have any views on the above amendment in relation to delays to the allocation process?
34.	Do you believe that the above proposal in relation to Negative Pricing achieves its purpose appropriately? In either case, please provide evidence.
35.	Do you agree with the proposal to treat UJV parties collectively for most purposes in the CFD regime?
36.	Do you agree that UJV parties may need to be treated individually rather than collectively under certain circumstances? Are there circumstances where this would be appropriate?
37.	Do you believe that the above proposal in relation to Sustainability Directions achieves its purpose appropriately? In either case, please provide evidence.
38.	Do you agree that the requirement on the LCCC to amend existing contracts should be at the discretion of the Secretary of State on a case-by-case basis, rather than automatically incorporating any and all amended Sustainability Criteria?
39.	Do you agree with the proposal to allow for the amendment of the Standard Terms Notice in certain circumstances?

40.	Do you agree with the use of twenty working days as a guaranteed period between the last possible amendment to the Standard Terms Notice and the opening of the Allocation Round
41.	Is the use of a minimum 'manifest error' sufficient to safeguard against unnecessary changes?
42.	Do you have any other views on the above proposal (Amendments to Standard Terms Notices)?
43.	Do you agree with the proposal to exclude only those Bank Holidays that occur in England and Wales from the definition of 'working day'?

