
D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No.

ELECTRICITY

The Electricity Supplier Obligations (Amendment & Excluded Electricity) (Amendment) Regulations 2016

Made - - - - - ***

Coming into force - - - - - ***

The Secretary of State has before making these Regulations—

- (a) consulted the persons listed in section 24(1)(a) to (g) of the Energy Act 2013(a) and such other persons as the Secretary of State considered it appropriate to consult; and
- (b) had regard to the matters in section 5(2) of that Act.

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 6(1), (5) and (6), 9(1), (6) and (7), 19 and 21(1) of the Energy Act 2013, and by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(b).

The Secretary of State has been designated for the purposes of section 2(2) in respect of matters relating to energy and energy sources(c).

Citation and Commencement

1.—(1) These Regulations may be cited as the Electricity Supplier Obligations (Amendment & Excluded Electricity) (Amendment) Regulations 2016.

(2) They come into force on the 22nd day after the day on which they are made.

Amendments to The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015

2.—(1) The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 are amended in accordance with this regulation.

(2) Amend regulation 2(1) as follows—

- (a) after the definition of “the Act” insert—

(a) 2013 c.32
(b) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) (the “2006 Act”) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A was inserted by section 28 of the 2006 Act.
(c) S.I. 2010/761, to which there are amendments not relevant to these Regulations.

““annual accounts”—

- (a) in the case of a company within the meaning of section 1(1) of the Companies Act 2006^(a), has the meaning given in section 471 of that Act;
 - (b) in the case of a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000^(b), has the meaning given in section 471 of the Companies Act 2006 as applied with modifications by regulation 29 of the Limited Liability Partnership (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008^(c);
 - (c) in the case of any other person’s business means accounts in respect of that person’s business that are prepared—
 - (i) annually, and
 - (ii) in accordance with accounting standards which are, in the opinion of the Secretary of State, satisfactory;”;
- (b) after the definition of “BM Unit Identification Number” insert—

““business year”—

- (a) in the case of a company within the meaning of section 1(1) of the Companies Act 2006, means the company’s financial year as determined in accordance with section 390 of that Act;
 - (b) in the case of a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, means the limited liability partnership’s financial year as determined in accordance with section 390 of the Companies Act 2006 as applied with modifications by regulation 7 of the Limited Liability Partnership (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008;
 - (c) in the case of any other person’s business means a period of one year commencing with 1st April;”;
- (c) at the end of the definition of “earnings” add “, excluding items which are exceptional in the opinion of the Secretary of State”;
- (d) after the definition of “excluded electricity” insert—

““financial data” in relation to a business, means complete details of the earnings and staff costs of that business;

““financial quarter” means a period of three consecutive months in a business year;”;

- (e) after the definition of “financial year” insert—

““force majeure” means abnormal and unforeseeable circumstances, including natural events, outside the control of the person applying for an EII certificate, the consequences of which could not have been avoided by the exercise of all due care by that person;

““force majeure application” means an EII application which states that the business to which the application relates was affected by a force majeure during the relevant period;”;

- (f) after the definition of “NACE Rev 2” insert—

““new business” means a business—

- (a) in respect of which no annual accounts have been prepared;
- (b) which has been trading for two or more consecutive financial quarters in the 12 month period immediately preceding the date on which an EII application is made in respect of it;

(a) 2006 c.46
(b) 2000 c.12
(c) S.I. 2008/1911

- (c) in respect of which there is financial data for two or more consecutive financial quarters in the 12 month period immediately preceding the date on which an EII application is made in relation to it; and
- (d) which has been trading for no more than 21 months;”.

(3) In regulation 7 (Relevant arrangements), in paragraph (2) omit the words “, by 30th September 2015,”.

(4) For regulations 8 to 13 (EII certificates—Validity and revocation of EII certificates) substitute—

“EII certificates

8.—(1) A person who uses electricity for a specified activity is entitled, on application to the Secretary of State under regulation 10, to a certificate (an “EII certificate”) in respect of the electricity meter which measures the supply of that electricity where—

- (a) the specified activity is carried out in the course of the person’s business;
- (b) either—
 - (i) the test in paragraph (2) is met in relation to that business, or
 - (ii) paragraph (4) or (5) applies to that business; and
- (c) the business has been trading for at least two consecutive financial quarters prior to the making of the application.

(2) The test in this paragraph is met in relation to a person’s business if the electricity cost impact of the business in the relevant period is equal to, or greater than, 0.2.

(3) For the purposes of paragraph (2), the electricity cost impact is the amount calculated in accordance with the formula—

$$\frac{BEP \times BEC}{BGVA}$$

where—

BEP is the price which, in the opinion of the Secretary of State, reflects the electricity price paid by businesses which carry out specified activities, in the most recent calendar year for which information is available, expressed in pounds per megawatt hour and adjusted for inflation in accordance with a measure of inflation determined by the Secretary of State so as to reflect prices in the calendar year beginning with 1st January 2012;

BEC is the amount of electricity consumed by the person’s business in the relevant period; and

BGVA is the sum of the staff costs and the earnings of that business in the relevant period, adjusted for inflation in accordance with a measure of inflation determined by the Secretary of State so as to reflect prices in the calendar year beginning with 1st January 2012, except that, for the purposes of this sum—

- (a) in the case of a new business, where the staff costs and the earnings of that business in any financial quarter during the relevant period total less than £1 they are to be treated as £1; and
- (b) in the case of any other business, where the staff costs and the earnings of that business in any business year during the relevant period are less than £1 they are to be treated as £1.

(4) (a) Subject to sub-paragraph (b), this paragraph applies to a person’s business where—

- (i) on the date of that person’s EII application in respect of that business, an EII certificate is already in force in respect of that business, and

- (ii) at the time of the EII application in respect of that EII certificate, the relevant period was the three most recent business years for which there are annual accounts in respect of the business.
 - (b) If sub-paragraph (a) applies to a person's business in respect of four consecutive EII applications, the test in paragraph (2) must be met in relation to that business in respect of an EII application before sub-paragraph (a) will apply to that business again.
- (5) This paragraph applies to a person's business where –
- (a) that person makes a force majeure application in relation to that business; and
 - (b) in the opinion of the Secretary of State, but for a force majeure the test in paragraph (2) would have been met.
- (6) An EII certificate must set out an address and an email address provided by the Secretary of State for correspondence about that certificate.

Relevant period for a business

- 9.**—(1) The relevant period for a person's business for the purposes of an EII application is—
- (a) in respect of a new business, the consecutive financial quarters prior to the relevant time—
 - (i) during which the business was trading, and
 - (ii) in respect of which there is financial data in relation to that business; and
 - (b) in respect of any other business, to be determined in accordance with paragraph (2).
- (2) Where at the relevant time a person has, in respect of their business—
- (a) annual accounts for three or more business years commencing after 1st January 2012, the relevant period is the three most recent business years for which there are annual accounts in respect of the business;
 - (b) annual accounts for two, but not three, business years commencing after 1st January 2012, the relevant period is those two business years; or
 - (c) annual accounts for one, but not two, business years commencing after 1st January 2012, the relevant period is that business year.
- (3) For the purposes of this regulation the relevant time is the time a person applies for an EII certificate in respect of their business.

Applications for EII certificates

- 10.**—(1) A person who uses electricity for a specified activity in the course of business may apply to the Secretary of State for an EII certificate in respect of the electricity meter which measures the supply of electricity used for that activity.
- (2) The application must be made in writing and, subject to paragraphs (3) and (4), it must contain—
- (a) evidence of the earnings and the staff costs of the business for which the electricity is used in the relevant period;
 - (b) where the meter which measures the supply of electricity used for a specified activity—
 - (i) is registered in SMRS, the MSID that relates to that meter,
 - (ii) is registered in CMRS, the BM Unit Identification Number and MSID that relates to that meter;
 - (c) evidence of—

- (i) the amount of electricity measured by that meter which was supplied in the relevant period, and,
- (ii) the sum paid to the electricity supplier supplying such electricity for such supply;
- (d) a statement either—
 - (i) confirming that all the electricity supplied to that meter is used in the course of business by the person applying for the EII certificate, or
 - (ii) identifying any third party with whom the person applying for the certificate shares, or to whom that person supplies, electricity supplied to that meter;
- (e) evidence of—
 - (i) in respect of a person’s business that was trading during the entire calendar year which immediately preceded the calendar year in which the EII application is made, the proportion of electricity measured by that meter which was used for a specified activity by that business in that year, or
 - (ii) in respect of a business that was not trading during the entire calendar year which immediately preceded the calendar year in which the EII application is made, the proportion of electricity measured by that meter which was used for a specified activity by that business in the relevant period;
- (f) except where sub-paragraph (e) is complied with, sufficient evidence of the activities which are carried out using electricity measured by that meter to enable the Secretary of State to estimate the proportion of electricity measured by that meter which was used for a specified activity by the person applying for the EII certificate in respect of their business in the period specified in sub-paragraph (e)(i) or (ii), as applicable;
- (g) information identifying the electricity supplier who, when the application is made, supplies electricity which is measured by that meter;
- (h) an address and an email address at which the person applying for the certificate can be contacted;
- (i) a statement setting out the business year used in respect of the business for which the electricity is used;
- (j) in respect of a force majeure application, evidence of the force majeure and of its effect on the amount of electricity used by the person’s business during the relevant period; and
- (k) except where an application relates to a new business, a statement setting out the accounting standards to which the annual accounts have been prepared in respect of the business for which the electricity is used.

(3) Where regulation 8(4) applies to a person’s business, the application does not need to contain the evidence described in paragraph (2)(a).

(4) Where anything required to be contained in an EII application under paragraph (2) has already been provided to the Secretary of State by a person, the Secretary of State may decide it does not need to be contained in an EII application made by that person.

(5) Where an EII application—

- (a) does not comply with paragraph (2)(e); or
- (b) complies with paragraph 2(e), but is a force majeure application,

the Secretary of State must, if sufficient evidence has been provided under paragraph (2)(f), estimate the proportion of electricity measured by that meter which was used for a specified activity in the course of business by the person who made the application, and in respect of a force majeure application, may take account of any evidence provided pursuant to paragraph 2(j) when estimating such proportion of electricity.

(6) Where the Secretary of State, after making an estimate under paragraph (5), concludes that a different estimate should have been made, the Secretary of State may revise that estimate.

(7) The Secretary of State may decide not to issue an EII certificate in respect of an EII application where in the opinion of the Secretary of State, the information or evidence contained in that application pursuant to paragraph (2) is either not sufficient or satisfactory.

(8) Where the Secretary of State decides not to issue an EII certificate in respect of a person's EII application in accordance with paragraph (7), the Secretary of State must notify that person and give reasons.

(9) A notice under paragraph (8) must be set out in writing and has been given if it is sent to—

- (a) the proper address of the person who applied for the certificate, or,
- (b) where the Secretary of State does not hold a proper address for that person, the address or email address provided by that person pursuant to sub-paragraph (2)(h).

Proportion to be specified in a certificate

11.—(1) An EII certificate issued in respect of an electricity meter must specify the proportion of electricity measured by that meter which will constitute EII excluded electricity, that proportion to be determined in accordance with paragraph (2) and rounded to the nearest hundredth with 0.005 being rounded upwards.

(2) The proportion to be specified in an EII certificate by virtue of paragraph (1) is 0.85 multiplied by either—

- (a) the proportion of electricity measured by that meter which was used for a specified activity in the course of business by the person who applied for the certificate, either—
 - (i) in respect of a new business which was not trading for the entire calendar year which immediately preceded the calendar year in which the EII application is made, in the relevant period, or
 - (ii) in respect of any other business, in the calendar year which immediately preceded the calendar year in which the EII application is made; or
- (b) the Secretary of State's estimate under regulation 10(5) where the proportion—
 - (i) is known in respect of neither sub-paragraph (a)(i) or (ii), or
 - (ii) is known in respect of either sub-paragraph (a)(i) or (ii), but the Secretary of State is satisfied that it was affected by a force majeure.

(3) Where, after issuing an EII certificate, the Secretary of State subsequently concludes that a proportion specified in that certificate is incorrect, the Secretary of State must give a notice, which specifies the correct proportion, to—

- (a) the person who applied for the certificate, except where the Secretary of State does not hold a proper address for such person;
- (b) the BSCCo; and
- (c) the CFD counterparty.

(4) For the purposes of paragraph (3), reference to a proportion specified in a certificate being "incorrect" includes where the Secretary of State concludes that the estimate made under regulation 10(5) should be revised.

(5) A notice under paragraph (3) has effect from the 6th working day after it is given and ceases to have effect if a subsequent notice is given and has effect.

Required notifications

12.—(1) Where any of the following occur in respect of a person’s business, that person must notify the Secretary of State of such occurrence as soon as is reasonably practicable—

- (a) a specified activity which was carried out using electricity measured by the meter in respect of which the certificate was issued has ceased to be carried out for a period of four weeks or longer;
- (b) that person becomes aware of an error in a successful EII application made by them and, but for the error, that person would not have been entitled to an EII certificate under regulation 8 in respect of that application;
- (c) that person becomes aware of an error in any successful application by them for an EII certificate, as a result of which the proportion of electricity measured by the meter in respect of which the certificate was issued which constitutes EII excluded electricity should be, or should have been, lower;
- (d) that person begins to—
 - (i) share with a third party the electricity supplied to the meter in respect of which the EII certificate was issued, or
 - (ii) supply to a third party any electricity supplied to the meter in respect of which the EII certificate was issued.

(2) Where a person is required to notify the Secretary of State under paragraph 1(d), the notice must specify the identity of the third party and the proportion of the electricity supplied to that meter which is used by, or supplied to, that third party.

(3) A person who has successfully applied for an EII certificate must, while the EII certificate is in force, notify the Secretary of State on the last working day in the months of March, June, September and December to confirm whether—

- (a) the person’s business is still trading; and
- (b) the person’s business is still carrying out the specified activity to which the EII certificate relates.

(4) A person who makes a successful application for an EII certificate in respect of their business at a time when that business is a new business must, within a period of 30 days beginning with the day on which annual accounts in respect of that business which relate to all or part of the relevant period for the purposes of that application are finalised, supply a copy of such annual accounts and the information set out in regulation 10(2)(k) to the Secretary of State.

(5) A notice under paragraphs (1) or (3) must be set out in writing and has been given if it is sent to the address or email address for correspondence set out in the certificate.

Validity and revocation of EII certificates

13.—(1) An EII certificate comes into force—

- (a) where there is already an EII certificate in force in relation to the meter in respect of which the certificate is issued, on the day after the expiry of the EII certificate that was already in force; or
- (b) where there is no EII certificate in force in relation to the meter in respect of which the certificate is issued, on the day after the day on which it is issued.

(2) Where an EII certificate is issued the Secretary of State must give a notice to—

- (a) the person who applied for the certificate;
- (b) the BSCCo; and
- (c) the CFD counterparty.

(3) Where an EII certificate is issued (and not revoked) by the Secretary of State, it is valid from the date on which it comes into force until either—

- (a) midnight on the date falling 16 months after the first day of the relevant period for the purposes of the EII application in respect of which the EII certificate was issued, if—
 - (i) at the time of that application the business in respect of which the application was made was a new business, and
 - (ii) at the time of that application the business in respect of which the application was made had been trading for not more than four financial quarters; or
 - (b) in the case of all other businesses, either—
 - (i) the end of the financial year in which the EII certificate comes into force, or
 - (ii) where sub-paragraph (i) would result in an EII certificate expiring after a period of 6 months or less, the end of the financial year after the financial year in which the EII certificate comes into force.
- (4) An EII certificate may only be revoked where the Secretary of State is satisfied that the person who applied for the certificate—
- (a) is not entitled to it pursuant to regulation 8; or
 - (b) has failed to comply with the requirements of regulation 12.
- (5) Where an EII certificate is revoked the Secretary of State must give a notice to—
- (a) the person who applied for the certificate, except where the Secretary of State does not hold a proper address for such person;
 - (b) the BSCCo; and
 - (c) the CFD counterparty.
- (6) Revocation has effect from the 6th day after the notice under paragraph (5) is given.
- (7) Where an EII certificate is revoked, or a notice under regulation 11(3) has been given in respect of that certificate, the CFD counterparty must, as soon as reasonably practicable, inform electricity suppliers who supply electricity which is measured by the meter in respect of which that certificate was issued.”.
- (5) After regulation 13, insert—

“Information sharing

13A. The CFD Counterparty may share information with the Authority for the purpose of facilitating the performance of the Authority’s functions under the Feed-in Tariffs Order 2012(a), the Renewables Obligation Order 2015(b) or the Renewables Obligation (Scotland) Order 2009(c).”.

- (6) For the Schedule (Specified activities) substitute the Schedule set out in the Schedule to these Regulations.

(a) S.I. 2012/2782
 (b) S.I. 2015/1947
 (c) S.I. 2009/140 as amended by S.I. 2009/276

SCHEDULE Specified Activities

Regulation 2

Table 1

<i>Column 1</i> <i>Description of activity</i>	<i>Column 2</i> <i>NACE Rev 2 Class</i>
Mining of hard coal	05.10
Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate	08.11
Operation of gravel and sand pits; mining of clays and kaolin	08.12
Other mining and quarrying not elsewhere classified	08.99
Processing and preserving of poultry meat	10.12
Manufacture of prepared feeds for farm animals	10.91
Manufacture of malt	11.06
Preparation and spinning of textile fibres	13.10
Weaving of textiles	13.20
Manufacture of knitted and crocheted fabrics	13.91
Manufacture of carpets and rugs	13.93
Manufacture of non-wovens and articles made from non-wovens, except apparel	13.95
Manufacture of other technical and industrial textiles	13.96
Manufacture of other textiles not elsewhere classified	13.99
Manufacture of other wearing apparel and accessories	14.19
Manufacture of knitted and crocheted hosiery	14.31
Manufacture of other knitted and crocheted apparel	14.39
Tanning and dressing of leather; dressing and dyeing of fur	15.11
Sawmilling and planing of wood	16.10
Manufacture of veneer sheets and wood-based panels	16.21
Manufacture of other products of wood; manufacture of articles of cork, straw and plaiting materials	16.29
Manufacture of paper and paperboard	17.12
Manufacture of corrugated paper and paperboard and of containers of paper and paperboard	17.21
Manufacture of household and sanitary goods and of toilet requisites	17.22
Manufacture of wallpaper	17.24
Manufacture of refined petroleum products	19.20
Manufacture of industrial gases	20.11
Manufacture of other inorganic basic chemicals	20.13
Manufacture of other organic basic chemicals	20.14
Manufacture of fertilisers and nitrogen compounds	20.15
Manufacture of plastics in primary forms	20.16
Manufacture of synthetic rubber in primary forms	20.17
Manufacture of man-made fibres	20.60
Manufacture of rubber tyres and tubes; retreading and rebuilding of rubber tyres	22.11
Manufacture of other rubber products	22.19
Manufacture of plastic plates, sheets, tubes and profiles	22.21
Manufacture of plastic packing goods	22.22
Manufacture of other plastic products	22.29

Manufacture of flat glass	23.11
Manufacture of hollow glass	23.13
Manufacture of glass fibres	23.14
Manufacture and processing of other glass, including technical glassware	23.19
Manufacture of refractory products	23.20
Manufacture of ceramic tiles and flags	23.31
Manufacture of bricks, tiles and construction products, in baked clay	23.32
Manufacture of other technical ceramic products	23.44
Manufacture of other ceramic products	23.49
Manufacture of cement	23.51
Manufacture of lime and plaster	23.52
Manufacture of plaster products for construction purposes	23.62
Manufacture of fibre cement	23.65
Manufacture of other non-metallic mineral products not elsewhere classified	23.99
Manufacture of basic iron and steel and of ferro-alloys	24.10
Manufacture of tubes, pipes, hollow profiles and related fittings of steel	24.20
Cold drawing of bars	24.31
Cold rolling of narrow strip	24.32
Cold drawing of wire	24.34
Aluminium production	24.42
Lead, zinc and tin production	24.43
Copper production	24.44
Other non-ferrous metal production	24.45
Casting of iron	24.51
Casting of steel	24.52
Casting of light metals	24.53
Casting of other non-ferrous metals	24.54
Manufacture of light metal packaging	25.92
Manufacture of electronic components	26.11
Manufacture of batteries and accumulators	27.20
Manufacture of other electronic and electric wires and cables	27.32
Manufacture of machinery for metallurgy	28.91