



Department for  
Business, Energy  
& Industrial Strategy

# Energy Intensive Industries (EIIIS)

Guidance for applicants seeking a certificate for an exemption from the indirect costs of funding Contracts for Difference (CFD), the Renewables Obligation (RO) and the small scale Feed in Tariff (FIT)



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# Introduction

1. The UK government is committed to achieving net zero greenhouse gas emissions by 2050. This requires a transformation of the UK economy, including the energy market, while keeping energy costs down for business and consumers, and maintaining competitiveness.
2. Several policies have been developed to increase the share of electricity generated from renewable and low carbon sources. Specifically, the government has put in place the Contracts for Difference (CFD) and Renewables Obligation (RO) schemes and the Small-Scale Feed-In-Tariff (FIT), amongst others, to incentivise low carbon and renewable electricity deployment. The costs of funding these schemes are recovered through levies or an obligation on suppliers and these are ultimately passed on to domestic and non-domestic electricity consumers' bills.
3. The government recognises that, in the short to medium term, the resulting increase in retail electricity prices may risk putting certain electricity-intensive businesses at a significant competitive disadvantage when they are operating in international markets. To address this risk, the government has developed exemption and compensation schemes. These schemes have been approved by the European Commission as compatible State aid and the exemption schemes have been implemented by secondary legislation<sup>1</sup> approved by Parliament. (The legislation implementing the CFD exemption, the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015, as amended, is hereafter referred to as "the Regulations".) The purpose of this guidance document is to explain how eligible businesses can apply for the CFD, RO and FIT exemption schemes. The eligibility criteria and process of assessment are the same for all these exemption schemes.
4. The CFD, RO and FIT exemption schemes do not apply to Northern Ireland. Companies based solely in Northern Ireland can currently apply for RO compensation and should refer to the Compensation Scheme Guidance. Companies with sites in both Great Britain and Northern Ireland should use this guidance.

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<sup>1</sup> [www.legislation.gov.uk/uksi/2015/721/contents/made](http://www.legislation.gov.uk/uksi/2015/721/contents/made)  
[www.legislation.gov.uk/uksi/2017/1051/contents/made](http://www.legislation.gov.uk/uksi/2017/1051/contents/made)  
[www.legislation.gov.uk/uksi/2017/1289/contents/made](http://www.legislation.gov.uk/uksi/2017/1289/contents/made)  
<http://www.legislation.gov.uk/id/uksi/2020/130>  
[www.gov.uk/government/publications/renewables-obligation-level-calculations-201819](http://www.gov.uk/government/publications/renewables-obligation-level-calculations-201819)

## Eligibility

5. There are five key requirements in determining whether a business is eligible for an EII certificate for an exemption from a proportion of the indirect costs of funding the CFD, RO and FIT:
  - The business must manufacture a product in the UK within an eligible sector (defined by a 4-digit NACE Code) – the “sector level test”.
  - The business must pass a 20% electricity intensity test – the “business level test”.
  - The business must not be an Undertaking in Difficulty (see paragraphs 24-28 below).
  - The business must have at least two quarters of financial data.
  - The application must contain evidence of the proportion of electricity used to manufacture the product for a period of at least three months.
6. In this guidance, “business” (or the “applicant”) refers to the legal entity manufacturing a product in the UK within an eligible NACE Code, such as a Company registered at Companies House.
7. If an agent is applying for an exemption on behalf of a client, they must submit a Letter of Authority (LoA) with the completed application which confirms they are acting on behalf of the applicant for this purpose. This should be signed by a Director or a senior manager within the business.
8. A business that successfully applies for the exemption will be issued with a certificate (an “EII certificate”) confirming their eligibility for the CFD, RO and FIT exemption.
9. Successful applicants should then pass their certificate on to their electricity supplier so that they receive the benefit of the exemption. Please note that electricity suppliers will need to set up the relevant arrangements before they receive, and therefore pass on, the exemptions.

### The “Sector Level Test”

10. The European Commission’s “Guidelines on State aid for environmental protection and energy 2014-2020<sup>2</sup>” (referred to in this guidance as the EEAG) sets out which sectors (by 4-digit NACE code) could be eligible for exemption.
11. To ensure that support is targeted at those most at risk, the UK Government further limited eligibility to those sectors which are electricity intensive and subject to international competitive pressures using UK specific data from the Annual Business Survey, specifically, those found to have a trade intensity of at least 4% and an electricity-intensity of at least 7%. Eligible sectors are those carrying out the activities listed in Annex 1, referred to as “specified activities” in the Regulations.
12. Applicants will need to establish that they manufacture a product(s) in the UK that falls within one or more of the eligible 4-digit NACE codes in Annex 1. If a business does not

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<sup>2</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XC0628\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XC0628(01))

manufacture a product in one of these sectors it will not be eligible for an EII certificate. Businesses that produce both eligible and ineligible products can apply but the exemption can only be applied to the proportion of electricity used to produce the eligible product.

## The “Business Level Test”

13. The purpose of the business level test is to ensure that the exemptions target only those businesses where support is most needed, i.e. those that will be put at a significant competitive disadvantage from the costs of funding renewable and low carbon policies.
14. In order to satisfy the business level test, businesses will need to show that their electricity costs amount to 20% or more of their Gross Value Added (GVA) over a reference period – the “relevant period”.
15. GVA is defined as earnings before taxes, interest, depreciation and amortisation (EBITDA) excluding items which are extraordinary and all staff costs including employers pension and national insurance contributions, director’s salaries and bonuses, casual or agency staff costs and other arrangements where employees are paid indirectly.
16. In line with the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102), which provides general accounting procedures on extraordinary expenditure, we define an extraordinary item as something which is highly unusual or infrequent in nature and not related to the ordinary and typical operating activities of the business.
17. If a business has a subsidiary business, they can apply at any level provided the applicant is a legal entity such as a Company registered at Companies House.
18. Eligibility will be assessed using data based on the applicant’s financial year. If applicable, the accounts on which data has been based must have been submitted to Companies House to allow verification. A business cannot apply with fewer periods of data than exist i.e. it is not permissible to exclude a year to ensure eligibility. The relevant period for businesses is as follows:
  - For businesses with three or more years of published annual accounts, the relevant period will be the three most recent consecutive years for which there are annual accounts.
  - For businesses with two years of published annual accounts, the relevant period will be those two years.
  - For businesses with one year of published annual accounts, the relevant period will be that one year.
  - A business that does not have any annual accounts and has been trading for 21 months or less can also apply. The relevant period in this circumstance will be the period for which they have been carrying out a specified activity and have financial data in the 12 months prior to making an application (which must be at least six months). Such businesses will need to supply a copy of their first set of annual accounts to BEIS within 30 days of the accounts being finalised.
  - Businesses with fewer than two financial quarters of financial data are ineligible.
  - For businesses with unusual accounting periods (i.e. which are longer or short than a 12-month period), we will use the period used in the published accounts.
19. Businesses will need to re-apply each time their EII certificate expires (which will generally be annually – see paragraphs 46-50 for more information about when

certificates expire). However, the eligibility of businesses with three or more years of annual accounts will only be reviewed when an application is made for their 6th EII certificate (i.e. they can receive four more certificates after their initial application before their eligibility will be reassessed). Eligibility of businesses with less than three years of annual accounts will need to be reassessed before a new certificate can be issued.

20. A legal entity which has a non-UK site can apply and may be eligible for the exemption. In these circumstances we will assess GVA at the legal entity level (i.e. including UK and non-UK assets or operations) but use UK only electricity data in the assessment. We cannot exempt electricity associated with non-UK production and therefore any certificate will only be valid for sites in the UK (excluding Northern Ireland) that produce an eligible product.
21. For businesses with sites in Northern Ireland, the business data for the Northern Ireland site(s) is included for the purposes of the business level test. However, businesses will not receive an exemption in respect of any meters in Northern Ireland.
22. Business electricity consumption includes all electricity consumed by the business during the relevant period (as outlined above) including grid and non-grid consumption.

## Force Majeure

23. Recognising that issues beyond the control of a business can affect its eligibility (if they affect its electricity consumption or its GVA), a business may obtain an EII certificate if the Secretary of State is satisfied its electricity consumption has been reduced by extraordinary circumstances, such as flood or fire, which were beyond its control, not foreseeable and could not have been avoided by the exercise of all due care (force majeure). Applicants will need to provide evidence of the alleged force majeure and show the effect of it on electricity consumption.

## Undertakings in difficulty

24. There are State aid requirements in relation to 'undertakings in difficulty' (UIDs). The Regulations provide that a business is eligible for an EII certificate only if it is reasonable to assume the business would not be regarded as a UID for the purposes of the European Commission's Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (the UID Guidelines)<sup>3</sup>. The UID Guidelines provide that "an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term." This requirement is tested when a business's eligibility is assessed against the 20% electricity intensity test.
25. BEIS considers that a business is not a UID (and therefore can be eligible for the exemption schemes) if any of the following apply:
  - a) The applicant is not in any of the UID circumstances in paragraph 20 of the UID Guidelines (set out in Annex 2).
  - b) The applicant is part of a larger group and the parent company is not in any of the UID circumstances in paragraph 20 of the UID Guidelines, as long as (i) the parent

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<sup>3</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.249.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.249.01.0001.01.ENG)



company has a controlling shareholding in the applicant and (ii) the parent company involves itself directly or indirectly in the management of the applicant and the two companies act in practice as a single economic unit.

- c) The applicant is only in one of the UID circumstances in paragraph 20 of the UID Guidelines because of the policy costs that the exemption schemes are designed to avoid or mitigate.
  - d) The applicant is an SME that has been in existence for less than three years, is not subject to collective insolvency proceedings and does not fulfil the criteria for being placed in collective insolvency proceedings at the request of its creditors.
26. The relevant business context may be considered when determining whether a business is a UID.
27. When applicants submit the information necessary to assess whether they meet the 20% electricity intensity test, they must confirm that they are not a UID. BEIS will also carry out checks to determine whether an applicant is a UID and, where necessary, BEIS may require additional information from the applicant and/or its parent company to satisfy BEIS on this point.
28. The European Commission has acknowledged in their recently published guidelines<sup>4</sup> that the sharp decline of electricity prices due to the COVID-19 outbreak may mean that a business which was not a UID could have become one. For the purposes of our scheme, we will exclude the period from 31 December 2019 until 30 June 2021 from the UID assessment. Businesses will still need to demonstrate that they meet the 20% business test.

### Electricity Cost Impact calculation

To calculate the electricity cost impact (which must be higher than or equal to 20%) we use the following formula:

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

BEP (Baseline Electricity Price):

- In calculating eligibility at both sector and business level the UK Government uses a Baseline Electricity Price (BEP) to allow fair comparison across sectors and businesses.
- The BEP is the price that, 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<sup>5</sup>, 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. It is based on the 2019 electricity price for the

<sup>4</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C\\_.2020.224.01.0002.01.ENG&toc=OJ%3AC%3A2020%3A224%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2020.224.01.0002.01.ENG&toc=OJ%3AC%3A2020%3A224%3ATOC)

<sup>5</sup> This will be the most recent calendar year for which all the information (both business information and electricity price information) needed to determine eligibility is available in order that the calculation of electricity cost impact uses data for BEP, BEC and BGVA that is comparable, as far as possible.

average industrial user in the [Quarterly Energy Prices publication](#)<sup>6</sup> This is currently the price from 2019 and, once deflated to 2012 prices using the most recent GDP deflator published by HMT using figures from the Office for Budgetary Responsibility and the Office for National Statistics<sup>7</sup>, is £111.75/MWh.

- We will update this guidance when this changes.

BEC (Baseline Electricity Consumption for Business) = The amount of electricity consumed in the UK for the business over the relevant period as outlined above.

BGVA (Baseline GVA for Business) = The GVA for the business over the relevant period as outlined above and deflated to 2012 figures. Any periods with negative GVA or GVA below £1 will be treated as having an aggregate value of £1.

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<sup>6</sup> See table 3.4.2 (inc CCL)

<sup>7</sup> <https://www.gov.uk/government/statistics/gdp-deflators-at-market-prices-and-money-gdp-november-2020-spending-review>

## Calculating the level of the exemption

29. The level of the exemption will be calculated as follows:

$$85\% \times \frac{\text{The electricity used by the applicant in producing eligible product(s)}}{\text{The total electricity through the meter}}$$

30. In accordance with the EEAG the aid intensity will be up to 85% of the indirect costs of funding the CFD, RO and FIT exemption schemes.

### Businesses that make several products

31. The exemption will be due for the electricity associated with the manufacture of eligible products. In order to assess this, we will take the following approach.
32. Where a business is manufacturing both eligible and ineligible products using electricity from a meter, the business will need to isolate the electricity usage associated with the different products using one of the following methods:
- Use evidence which clearly demonstrates the electricity usage associated with the manufacture of the product in question – preferably, in the form of metered records; or
  - Estimate the electricity usage associated with the manufacture of an eligible product using the proportion of the different products being made (in tonnage, m<sup>2</sup> or another justified metric). For example, electricity consumption is allocated to a product in the same proportion as the tonnage of the product produced relative to overall tonnage.
  - Where electricity begins or ceases to be used to make an ineligible product, the exemption certificate will be updated with the new proportion upon receipt of the relevant, verified, data.

### Businesses that have restructured

33. When a business is subject to restructuring (for example, merger, acquisition or divestment), any meter that is considered eligible for exemption prior to the restructuring will retain eligibility after it, and until the certificate expires, as long as the electricity supplied via that meter continues to be used for the same previously identified specified activity. This will ensure continued exemption. Where a restructuring has resulted in a different legal entity seeking to receive the exemption from such a meter, BEIS will need to be notified so that we can issue a notice to amend the name of the EII eligible for the exemption. This will ensure the new applicant benefits from the exemption.
34. As explained above, if any business applies for the exemption with the required data in respect of the applicant's three most recent consecutive financial years for which there are annual accounts, and meets the eligibility test, it will be able to apply four more times for an EII certificate before its eligibility needs to be reassessed. If a business in

these circumstances acquires another EII certificate following a restructuring (for example, through buying another business which had an EII certificate), this rule will apply to that EII certificate.

35. Under any new structure, any business wishing to include other existing meters that do not currently benefit from an exemption will need to submit data and supporting evidence to allow BEIS to assess eligibility of the meter.
36. If a business in the scheme installs a new meter, they can apply for a certificate when they have three months of electricity consumption data.

## Meter and network sharing

37. Electricity that is not consumed by the applicant, i.e. consumed by other businesses, will not be eligible. A business can only receive a certificate for exemption in respect of the proportion of electricity it uses that goes through the meter.
38. If another business uses the same meter as the applicant, the applicant will need to provide a statement identifying that business. The applicant will also need to provide evidence of the proportion of electricity going through the meter that it uses for the specified activity (for example, electricity bills). If the other business also produces an eligible product, they will need to apply separately in their own right for an EII certificate. If an applicant does not own the meter, they will need to contact the meter owner to supply evidence (such as electricity bills) of the proportion of electricity the applicant uses.
39. Sometimes an electricity network will be shared by several businesses. In such cases each individual business will have to apply separately in their own right for an EII certificate. In these cases, the proportion on the certificate could be significantly lower than the 85% aid intensity as it reflects that business's share of the electricity consumption.
40. For example, Company A is eligible for an EII certificate and uses 25% of the meter's electricity; Company B is eligible for an EII certificate and uses 50% of the meter's electricity; and Company C does not produce any eligible products and uses 25% of the meter's electricity. In this example Companies A and B will need to separately apply for the exemption and will each be issued with a certificate indicating the percentage of that meter's electricity on which they are eligible to claim the exemption. Company C will be ineligible for relief.
41. When there is a change in meter sharing arrangements, we will update the exemption certificate upon receipt of the relevant, verified, information.

## Third Party arrangements

42. In some cases, a business may receive their grid electricity from a third party who is not a licensed electricity supplier. In these circumstances the business applying will need to tell BEIS who that third party is. This is so that an EII certificate can be issued to both the business and the third party. The third party will be responsible for supplying this certificate to the electricity supplier.

# Applying for the exemption

## Information required

43. Annex 3 sets out the information required from applicants when completing the application form.

## Issuing certificates

44. Successful exemption applicants will receive a certificate setting out the details of their exemption. This should then be shared with the applicant's electricity supplier so that the business can receive the exemption it is entitled to. If requested by the EII we can issue separate certificates for individual sites or meters.
45. Some meters are not eligible for the exemption. This includes domestic meters (some businesses may use these in their offices), export meters (used to export non-grid power such as CHP (Combined Heat and Power) to the grid) and non-half hourly meters. If you are in doubt, please contact the BEIS EII team.
46. A new certificate (where one has not been issued previously) will come into force the day after the day on which it is issued and will last until 30<sup>th</sup> June of the following year. A new certificate issued to existing beneficiaries will be valid from 1<sup>st</sup> July to 30<sup>th</sup> June of the following year (e.g. a certificate starting from 1<sup>st</sup> July 2020 will be valid until 30<sup>th</sup> June 2021).
47. The above rule does not apply in respect of "new businesses" (as defined in the Regulations). Instead, for "new businesses" that have been trading for four consecutive financial quarters or less when they apply, the certificate will last until 16 months after the first day of the relevant period that was used for the application. For example, if a new business applied with 6 months of data and was eligible, and the certificate was issued a month after the date of the application (in month 7), the certificate would last for 9 months.
48. To ensure continuous exemption, businesses will need to apply for a new certificate before their existing certificate expires by completing an application form. Provided the business applies in time, a replacement certificate will be issued, and it will come into force on the day after the previous certificate expires.
49. The certificate will set out the proportion of electricity that is exempt from the indirect costs of funding the CFD, RO and FIT exemption schemes for each individual meter. This will be based on the proportion of electricity supplied to the meter used for a specified activity in the period for which evidence is required to be provided, which in most cases will be the previous calendar year or, if supply to the meter began after the start of that year, the period up to 12 months beginning on the date on which the supply began for which evidence is provided. This is provided there are three months' evidence. This will be rounded to the nearest hundredth with 0.005 being rounded upwards.

50. In some instances, there may be a “continuing change” since the beginning of the previous calendar year. There is a “continuing change” where the business begins or ceases to share a meter with a third party or the business begin or ceases to use electricity measured by the meter to make an ineligible product, provided that the change lasts for at least three months and is still continuing. If this is the case, then the proportion of exemption on the certificate will be based on the period since the last “continuing change” commenced, as long as there is at least three months’ worth of data. The proportion will be updated as new information becomes available. On receipt of additional information, an updated certificate will be issued.
51. Note that the exemption cannot be applied until suppliers have put in place the relevant arrangements for the meter, in line with the guidance issued by the Low Carbon Contracts Company (LCCC)<sup>8</sup>. To ensure the exemption schemes function effectively it is in the interest of both EIs and suppliers to make this happen as soon as possible. If an EI changes suppliers, the new supplier will need to re-notify LCCC and set the arrangements up again.
52. Once a certificate has been issued, we will notify the LCCC via the EMR Settlement Limited (EMRS) who manage the Contracts for Difference programme. EMRS will cross-check the MPAN (Meter Point Administration Number) or BM Unit (Balancing Mechanism Unit) number of the certificate with the information the electricity supplier has provided to ensure that the exemption can be applied.
53. The eligible relevant proportion of electricity volume that is exempt as determined by EMRS, acting on behalf of LCCC, will be shared with OFGEM for validation of the figures submitted by suppliers for its RO and FIT compliance process. This will allow businesses to benefit from the RO and FIT exemptions. To benefit from the RO and FIT exemptions, the electricity supplier should follow the guidance set out by OFGEM<sup>9</sup> to ensure that the relevant arrangements are in place.

## Appeals

54. Businesses can appeal against decisions made regarding their eligibility, the proportion of the exemption, an over-exemption or the amount to pay to BEIS due to an over-exemption if they consider that a decision is incorrect.
55. Appeals should be made in writing and can be sent via email to [energyintensiveindustries@beis.gov.uk](mailto:energyintensiveindustries@beis.gov.uk). They should clearly state that an appeal is being made, set out the grounds for appeal and be accompanied by any supporting evidence/documents that are to be relied on. Appeals will be determined on paper not via any oral hearing.
56. Appeals must be made within 20 working days of the date of the original decision. Following receipt of an appeal BEIS will send an acknowledgement of receipt within two weeks and will seek to make a decision within eight weeks of receipt of appeal. If an appeal is not upheld, an appellant can follow the Department’s appeals process.

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<sup>8</sup> [https://lowcarboncontracts.uk/sites/default/files/publications/LCCC%20Guidance%20on%20EI%20Excluded%20Electricity%20-%20Relevant%20Arrangements\\_0.pdf](https://lowcarboncontracts.uk/sites/default/files/publications/LCCC%20Guidance%20on%20EI%20Excluded%20Electricity%20-%20Relevant%20Arrangements_0.pdf)

<sup>9</sup> [www.ofgem.gov.uk/publications-and-updates/renewables-obligation-guidance-suppliers-march-2018](http://www.ofgem.gov.uk/publications-and-updates/renewables-obligation-guidance-suppliers-march-2018)

## Supporting evidence needed from applicants

57. Regulation 10 of the Regulations lists what supporting evidence an application must contain. In particular, regulation 10(2)(a) states that evidence of the earnings and the staff costs of the person's business must be provided. This section sets out what supporting evidence will be considered sufficient for the purposes of regulations 10(2)(a) and (b).
58. We will need to validate the data in the application. For all businesses we will need May and November electricity bills for the relevant period. For example, if a business is applying with data from 2017, 2018 and 2019, we will need bills for May 2017, 2018 and 2019 and November 2017, 2018 and 2019. We may require additional bills.
59. Businesses must, where applicable, provide finance data to match that published on Companies House. Businesses that do not have published staff costs and/or EBITDA at Companies House, or in a published UK annual report, must provide us with a copy of internal documents (in most cases, a copy of management accounts) used to support the figures for EBITDA and staff costs reported in Part 2 of the application, and provide an explanation for any difference between the figures in the application and those relevant in the internal documents. If deemed necessary by BEIS, an accountant's report may also be required. If this is the case, BEIS will provide further guidance on the scope of that report.
60. For new businesses (both large and small electricity users) which will not have annual accounts, we will require any management accounts which are available. Such businesses should provide an explanation for any differences between the figures in the application and those in the relevant internal documents.

# Monitoring and verification

## Quarterly reports

61. Businesses receiving the exemptions must notify BEIS on a quarterly basis (i.e. in each of the three month periods ending 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September and 31<sup>st</sup> December), that they are still trading and carrying out the specified activity in relation to which the application for the certificate was made. Businesses must also report any other specified activity for which electricity being measured by the meter is used. These quarterly declarations can be submitted on any day in a quarter rather than by the last working day of the month concerned.
62. For certificates where the proportion of exempt electricity set out in the EII certificate is based on a period of less than twelve months or where, at the date of the quarterly report, there is a continuing change in meter use (as set out in paragraph 50 above) the quarterly report will need to include the most recent evidence, when available, of the proportion of the electricity measured by the meter and used for a specified activity. This will enable us to update the proportion of electricity set out in the existing certificate and issue a new one.
63. Where the continuing change is that the business has begun to share a meter with a third party, the identity of the third party should be reported in the quarterly report and evidence, such as bills or a contract, should be provided. Businesses should also report any changes in the name of a third party.

## Re-application

64. As explained above, an EII certificate will normally only be valid for up to one year. To ensure continuous exemption, businesses will need to apply for a new certificate before their existing certificate expires. The information required in support of applications is set out in Annex 3.

## Monitoring

65. BEIS will monitor applications and will undertake further validation or investigation. This may include but is not limited to:
  - Where a case is complex – for example, a restructured business or an installation manufacturing several products.
  - Where the information being provided is significantly different from that declared with Companies House.
  - A random check of a sample of applications by a BEIS official. In some cases, an independent verifier may also be used.
  - Where a business is suspected to be an Undertaking in Difficulty.



## Information sharing, publication and transparency

66. We recognise that businesses will be required to provide commercially sensitive data and, unless we consider that we are legally required to do so (for example, by the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or requirements in the approved terms of our State aid notification to the European Commission) we are not intending to make public commercially sensitive business data.
67. We may share data with the LCCC, the BSCCo, EMRS and OFGEM for the administration of the exemption schemes. This data will not be published.
68. The European Commission requires that member states publish certain information in respect of businesses receiving the exemptions (if worth €500,000 or more) for transparency purposes: specifically, their name, the total amount of aid received (within bounded ranges), the date the aid was awarded, the relevant region of operation (NUTS 2), NACE code(s) and the type of business (i.e. small or medium-sized enterprises (SME) or large company)<sup>10</sup>. This information will be published on: <https://webgate.ec.europa.eu/competition/transparency/public/search/home>. We will upload the relevant information to this website within six months of the 31 December of the year during which the aid reached the €500,000 threshold.
69. BEIS does not hold all the information it requires to calculate the value of the aid received by eligible EIs in respect of the CFD, RO and FIT exemptions. The LCCC holds the relevant information in the form of the electricity consumption data of eligible EIs. The UK government will therefore require LCCC to share the following data with BEIS – the EI certificate number; the name of the recipient; the volume of electricity supplied through the eligible meters (in MWh) and the value of the CFD exemption (in £).
70. In order to calculate the individual aid amounts, LCCC or BEIS will need to multiply this volume data (MWh) by the CFD supplier levy (£/MWh). EMRS publishes the interim levy rate on behalf of the LCCC on a quarterly basis in advance and a reconciled levy rate on a daily basis once the generators have been paid.
71. The metered volume data is the same data that will be used to calculate the value of the RO and FIT exemption to each beneficiary. BEIS may use this data in its internal administration of the CFD, RO and FIT EI exemption schemes and may use the total volume of electricity supplied through eligible meters for the purpose of setting the annual Renewables Obligation on licensed suppliers.
72. By applying for an EI certificate, an applicant consents to the data sharing requirements set out in this guidance. By giving consent to BEIS, an applicant is also confirming that this consent can be relied upon by LCCC.
73. Otherwise, unless BEIS considers that it is legally required to make further information available, BEIS will only publish the names of businesses receiving the exemption and will not publish details of unsuccessful applicants.
74. For the purposes of Data Protection, the Data Controller is the Department for Business, Energy and Industrial Strategy (BEIS). You can contact the BEIS DPO (Data Protection

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<sup>10</sup> An SME is defined as an “enterprise which employs fewer than 250 persons and has an annual turnover not exceeding €50 million, and/or an annual balance sheet total not exceeding €43 million”.

Officer) at: BEIS Data Protection Officer, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

## Change of details or circumstances

75. The applicant (or its successor) must notify BEIS as soon as possible if:
- The contact name or address changes.
  - It ceases to manufacture all types of eligible product. Note: this does not extend to temporary shutdown of a plant for maintenance.
  - It becomes aware of an error in an application it has made which means that either it is actually not eligible for the exemption or that a higher proportion of electricity supplied to the meter is subject to the exemption than it should be.
76. If a business restructures, BEIS will issue a notice updating the name on the certificate. We will also issue a notice correcting the certificate if a business is receiving too much or too little exemption.
77. If a business notifies BEIS that its site (or one of its sites) has been mothballed, we will consider the individual circumstances, but it is very likely that the certificate would be revoked in respect of the meter(s) on that site. If a certificate for a mothballed site is revoked, a business can apply for a new certificate if the site becomes operational again. The proportion specified in the new certificate will be based on whatever data is available for the previous calendar year; if supply to the meter began after the start of that year, the period of up to 12 months beginning on the date on which supply began for which such evidence is provided; as specified in the Regulations, as long as at least three months of data is available.
78. Certificates will remain valid during any period of scheduled maintenance.
79. BEIS will revoke a certificate if a business:
- ceases to carry out a specified activity or if it discovers an error meaning it was never eligible.
  - fails to comply with its notification obligations, set out in regulation 12 of the Regulations.
80. BEIS would also recover the value of any exemption that the business had received but was not entitled to.
81. If a business is supplied by a third party that is not an electricity supplier but has a certificate because it supplies that business, we can revoke that certificate if the business ceases to be supplied by that third party. We can also revoke the certificate issued to the third party if the business's own certificate is revoked.

## Recovery of money from over-exempted energy intensive industries

82. The EEAG require EU member States to put in place an ex-post monitoring mechanism to ensure that any over-exemption of the reduction in charges from schemes to finance

renewable energy deployment will be recovered. Although the UK is no longer an EU Member State, these requirements will continue to apply during the transition period.

83. To calculate the value of any over-exemption, BEIS will ask for the electricity bill of an over-exempted business which may show the pass-through costs of the CFD, RO and FIT exemption schemes as a line item. If the bill shows the price impact and volume figures, BEIS will use this information and the level of reduction in charges that the business ought to have received to calculate the amount the business has to pay to BEIS.
84. If the electricity bill does not show the price impact, BEIS will calculate the amount to be recovered by taking the difference between the volume of electricity actually exempted and volume of electricity consumed that should have been eligible to be excluded from the renewables charges, multiplied by the respective renewable charge, bearing in mind the maximum aid intensity of 85% and the relevant period. BEIS will use the following levels of the charges (£/MWh):
  - CFD: Reconciled Daily Levy Rate, as published by the LCCC;
  - RO: 'Effective' price of the RO (= GB renewable obligation in proportion to total electricity supplied (ROC/MWh) multiplied by the buy-out price (£/ROC)), within the relevant period;
  - FIT: 'Effective' price of the FIT (= total quarterly Levelisation fund (£) / total electricity supplied in GB (MWh) within the relevant period.
85. BEIS will write to any over-exempted business informing it and requesting further information to calculate the amount of the over-exemption. After BEIS has calculated the level of the over-exemption based on the information above, it will write again to the business with its decision about the value of the over-exemption that the business must pay BEIS.
86. Businesses can appeal against decisions made regarding the over-exemption and the amount they must pay to BEIS if they consider that a decision is incorrect (see the appeals section above).

# Appendix: Example Calculations

## The 20% Business Level Eligibility Calculation

1. The 20% business level eligibility test is the same for the exemption from the costs of the CFD, RO and FIT.

The electricity intensity calculation includes electricity from all sources (grid and non-grid) across the entire business (including ineligible products). To allow fair comparison across applicants facing different electricity prices, a common reference price is used. To allow comparison across time, all monetary values are first deflated by BEIS to a common year using the most up to date version of the UK GDP Deflator published by the ONS.

2. Total electricity consumption provided in Table A of part 2 of the application form, is added together for each complete financial period provided. It is then multiplied by the reference price to give the total representative cost of electricity over the years/quarters provided. The reference price is fixed in 2012 prices. The reference price is currently £111.75/MWh.
3. Earnings Before Interest, Tax, Depreciation & Amortisation (EBITDA) and staff costs are added together to create GVA<sup>11</sup>. GVA for each time period is multiplied by the relevant GDP Deflator to convert it to 2012 prices. GVA is then added together over the financial periods provided to get total GVA in 2012 prices. If GVA is less than £1 in any period, a value of £1 is used.
4. The total representative electricity cost is divided by total GVA to create electricity intensity. A business is eligible if electricity intensity meets or exceeds 20%. A worked example of the calculation performed by BEIS is outlined below for a business which has submitted an illustrative “Table A”. Note that calculations are rounded and tables slightly abridged for ease of presentation.

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<sup>11</sup> In accordance with Annex 4 of EEAG guidelines, income and expenditure classified as financial or extraordinary in company accounts should not be included in EBITDA. Staff costs should include employer’s pension and national insurance contributions; businesses with complex arrangements including third party payment of staff should discuss these arrangements with BEIS.

**Table A**

	2012/13	2013/14	2014/15	2015/16
Business Financial period Start Date	-	01/07/2013	01/07/2014	01/07/2015
Business Financial period End Date	-	30/06/2014	30/06/2015	30/06/2016
Does this business financial year represent a full year of operation?	No	Yes	Yes	Yes
EBITDA (£ nominal)	-	-£20,000,000	-£5,000,000	£15,000,000
Total staff costs (£ nominal)	-	£17,500,00	£20,000,000	£30,000,000
Total Business Electricity Consumption incl Grid and Non-Grid Sources (MWh)	-	80,000	90,000	85,000
Total business Grid Electricity Consumption (MWh)	-	23,105	31,900	27,810
Total business Grid Electricity Bill	-	£1,594,245	£2,488,200	£2,336,040

**Step 1:** Calculate total representative electricity consumption = £111.75 x (80,000 + 90,000 + 85,000) = £29,555,000.

**Step 2:** Add staff costs and EBITDA together to create GVA

GVA	£17.5m - £20m = -£2.5m However, because GVA is below £1 this becomes £1	£20m-£5m=£15m	£30m + £15m = £45m
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**Step 3:** Convert GVA to 2012 prices for each year and then sum to create total GVA in 2012 prices.

**GDP Deflator provided by ONS (November 2020, indexed to 2012 prices)**

Index	1	0.983	0.966	0.959	0.939
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Because the business has a financial year which does not follow the calendar year, the index has to be converted so it matches the financial year provided by the business. This is done by using the proportion of the financial year that is in each calendar year.

**Table B**

Business Financial period Start Date	01/07/2013	01/07/2014	01/07/2015
Business Financial period End Date	30/06/2014	30/06/2015	30/06/2016
Proportion of financial year in first calendar year	184 days / 365 days = 0.5	184 days / 365 days = 0.5	184 days / 366 days = 0.5
Index for financial year	$(0.5 \times 0.983) + (0.5 \times 0.966) = 0.975$	$(0.5 \times 0.966) + (0.5 \times 0.959) = 0.962$	$(0.5 \times 0.959) + (0.5 \times 0.939) = 0.949$
GVA in 2012 prices	$0.975 \times \text{£}1 = \text{£}0.98$	$0.962 \times \text{£}15\text{m} = \text{£}14.4\text{m}$	$0.949 \times \text{£}45\text{m} = \text{£}42.7\text{m}$

Total GVA in 2012 prices = £0.98 + £14.4m + £42.7m = £58.08.2m

**Step 4:** Calculate electricity intensity = £29.5m / £58.08m = 51%. This exceeds 20% so the business is eligible.

### Proportion of Electricity Eligible per Meter

- Eligible businesses will be issued a certificate indicating their eligibility for an exemption. The certificate will detail the proportion of electricity consumed from each meter, eligible for exemption. These proportions will be calculated using data from a business' application and updated each year based on annual data provided in re-applications.
- Those eligible businesses that share a meter with other businesses or are supplied by a third party who also supplies others or onward supply to other businesses will only receive support for the proportion of electricity they consume. Those businesses that consume electricity from the same meter to produce eligible and ineligible products will only receive support on the proportion of electricity consumed in relation to the production of eligible products.

### Worked Example

- In this example a business has two meters at two sites – meter A and meter B – the first meter it shares with another business and the site produces both eligible and ineligible products. At the second site it also produces eligible and ineligible products. As the business does not use all the electricity from a meter it submits table E and as it produces ineligible products it submits Table G in Part 2 of the application form.

**Table E (in part 2 of the application form)**

Meter A	SW1 234	Other Company Ltd	80,000	2,000
Meter B	NE1 234	-	10,000	0

**Table G (in part 2 of the application form)**

Meter A	SW1 234	2013	70,000
Meter B	SW1 234	2023	10,000
Meter C	NE1 234	2013	5,000
Meter D	NE1 234	2023	5,000

**Step 1:** Calculate proportion of electricity from each meter which is consumed by the eligible business.

$$\text{Meter A} = 80,000 / (80,000 + 2,000) = 97.5\%$$

$$\text{Meter B} = 100\%$$

**Step 2:** Calculate the proportion of electricity from each meter used to produce eligible products (2013 is eligible and 2023 is ineligible).

$$\text{Meter A} = 70,000 / 80,000 = 87.5\%$$

$$\text{Meter B} = 5,000 / 10,000 = 50\%.$$

**Step 3:** The maximum aid intensity is 85%. This is multiplied by the proportion of electricity consumed from the meter by the eligible business to make eligible products. This is the final proportion which will be applied by the energy supplier.

$$\text{Meter A} = 97.5\% \times 87.5\% \times 85\% = \mathbf{72.5\%}$$

$$\text{Meter B} = 100\% \times 50\% \times 85\% = \mathbf{42.5\%}$$

# Annex 1: Eligible activities

Description of activity	NACE Rev 2 Class
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 grain mill products	10.61
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



Description of activity	NACE Rev 2 Class
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

Description of activity	NACE Rev 2 Class
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

## Annex 2: Extract from the European Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (UID Guidelines)

Paragraph 20 of the UID Guidelines<sup>12</sup> says:

‘For the purposes of these guidelines, an undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term. Therefore, an undertaking is considered to be in difficulty if at least one of the following circumstances occurs:

- (a) In the case of a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital.
- (b) In the case of a company where at least some members have unlimited liability for the debt of the company, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.
- (c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
- (d) In the case of an undertaking that is not an SME, where, for the past two years:
  - i. the undertaking's book debt to equity ratio has been greater than 7.5 and
  - ii. the undertaking's EBITDA interest coverage ratio has been below 1.0.’

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<sup>12</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2014.249.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.249.01.0001.01.ENG)

## Annex 3: Information required from applicants: checklist

No.	Requirement	
1	A contact name, address and e-mail address.	
2	The business's name and evidence of its legal status (for example, Companies House registration number).	
3	Details of the eligible product (using the relevant 4-digit NACE Code).	
4	The 8-digit PRODCOM Code (this is required for monitoring purposes only).	
5	A statement setting out the business's financial year.	
6	Except where the application relates to a "new business" (as defined in the Regulations), a statement setting out the accounting standards to which the annual accounts have been prepared.	
7	If applicable <sup>13</sup> , evidence of the earnings (EBITDA) and the staff costs of the business in the relevant period.	
8	If applicable <sup>14</sup> , evidence of the total amount of electricity consumed in the UK by the business in the relevant period (i.e. from all meter points and any other sources of electricity which the business uses), the total grid electricity consumption of the business in the relevant period and the amount paid by the business for the total grid electricity consumption. To prove this, we will require May and November bills for the relevant period.	
9	Details of the electricity meter which measures the supply of electricity used for a specified activity including: <ul style="list-style-type: none"> <li>- the MSID and, in the case of a meter registered in CMRS, the BM Unit Identification Number</li> <li>- the amount of electricity measured by that meter in the previous calendar year</li> </ul>	

<sup>13</sup> For a business with three or more years of annual accounts, this is required on the first application and if it meets the eligibility test, the business will be able to apply four more times for an EII certificate before this information will be required again.

<sup>14</sup> For a business with three or more years of annual accounts, this is required on the first application and the business will be able to apply four more times for EII certificate before this information will be required again.

	<ul style="list-style-type: none"> <li>- the name and contact details of the electricity supplier (or, if applicable, the third-party supplier)</li> <li>- the sum paid to the electricity supplier for the supply of electricity during the previous calendar year.</li> </ul>	
10	A statement that either all the electricity supplied to the meter which is subject to the application is used by the business concerned or details of the proportion shared with any third party and the name of the third party.	
11	<p>Evidence of the proportion of electricity measured by the meter that was used for a specified activity:</p> <ul style="list-style-type: none"> <li>- if there is a “continuing change” at the date of the application, in the period up to twelve months beginning on the date on which the last continuing change commenced, as long as there is at least three months’ evidence:</li> <li>- in any other case, either in the calendar year preceding the application or, if the supply to the meter began after the start of that year, in the period of up to twelve months beginning on the date on which supply began.</li> </ul>	
12	Where at the date of the application there is a continuing change, a statement setting out the date on which the last continuing change commenced.	
13	If applicable, evidence of any force majeure and its effect on the amount of electricity used by the business in the relevant period.	
14	Where an applicant does not itself pay for the electricity supply, the name of the person who pays for it.	
15	A statement confirming that the applicant is not an undertaking in difficulty.	

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