



Department for  
Business, Energy  
& Industrial Strategy

# CONTRACTS FOR DIFFERENCE

Government Response to the Consultation on  
Changes to the Non-Delivery Disincentive for  
CFD Allocation

A decorative blue curved line that starts on the left, rises to a peak, and then curves down to the right, ending with a small blue dot.

October 2016

# CONTRACTS FOR DIFFERENCE

## Government Response to the Government Response to the Consultation on Changes to the Non-Delivery Disincentive for CFD Allocation

The consultation and Impact Assessment can be found on BEIS's website

<https://www.gov.uk/government/consultations/consultation-on-changes-to-the-non-delivery-disincentive-for-cfd-allocation>

CONTRACTS FOR DIFFERENCE

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# Introduction / Executive Summary

1.1. The Electricity Market Reform (EMR) programme launched in August 2014, with the implementing legislation coming into force and the independent EMR delivery bodies becoming designated and operational. The first Contracts for Difference (CFD) allocation round concluded in March 2015.

1.2. We introduced amendments<sup>1</sup> to the Contract for Difference (Allocation) Regulations 2014<sup>2</sup> (the “Allocation Regulations”) to introduce the Non-Delivery Disincentive (NDD) which applied to the first CFD allocation round.

1.3. The NDD aims to incentivise applications in respect of projects likely to be delivered, and therefore to ensure that applicants which are awarded a contract in a CFD allocation round are incentivised to sign that contract and to make their best efforts to meet the Milestone Delivery Date (MDD). This is provided for by an exclusion applying to the site of a project that was awarded a CFD but where (i) the applicant in respect of that project failed to sign it before the offer lapsed, or (ii) the CFD was terminated within 13 months of the CFD notification due to a failure to meet the stages for delivery required in the CFD (in the life of most projects awarded a CFD, the MDD would be expected to fall at about 13 months after CFD notification). The exclusion applies to the site and ends on the date which is 13 months after the date of CFD notification<sup>3</sup>. The aim was that such sites would be excluded from being used for an application for the next CFD round.

1.4. As allocation rounds have not occurred as frequently as originally envisaged, we considered it had become necessary to update the exclusion period. To this end we opened a consultation on 26 May 2016 regarding an extension to the exclusion period to include, not only any allocation round occurring in the period of 13 months after CFD notification, but also the first CFD allocation round occurring after the end of that period up to 24 months after CFD notification.

1.5. We also consulted on making two further changes: to clarify the site description and to amend the ‘non-delivery case’ to capture termination occurring:

(a) prior to 13 months after the date of CFD notification (ie prior to the likely date of the MDD) ; or

(b) due to a failure to meet the stages of delivery required by the MDD.

Finally, we also consulted on a further exemption from the NDD where a CFD terminates due to a sustainability change in law.

The consultation closed on 22 June 2016.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2015/981/made>

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2014/2011/contents/made>

<sup>3</sup> As defined in section 12 of the Energy Act 2013.

## Analysis of consultation responses

In total, twenty one responses to the consultation were received from a range of stakeholders, including independent renewables generators, trade associations and large integrated energy suppliers, as well as an environmental group.

This Government Response provides a representative overview of the feedback received in relation to each of the four consultation questions, and explains what final decisions have been taken. All responses received as part of this consultation were considered in developing the final policy positions in the areas covered.

We would like to thank all those who engaged with the consultation and submitted a response.

## Next Steps

Draft Regulations, implementing the decisions outlined in this Government Response, have been laid before Parliament today. We intend that the changes to the Regulations will be made in time to apply to the second CFD Allocation Round.

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# NDD Changes

## Exclusion Period

Question 1:

Do you agree that the NDD exclusion period should be changed so that the relevant site is excluded from being used in respect of a CFD application for:

- (a) any CFD allocation round commencing in the period of 13 months from the date of the relevant CFD notification; and
- (b) the first of any CFD allocation rounds commencing between the end of that period and 24 months after CFD notification?

If not, why not and what alternative approach would you propose which delivers our objective?

1.6. We proposed to amend the Allocation Regulations to ensure that the site of a project which fails to sign its contract, or which terminates prior to 13 months post-CFD notification (ie prior to the MDD) or due to a failure to meet the MDD, is excluded from being used in respect of a CFD application for:

- (a) any CFD allocation round commencing in the period of 13 months from the date of the relevant CFD notification; and
- (b) the first of any CFD allocation rounds commencing between the end of that period and 24 months after CFD notification.

## Summary of Responses

1.7. There were 18 responses to this question, of which all but one expressed a clear preference for increasing the exclusion period as proposed by Government. A number said that such an increase was necessary in order to deliver certainty that only realistic projects participated in the round. The one exception thought we should not make decisions until there was greater clarity about future rounds timings. The call for such clarity was more general.

1.8. Among the views expressed, some respondents suggested that additional measures should be looked at in the future, and Government will consider this further. Some respondents linked this to questions in the Consultation on changes to the CFD Contracts and CFD Regulations<sup>4</sup> on measures needed to prevent bed-blocking with suggestions that we needed to look at Milestone Delivery Date timings. Government is considering these representations.

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<sup>4</sup> <https://www.gov.uk/government/consultations/consultation-on-amending-the-cfd-contract-and-regulations>

### Decision taken since the consultation – question 1.

1.9. The Government welcomes the stakeholder feedback on the proposal to change the exclusion period and confirms its intention to make this change.

### Site Description

Question 2:

Do you agree that the change to the site description provides greater clarity?

1.10. We proposed to amend regulations to make clear that for the purposes of NDD, the relevant site is that of the main generating structures of the CFD unit (whole or part of an eligible generating station) rather than the eligible generating station. In the case of (for example) a CFD for a wind farm extension, the policy is that the site of the extension only, not the site of the entire wind farm including the extension, would be excluded in the event of a breach of the NDD.

### Summary of Responses

1.11. There were 19 responses to this question with all agreeing that the change to the site description provided greater clarity.

1.12. One respondent was concerned that this might cause an issue for bioenergy plants. Following further consideration of this point Government is satisfied that this does not cause such a problem.

### Decision taken since the consultation – question 2.

1.13. The Government welcomes the stakeholder feedback on the proposal to change the site description and confirms its intention to make this change.

### Non-Delivery case

Question 3:

Do you agree that we amend the ‘non-delivery case’ so that it captures termination occurring:

- (a) prior to 13 months post-CFD notification (ie prior to the MDD); or
- (b) due to a failure to meet the stages of delivery required by the MDD.

1.14. In the consultation we proposed to amend the ‘non-delivery’ case so that it captures a termination occurring:

- (a) prior to 13 months post-CFD notification (ie prior to the MDD); or
- (b) due to a failure to meet the stages of delivery required by the MDD.



### Summary of Responses

1.15. There were 18 responses to this question, of which all agreed that we should amend the 'non-delivery case' to make clear the timings of the termination event captured.

1.16. A couple of respondents questioned whether there needed to be well-defined criteria to assess termination. Government is considering this point.

### Decision taken since the consultation – question 3.

1.17. The Government welcomes the extensive and detailed stakeholder feedback on the proposal to amend the 'non-delivery case' and confirms its intention to make this change as consulted on.

### Sustainability Change in Law

Question 4:

Should we extend exemption protection to projects which have terminated due to Sustainability Change in Law? Please support your answer with evidence of why it should or should not be exempted.

1.18. Following changes to the change in law termination events in the CFD terms and conditions to include termination by reason of Sustainability Change in Law (SCiL), we proposed to extend the exemptions to the NDD to include this termination event.

### Summary of Responses

1.19. There were 18 responses to this question with the vast majority agreeing that the exemption should be extended to include projects terminated due to Sustainability Change in Law.

1.20. There were a few suggestions that this needed to be extended to cover where there is a prolonged "force majeure" event due to judicial review. Government is not convinced that we need to extend this protection further than it is currently at this time.

### Decision taken since the consultation – question 4.

1.21. The Government welcomes the stakeholder feedback on this proposal and confirms its intention to make this change.

### Other issues

1.22. A number of responses to the consultation raised issues that did not specifically relate to any of the consultation proposals upon which comments were sought.

1.23. A number of responses suggested that there was a need for an end to end review of the CFD system. This included a mixture of responses with some suggesting that Government should strengthen the Non-Delivery Disincentive by introducing bid/performance bonds or delivery deposits, though there were a similar number of responses which were strongly against any such move citing the increased risk to smaller developers in particular. Linked to the above was a number of requests that the review should look at the linkage to Milestone Delivery Dates with suggestions that these could be relaxed for mature technologies where there was a lower risk of non-delivery. Government has noted these responses and those received as part of the Consultation on changes to the CFD Contracts and CFD Regulations<sup>5</sup>.

1.24. A response to the consultation suggested that the eligibility checks for CFD Allocation should be extended to include an environmental eligibility check. We do not believe this is necessary at this time.

1.25. Whilst one other response requested that waste heat should be included in the CFD. This is not an issue addressed here, but Government does not think that this appropriate as waste heat may come from generation sources which are not low carbon.

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<sup>5</sup> <https://www.gov.uk/government/consultations/consultation-on-amending-the-cfd-contract-and-regulations>

# Catalogue of consultation questions

## Consultation Question

|    |   |
|----|---|
| 1. | <p>Do you agree that the NDD exclusion period should be changed so that the relevant site is excluded from being used in respect of a CFD application for:</p> <ul style="list-style-type: none"><li>(a) any CFD allocation round commencing in the period of 13 months from the date of the relevant CFD notification; and</li><li>(b) the first of any CFD allocation rounds commencing between the end of that period and 24 months after CFD notification?</li></ul> <p>If not, why not and what alternative approach would you propose which delivers our objective?</p> |
| 2. | <p>Do you agree that the change to the site description provides greater clarity?</p>   |
| 3. | <p>Do you agree that we amend the 'non-delivery case' to make clear that it captures termination occurring:</p> <ul style="list-style-type: none"><li>(a) prior to the MDD; or</li><li>(b) due to a failure to meet the stages of delivery required by the MDD.</li></ul>   |
| 4. | <p>Should we extend exemption protection to projects which have terminated due to Sustainability Change in Law? Please support your answer with evidence of why it should or should not be exempted.</p>  |

