



Department
of Energy &
Climate Change

Electricity Market Reform – Contracts for Difference

Government Response to the Consultation on
Changes to the CFD Contract & CFD Regulations

June 2015

© Crown copyright 2015

URN 15D/341

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open government Licence.

To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to us at CFD Design & Governance, Area 4D, 3 Whitehall Place, London, SW1A 2AW.

Contents

Contents	3
1. Introduction	4
Next Steps	4
Analysis of Responses	5
2. CFD Contract Changes	5
Issue 1: Unincorporated joint ventures	5
Issue 2: Negative pricing	6
Issue 3: Minor, technical and clarificatory amendments	9
Milestone Delivery Date and Milestone Requirements	9
Representations and Warranties	11
Undertakings	11
Confidentiality	11
Annex 7 – Fuel Measuring and Sampling	12
Disputes and Generation Tax	12
Change in Law	12
Other minor and technical proposals	12
Issue 4: Metering Operational Framework and Technical System Requirements	13
3. CFD Regulations	13
Issue 1: Running each pot as a separate Allocation Round	14
Issue 2: Applications to participate in the Capacity Market Auction	14
Issue 3: Excluded Applications	15
Issue 4: Sealed Bid Non-Pricing Information	15
Issue 5: Qualifying Applicants	16
Issue 6: Direct Connections, Partial Connections and where no Direct or Partial Connections apply	16
Issue 7: Pending Applications which Qualify after the Allocation Process has commenced ...	16
Issue 8: Minor Technical Amendments: Reviews & Appeals; Pending Applications and Delays	17
Issue 9: Unincorporated joint ventures	17
Issue 10: Sustainability Directions	18
Issue 11: Amendments to Standard Terms Notices	18
Issue 12: Harmonisation of ‘working day’ definitions	19

1. Introduction

- 1.1. In August 2014, as part of the implementation of the Electricity Market Reform ('EMR') programme, the previous government announced the first Contract for Difference ('CFD') Allocation Round in which low carbon projects were able to apply and compete for support. This first round concluded in March 2015 and resulted in 25 low-carbon projects signing CFDs.
- 1.2. A CFD is a private law contract between a low carbon generator and a government owned company. It acts to encourage the delivery of projects being offered support by giving greater certainty and stability to the revenues of electricity generators. It does this by reducing their exposure to volatile wholesale prices, whilst protecting consumers from paying as high support costs when electricity prices are high.
- 1.3. From 9 March to 20 April 2015, the previous government consulted on proposals to undertake a package of amendments to the CFD regime intended to ensure that it can operate effectively and flexibly, supporting any future Allocation Round.
- 1.4. These proposals include amendments to four sets of Regulations:
 - The Contracts for Difference (Definition of Eligible Generator) Regulations 2014
 - The Contracts for Difference (Allocation) Regulations 2014
 - The Contracts for Difference (Standard Terms) Regulations 2014
 - The Electricity Market Reform (General) Regulations 2014
- 1.5. The consultation document also proposed a number of changes to the CFD Contract itself. The details of the package of proposed changes and the government's decisions following the consultation are set out within the individual chapters that follow.
- 1.6. In total, we received 25 submissions. The majority of respondents were electricity generators, suppliers and developers, whilst other respondents included trade associations and delivery partners.
- 1.7. The responses received were largely positive about the majority of the proposals. Many respondents did not comment on all of the consultation questions, but focused instead on items of specific interest to them.

Next Steps

- 1.8. The positions set out in this government response will be reflected, where necessary, in amendments to Regulations that we intend to lay before Parliament over the coming months, and within the next version of the CFD contract.

Analysis of Responses

2. CFD Contract Changes

- 2.1. In the consultation document, we proposed changes to the CFD Contract on the following topics:
- Unincorporated Joint Ventures
 - Negative pricing
 - Minor, technical and clarificatory amendments
 - Metering Operational Framework and Technical System Requirements
- 2.2. The responses from stakeholders in relation to each of these will be described and responded to in turn below. All responses have been taken into account in composing the final decisions, although only responses that have provided substantive feedback on specific issues are considered in detail.
- 2.3. As noted in the consultation document, any revision to the CFD Contract will not alter existing CFD Contracts that have already been entered into by developers and the Low Carbon Contracts Company Ltd ('LCCC'). However, the existing terms do allow the LCCC to propose amendments to existing CFD Contracts. It will be for the LCCC to decide whether they wish to propose amendments to existing contracts to mirror the changes made here.

Issue 1: Unincorporated joint ventures

- 2.4. The vast majority of respondents welcomed the proposal to enable unincorporated joint ventures ('UJVs') to enter into CFDs. Some specific concerns or alternative proposals were raised, as detailed below.
- The majority of stakeholders stated that the proposals might unfairly impact projects where a single party to the venture became insolvent but where the remaining parties were fully capable of stepping in and continuing to deliver under the CFD Contract. These respondents proposed a right of step-in for the solvent UJV parties.
 - Two respondents noted that it should be possible to specify multiple representatives for the joint venture, or to include a provision for the representative to change over time.

Response

- 2.5. In line with the views expressed by the vast majority of respondents, the government has decided to proceed with the proposals to enable UJVs to bid for CFDs.
- 2.6. The government recognises that the insolvency of a single party to a UJV does not fundamentally undermine the deliverability of a CFD in the way it does where a single generator becomes insolvent. As a result, the revised CFD Contract will include a step-in right for the remaining members of a UJV, subject to the satisfaction of the LCCC

that it will be possible for those parties to deliver their project. This determination will be subject to dispute processes as are other determinations that are made by the LCCC.

- 2.7. On the proposal to include multiple representatives or to allow for the representative to change over time, the government does not believe it is appropriate to add to the complexity of the CFD drafting by including such additional optionality, given that the desired flexibility may already be achieved through the change control arrangements contained within the existing CFD Contract terms.

Issue 2: Negative pricing

Background

- 2.8. As noted within the consultation document, in granting State aid approval in respect of the CFD for Renewables programme, the European Commission required that
- “By the beginning of 2016, the UK will modify the Contract for Difference to include provision ensuring that generators do not have an incentive to generate electricity under negative prices. If the day-ahead power auction hourly price is below zero support will be capped at the strike price. Moreover, if prices remain negative throughout a six-hour period or longer then the difference amount under the CFD Contract will be set to zero for the entirety of that period.”¹*
- 2.9. This condition aligns with the Energy and Environmental State aid Guidelines (‘EEAG’) developed and published by the Commission in parallel with the decision.² Discussions with the Commission have made clear that the requirement within the EEAG is based upon a principled opposition to public subsidy during oversupply, and not necessarily upon specific or technical concerns.

Proposals

- 2.10. The consultation proposed making two changes to give effect to the Commission’s condition:
- Revise the CFD Contract in order to prevent payment being due for any period of six or more consecutive hours where the Intermittent Market Reference Price (the GB Day Ahead Hourly Price) is negative.
 - Amend the Contracts for Difference (Standard Terms) Regulations in order to allow for the above.

Response

- 2.11. Respondents did not provide substantive responses with regard to their own views or understanding of the potential future development of negative prices within Great Britain (‘GB’).
- 2.12. Respondents were either positive or silent when providing views on the drafting proposals for the CFD Contract. However, the majority of respondents disagreed with

¹ http://ec.europa.eu/competition/state_aid/cases/253263/253263_1583351_110_2.pdf in recital 31

² [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0628\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0628(01))

the proposals in principle. In expressing their views on the wider issue, respondents focused on a number of different areas.

- 2.13. In general, respondents felt that the negative pricing condition placed additional risk on generators, which they believed would be difficult or potentially impossible to assess and place a price on. A small number of respondents expressed concern that this may impact the bankability of the CFD.
- 2.14. A number of respondents expressed additional concern that the requirement would have a particularly adverse impact on baseload generators because:
- Baseload CFD plant are incentivised to trade as much of their generation as they are able to within the season-ahead market in order to match their Market Reference Price and exposing them to the day-ahead market would be perverse in this context.
 - Some baseload plants are significantly more inflexible in their generation and may be unable to respond rapidly to negative prices in the day-ahead market.
 - Some baseload technologies have input (e.g. fuel) costs, which make a decision on whether or not to generate more complex than that faced by most intermittent facilities.
- 2.15. A number of respondents also argued that the negative price condition should not apply to non-renewable CFDs (e.g. nuclear or CCS), since these are not wholly governed by the EEAG or equivalent principles.
- 2.16. Many respondents argued that government should seek to implement an alternative means of achieving the requirements of the EEAG. A number noted that alternatives had previously been explored by the CFD Expert Group on the Market Reference Price in late 2014 and questioned why these approaches had not been implemented in the short term.
- 2.17. In particular, these respondents argued that the government should implement an approach based on payment on availability during prolonged negative price events. Under this approach, payment under the CFD is pegged to the generation a plant is able to produce at a given point in time, rather than to the metered output in that period. Respondents stated that adopting this design offered a means of removing the incentive for generators to generate, by no longer paying on the basis of output, thereby fulfilling the letter of the EEAG requirements.
- 2.18. Two respondents accepted that DECC had no alternative but to implement the requirement as written, but indicated that they did not consider this was the right approach to the problem over the longer term.

Further Analysis

- 2.19. The government recognises that the proposals expose generators to an amplified risk. To help understand the extent to which generators might be exposed to this risk, DECC commissioned Baringa Partners to undertake an analysis and modelling of negative price events, with a focus on the drivers, frequency and duration of negative prices through to 2040. That report is published today alongside this response, with the approach and key findings summarised below.
- 2.20. Baringa's analysis discusses in detail the sensitivity of the results to the initial assumptions that are used on a variety of factors, from commodity prices to the future

building of subsidised generating plant, as well as the level of interconnection. Baringa undertook their modelling on the basis of two scenarios:

- Baringa's own 'market credible' scenario (the '**Market scenario**'), based upon Baringa's central expectations of the way the market will develop in future, and representative of a scenario they would use were a central view to be sought by a commercial client.
- A scenario tailored to account for DECC's published policy aspirations (the '**Policy scenario**'), including high growth in offshore wind and nuclear as well as assuming the commercial adoption of CCS technology. Many of the assumptions underpinning this scenario are found within DECC's most recent Updated Energy and Electricity Projections ('UEP') publication and are otherwise discussed within the report.

2.21. Baringa's key findings were that negative prices are rare under both scenarios, with no periods of six hours or more observed in the Market scenario, and only 80 such events under the Policy scenario. These 80 events represent less than 0.3% of the generating hours across all 25 years modelled within the report. For any given CfD project commissioning in 2020, this represents less than 0.5% of total generating hours over its 15 year contract term, falling primarily at night.

2.22. These results are sensitive to input assumptions, however, and the report highlights the following key conclusions drawn from sensitivity analysis on the above scenarios:

- a. The amount of low carbon capacity in receipt of support payments may be more important in driving the occurrence of negative prices than the total low carbon capacity in itself. This means that as more low carbon generating capacity reaches the end of the term of its support payments, the incidence of negative prices could decrease.
- b. The number of negatively priced hours is very sensitive to the assumed bidding behaviour of low-carbon generators. If low carbon generators discount their bids beyond what is assumed in the analysis, for example to avoid incurring technical or commercial shut-down or start-up costs, then the number of negative prices could be substantially higher.
- c. Interconnection to other markets plays an important role in mitigating against negative prices in GB, in both the day-ahead and intra-day markets. Lower future new build of interconnection could significantly increase the frequency and duration of negative price events.
- d. More electricity storage could help reduce the future incidence of negative prices.

2.23. Further details on the frequency and duration of negative prices, and the impact on the intra-day market, are set out in Baringa's full report.

Decisions following consultation

2.24. In light of the specific nature of the negative price condition in the European Commission's State Aid decision and the need for new CFDs to comply with this by 2016, we have decided to implement the proposals as put forward in the consultation. However, the government has considered the concerns raised by respondents to the consultation and the alternative proposals put forward, alongside the evidence offered by the Baringa report, and we will continue to engage with industry and the

Commission to consider whether alternative approaches could provide a better outcome for both industry and consumers in future Allocation Rounds, particularly where further evidence becomes available on the impact of the measure.

- 2.25. We recognise that the negative price condition will expose generators to additional risks, and that there was no opportunity for stakeholders to consider and comment on the issue in advance of the State aid decision, due to the late stage at which the requirement was imposed by the European Commission. However, the modelling carried out by Baringa Partners shows that even in a high renewables scenario, negative price events of 6 hours or longer are likely to be rare, equivalent within their model to less than 0.5% of total generating hours over the 15 year CFD term for a project commissioning in 2020, and falling primarily at night.
- 2.26. The Commission have been clear that the requirement applies to all renewable CFD Contracts, both intermittent and baseload. This is consistent with the EEAG, and the underlying principle that subsidy should not be paid where the market is oversupplied. Therefore, the consultation proposals will be implemented for all technologies within the next revision of the CFD Contract standard terms and conditions.
- 2.27. The government notes the representations made that the condition should not apply to non-renewable or bilaterally-negotiated CFDs. This is an issue that will be considered in the course of any discussions with the Commission on State aid approval for the relevant contracts.
- 2.28. We will continue to engage with industry and the Commission to consider whether alternative approaches could provide a better outcome for both industry and consumers in future Allocation Rounds. We note the emphasis placed by generators on payment on availability as a potential alternative and will ensure that this is explored for feasibility, alignment with policy and compliance with both the letter and intent of the Commission's guidelines.

Issue 3: Minor, technical and clarificatory amendments

Milestone Delivery Date and Milestone Requirements

- 2.29. Three respondents expressed concern with regard to the proposal to exclude costs relating to the Offshore Transmission System from counting towards the 10% total project spend limb of the Milestone Requirements. One respondent commented that the current provisions are not favourable for developers seeking to undertake the generator-build approach to Offshore Transmission assets.
- 2.30. Two respondents made comments in relation to the changes to Condition 4.1 (B), which inserted text to clarify that any project commitments should demonstrate to the LCCC's satisfaction that the agreements submitted constitute a significant financial commitment. Both respondents commented that the proposed change seemed to increase the level of discretion held by the LCCC and reduce the objectivity of the test. One stakeholder welcomed the clarity that the proposed change provided.
- 2.31. A number of respondents also made some more general comments regarding the existing Milestone Delivery Date provisions in the contract. Three respondents stated that costs relating to grid liabilities, for both onshore and offshore technologies, should be allowed to count towards meeting the 10% spend option for meeting the Milestone Requirements. Further, two respondents commented that it would be helpful for clarity to be provided regarding what costs were considered acceptable for demonstrating the 10% spend option. Four stakeholders commented that the existing Milestone Delivery

Date provisions were sub-optimal for large projects and that the 12 month period for fulfilling the requirements should be extended to 24 months.

- 2.32. Two respondents commented that they were content with the new text introduced in Condition 4.8 of the Milestone Requirements which allowed for the Generator to submit a subsequent Milestone Requirement Notice in the event the LCCC deemed the previous notice ineffective.

Response

- 2.33. With regard to the questions of the suitability of the current 12 month Milestone Delivery Date period, the government does not wish to increase the period generators have to fulfil the Milestone Requirements because it considers the existing arrangements strike the right balance between giving generators sufficient optionality and time to meet the requirements, and ensuring that generators that are not committed to delivering the project do not continue to take up CFD budget. We would note that two Offshore Wind generators have already successfully fulfilled their Milestone Requirements, one using the 10% spend and one using the project commitment route.
- 2.34. The government notes the concerns expressed by some respondents about the proposal to exclude costs relating to the Offshore Transmission System from counting towards the 10% spend route to meeting the Milestone Requirements. However, the government considers that the proposed amendment should be made because:
- a. It is consistent with the position taken in the CFD Agreements for Phased Projects and Investment Contracts
 - b. Spend relating to the Offshore Transmission System is excluded from the calculation of Total Project Pre-Commissioning Costs used to calculate the 10% spend requirement
 - c. Spend by generators on Offshore Transmission assets is recoverable through the competitive tender process of the offshore transmission regime, run by Ofgem.³
- 2.35. We note that one offshore wind farm has fulfilled its Milestone Requirement by the 10% route under a CFD Agreement for Phased Projects, which already excludes spend on Offshore Transmission System assets.
- 2.36. We note queries raised by respondents in relation to whether spend on onshore grid connection costs falls within the scope of the 10% spend limb of the Milestone Requirement. It was DECC's policy intent that it does.
- 2.37. Regarding the proposed amendment to Condition 4.1 (B), the government considers that the change provides clarity that the LCCC will need to be satisfied that contracts relating to material equipment constitute financial commitments and does not alter the level of discretion held by the LCCC, as they have always held discretion over whether a generator has fulfilled or failed to meet a Milestone Requirement. We consider that the amended drafting simply clarifies the original policy intention.

³ <https://www.ofgem.gov.uk/electricity/transmission-networks/offshore-transmission>

Representations and Warranties

- 2.38. The majority of respondents providing views on this point commented that the reformulated wording in Condition 28.1 (G) was now too broad and made it less clear as to what litigation the Generator would need to represent that it was free from. Some respondents noted that they believed the new wording could be interpreted to mean that the Generator would need to provide this warranty in relation to any litigation, even that against third parties.

Response

- 2.39. The government has amended the drafting to clarify that the Generator need only warrant that it is not facing pending, threatened or actual litigation against 'the Generator' (i.e. itself), not third parties. This was our original policy intention reflected within the previous version of the CFD Contract. We have retained the expanded definition of both 'pending' and 'threatened', which maintain the extent of our original policy objective.

Undertakings

- 2.40. Six respondents questioned why the wording in the new Condition 32.1 (I), relating to the Generator informing the LCCC of any litigation actions pending or threatened against it over the course of the contract, differed from that in Condition 28.1 (G).
- 2.41. Two respondents requested clarity regarding why Condition 31.1 (B) (Facility Metering Equipment) had been amended because it was not immediately clear what it was trying to achieve.

Response

- 2.42. The government thanks respondents for identifying this inconsistency, and will amend the drafting to ensure that Condition 32.1 (I) replicates the amended Condition 28.1 (G).
- 2.43. On Condition 31.1 (B), the government considers that the new wording further clarifies exactly what a Generator is required to measure under its CFD Contract. CFD payments are calculated based upon a generator's net metered output which comprises all output generated by the Facility less all input electricity used by the Facility.

Confidentiality

- 2.44. The majority of respondents on this issue noted that it was unclear what the impact would be of the proposed expansion of circumstances in which Generator Confidential Information may be shared with delivery partners, and sought clarity on the objective underpinning it, opposing any expansion of the information that can be shared.

Response

- 2.45. The government is content to provide further clarity. Under the previous drafting, the LCCC was permitted to share Generator Confidential Information on a confidential basis with a limited selection of industry bodies and regulatory bodies only where this was necessary to fulfil obligations arising from the CFD Contract itself. The revised drafting permits the LCCC to share such information where necessary to fulfil obligations arising from the CFD Contract or other agreements tied to the CFD Contract, such as arrangements made in relation to Fuel Measurement and Sampling.

It does not propose to expand the classes of information that may be shared confidentially, or the bodies with whom it may be shared.

Annex 7 – Fuel Measuring and Sampling

- 2.46. The consultation document proposed the amendment of the Sustainability Criteria within the CFD Contract to take account of both the revised approach proposed to be taken under the Renewables Obligation (RO) and a number of minor and technical revisions put forward by members of the CFD Expert Group.
- 2.47. One respondent noted with concern what they believed to be the potential for unintentional impacts on the Biomass supply chain resulting from a number of amendments made to the drafting of the Sustainability Criteria.

Response

- 2.48. Government confirms that this was unintentional. The Sustainability Criteria in the revised CFD Contract will be amended in order to deliver the same policy intent without the potentially deleterious result, and align with the work being taken forward under the Renewables Obligation.

Disputes and Generation Tax

- 2.49. The majority of respondents to these questions welcomed the proposed changes set out in the consultation document, although they noted that a small number of the proposed amendments were not reflected within the draft CFD Contract, particularly with regard to the content of Generation Tax notices and the nature of matters that an Expert may consider during a dispute.

Response

- 2.50. Government thanks stakeholders for highlighting this oversight. The revised CFD Contract will include all the amendments proposed in the consultation document relating to Disputes and Generation Tax provisions.

Change in Law

- 2.51. A small number of respondents noted that the amendment proposed to remove the inconsistency between the time available for a payment to be made in relation to a Change in Law, and a Net Payable Amount more generally, had the theoretical impact of reducing the time available for a party to make a payment to the LCCC from twenty business days to ten, subject to LCCC discretion.

Response

- 2.52. We note this response, and thank stakeholders for their understanding on this point. As noted within the consultation document this amendment is necessary to allow the drafting to function.

Other minor and technical proposals

- 2.53. Beyond the above-noted issues, respondents were either in favour of or did not provide substantive feedback with regard to the following areas:
- Definitions
 - Metered Output
 - Collateral

- Intellectual Property
- Notices
- Annex 4 - Market Reference Price

2.54. These proposals will therefore be adopted as described. A number of respondents sought clarity in the drafting as a general point, on these areas and others. We will work to ensure that this is carried across throughout the CFD Contract.

Issue 4: Metering Operational Framework and Technical System Requirements

2.55. A number of amendments were proposed to the Private Network Metering Operational Framework and Technical System Requirements in order to provide generators with greater flexibility in how they maintain their metering systems and also to correct for some errors and inconsistencies.

2.56. One respondent made a number of comments in relation to the existing provisions, stating that some of the provisions were unduly lenient when compared to the Balancing and Settlement Code as well as identifying some inconsistencies. The same respondent also made some suggestions regarding how it believed the proposed changes could be made clearer and questioned whether some of the new standards inserted were consistent with other industry documents.

Response

2.57. The government thanks the respondent for a number of helpful comments. With regard to the respondent's comments on the existing drafting, we note that when the previous government consulted on the Private Network Generator CfD provisions in May 2014, it was clear that because they are typically smaller than most publically trading generators, it would be disproportionate to require them to be fully compliant with the Balancing and Settlement Code, because many of the BSC obligations would not be applicable to those operating on Private Networks.

2.58. We have made a small number of changes to parts of the existing drafting and proposed changes to correct for errors and inconsistencies which the respondent helpfully identified.

3. CFD Regulations

3.1. As noted above, the consultation document included proposals for a number of amendments to be made in respect of the regulations that underpin the CFD regime.

3.2. The first set of proposals relate to the Allocation Regulations, with the consultation document set out the following proposals:

- Running each pot as a separate Allocation Round
- Excluding pending applications participating in the Capacity Market Auction from being eligible for a CFD
- Excluded Applications
- Sealed Bid Non-Pricing Information
- Qualifying Applicants

- Direct Connections, Partial Connections and where no Direct or Partial Connections apply
 - Pending Applications that become Qualifying Applications after the allocation process has commenced
 - Minor, technical amendments: Reviews & Appeals; Pending Applications and Delays
- 3.3. The following changes were proposed in respect of the CFD Standard Terms Regulations:
- Negative pricing
 - Sustainability Directions
 - Amendments to Standard Terms Notices
- 3.4. Finally, amendments were proposed in order to enable UJVs to bid for and enter into CFDs and to harmonise the definition of 'working day'.

Issue 1: Running each pot as a separate Allocation Round

- 3.5. The vast majority of respondents who commented (95%) agreed with the proposal to run each pot as a separate Allocation Round. Some respondents commented on the importance of running the Allocation Round as efficiently as possible and communicating timetables clearly. One respondent disagreed and was concerned that running separate rounds moves away from the principle of annual Allocation Rounds and a desire to move to technology neutral auctions.

Response

- 3.6. In the event of a future allocation round the government is minded to keep open the possibility of the approach described in the policy proposal and, where appropriate to do so, run each pot as separate allocation rounds. This approach would involve publishing separate notices and Allocation Frameworks for each round. This would be an administrative change and no change to regulations would be required. Running each pot as a separate allocation round would allow pots to progress through the allocation process at differing rates and may help prevent delays to the award of CFDs.

Issue 2: Applications to participate in the Capacity Market Auction

- 3.7. Almost two-thirds of respondents who commented on this proposal agreed with making the proposed amendment to ensure that an application cannot be made in respect of a CFD where there is a pending application to the Capacity Market support scheme in respect of the same unit.
- 3.8. Three respondents were concerned that the proposed amendment would not allow an applicant who has a Capacity Agreement in place, to use the transfer notice mechanism provided for in The Electricity Capacity Regulations 2014⁴ and thereby transfer to the CFD scheme. The Allocation Regulations already prevent an application for a CFD from being made where an applicant has a Capacity Agreement in place in respect of that CFD unit. This aspect of the regulations is not subject to a proposed amendment and not within the scope of this consultation. However, these concerns are noted and we are grateful to respondents for raising them.

⁴ <http://www.legislation.gov.uk/ukdsi/2014/9780111116852/contents>

Response

- 3.9. The government has decided to amend the Allocation Regulations in line with its proposal to ensure an application cannot be made for a CFD where an application is still pending in the Capacity Market support scheme. This aims to prevent any project from receiving subsidy from both the Capacity Market and CFD schemes.

Issue 3: Excluded Applications

- 3.10. A significant majority of respondents who commented (80%) agreed with clarifying that the exclusion in paragraph 14(5) of the Allocation Regulations applies to any CFD unit which is to be established or altered. This amendment would make the wording consistent with the wording in the Eligible Generator Regulations. One respondent was concerned that the amendment may capture a unit which was funded under the RO and which was being re-powered, thus resulting in a period in which the unit would not receive support under either the RO or CFD scheme. This is not the policy intention of the amendment.

Response

- 3.11. The government has decided to proceed with the proposed amendment to ensure consistency across both the Allocation Regulations and the Eligible Generator Regulations.

Issue 4: Sealed Bid Non-Pricing Information

- 3.12. Many of the respondents agreed with the rationale of distinguishing between sensitive price information and non-price information and supported the proposals for increased transparency around the CFD auction. 75% of respondents expressed interest to have further details around how sealed bid data would be objectively disaggregated from sensitive data and anonymised.
- 3.13. Five respondents were concerned that individual projects and their bids may be inadvertently identified if there were only a few projects of a certain type competing in any one delivery year. One respondent expressed the need to avoid subjective judgements by the Delivery Body. These concerns applied to information supplied to the Secretary of State and by the Secretary of State to third party advisers instructed for evaluation purposes. One respondent disagreed with the proposal, stating all information contained in a sealed bid was confidential. Two respondents were concerned that where non-price sealed bid information was supplied to the Secretary of State, it would become the subject of requests for information under the Freedom of Information Act.

Response

- 3.14. The government would like to ensure that it is able to measure the success of the CFD auction and further refine the auction mechanics in order to deliver the best value for money for consumers. This, however, should be balanced with ensuring that the commercial confidentiality of participants in the CFD auction is not compromised.
- 3.15. The government has decided to amend the regulations to make a distinction between confidential price information contained in a sealed bid submission (the strike price) and non-price information. The amendment will extend the existing power of the Secretary of State, to give a direction to the CFD Delivery Body to supply information, to include anonymised non-price bid information. Finally, the amendments will clarify that any information made available pursuant to a direction under regulation 54 of the

Allocation Regulations can be shared with third party advisers instructed by the Secretary of State in connection with the evaluation of an Allocation Round, to the extent that the information is required for the evaluation.

- 3.16. In relation to any information held by government, the applicability of Freedom of Information Act and any relevant exemptions will be considered in relation to any request on a case by case basis.

Issue 5: Qualifying Applicants

- 3.17. All respondents who commented were in support of amending regulations to ensure that an application was a qualifying application only where all the information required to enable the Delivery Body to give a CFD Notification was supplied. One respondent commented more generally on the eligibility determination, stating that an open and iterative eligibility determination window could prevent delays to the allocation timeline.

Response

- 3.18. The government has further considered whether it is necessary to make an amendment to regulations in order to achieve the policy objective. The government considers that the policy objective would be better implemented through the Allocation Framework that applies to a round. The Allocation Framework will be issued at least 10 working days in advance of an Allocation Round opening for application.
- 3.19. The government has decided it is not necessary to amend regulations to achieve the policy objective.

Issue 6: Direct Connections, Partial Connections and where no Direct or Partial Connections apply

- 3.20. Very few stakeholders commented directly on this proposal. Of the four respondents who did comment, three agreed that the connection requirements for Private Network operators should be set out in regulations and one queried the need for transferring the requirements from the Allocation Framework into the regulations.

Response

- 3.21. The government intends to amend the provisions relating to connection agreements in the Allocation Regulations in order to include the requirements for private network operators.

Issue 7: Pending Applications which Qualify after the Allocation Process has commenced

- 3.22. Only three respondents commented directly on this proposal, with the main comment being that further detail around how this is to be implemented would be welcomed.

Response

- 3.23. The amendments intend to address situation where the allocation process has commenced but not proceeded notice under regulation 37(1)(b)(i) has been given in respect of the most recent run of the allocation process. In this situation, where the delivery body receives a notice from the Authority that it has determined an applicant is a qualifying applicant, the delivery body should re-run the allocation process.

- 3.24. The amendments also intend to clarify that the determination made in regulation 51(3) is made in accordance with the Allocation Framework for the Allocation Round.

Issue 8: Minor Technical Amendments: Reviews & Appeals; Pending Applications and Delays

- 3.25. No respondents replied directly to questions 31 to 33 in respect of the proposals for minor and technical amendments relating to reviews and appeals, pending applications and delays.

Response

- 3.26. The government intends to make the minor, technical amendments in line with the proposals set out in the consultation.

Issue 9: Unincorporated joint ventures

- 3.27. The consultation proposed ensuring that under regulations, parties to an Unincorporated Joint Venture (UJV) would in general be treated collectively, apart from specific circumstances where they should be treated individually.
- 3.28. The majority of respondents provided their views only on the proposed drafting for the CFD Contract, and did not comment on the proposed changes to the regulations.
- 3.29. Those stakeholders that did respond noted that their understanding of the proposal was to treat members of a UJV collectively for the purposes of the regime, with exceptions where necessary and provided support on the basis of that understanding.

Response

- 3.30. Government confirms that for the purposes of applying for a CFD (including application and appeal), the parties to a UJV will be treated together in the same way that an individual 'eligible generator' would be, with a single application made in relation to their project.
- 3.31. In line with the approach described within the consultation, there are specific exceptions where UJV parties will be treated individually in order to preserve the intent of the underlying provision:
- The assessment of whether grounds 2 and 3 for granting an exemption certificate from the Non-Delivery Disincentive exclusion will be on the basis of every party involved in the joint venture.
 - The names of every party to a UJV must be published on the register of sites excluded under the non-delivery disincentive policy.
 - A UJV applicant for a CFD must provide:
 - the application information specified in paragraph 2 of Schedule 1, in relation to every party to the UJV;
 - the required statement that no party has or has made an application for accreditation under the RO in respect of the project;
 - the identity of the intended UJV Representative for the purposes of the CFD.
 - Individual parties to the UJV may be required to provide information under regulation 7 of the Electricity Market Reform (General) Regulations 2014 in

support of the setting of Strike Prices, recognising the fact that not all parties to a UJV, nor the UJV representative, may hold the necessary information.

- Any party to the UJV may make a supply chain application, in recognition of the time in advance of an Allocation Round that such plans may be prepared. Only the UJV may apply to modify the CFD Contract.
- Though a CFD is offered to the UJV, and only one fully-signed copy should be returned to the LCCC, each party to the UJV will be sent a copy of the CFD Contract.

Issue 10: Sustainability Directions

- 3.32. The consultation document proposed the inclusion within Regulations of a power to require the LCCC to amend signed CFD Contracts where the Sustainability Criteria have been altered in subsequently published versions of the CFD. This was not a new concept, being contained within the CFD Contract standard terms and conditions consulted upon prior to and published as part of the first Allocation Round, but amendments to regulations are required to give effect to those CFD terms.
- 3.33. The majority of respondents agreed that this proposal is the necessary final step in implementing the terms contained within the existing CFD Contract and supported its inclusion on this basis and on the understanding that it did not appear to extend beyond the literal implementation of the power that those terms envision.

Response

- 3.34. In accordance with the positive response from the majority of respondents, the amendment will be made as originally proposed. The power to direct amendments is to be restricted to those provisions in the CFD Contract which expressly contemplate such amendments, and so does not change the nature of the government's relationship with signed contracts.

Issue 11: Amendments to Standard Terms Notices

- 3.35. The consultation document proposed a new power for the Secretary of State to amend the Standard Terms Notice that is issued at the announcement of each Allocation Round, to enable the correction of errors in the original notice, or to refer to a new version of the CFD Contracts issued after the initial publication of the Standard Terms Notice.
- 3.36. The consultation proposed that amendments to the Standard Terms Notice must be made no later than 20 working days before the commencement of an Allocation Round, in order to provide generators with certainty before the start of the Allocation Round, over the content of the notice and the CFD terms that apply. The vast majority of respondents were in favour of the additional flexibility offered by the proposal to enable the Secretary of State to amend the Standard Terms Notice after its initial issue. A small number of respondents went on to note that such a power should see decreasing use over future rounds as the scheme is 'bedded down' and that its use should not become habitual due to the harm that persistent uncertainty may cause to the CFD regime.
- 3.37. The majority of respondents were also in favour of the twenty working day limit proposed for the use of this power. However, clarity was sought on how this timeline (and the wider process of amendment) might interact with the existing capacity to seek 'minor and necessary' amendments.

Response

- 3.38. In accordance with the majority of consultation responses, the government will amend the Standard Terms Regulations to enable the Secretary of State to correct errors in the Standard Terms Notice and to update the CFD Contract terms listed within where these have been revised and re-published, up 20 working days prior to the opening of an Allocation Round.
- 3.39. The consultation suggested that this ability should be restricted to the amendment of 'manifest errors' but we do not consider that this concept is sufficiently clear to be reflected in the drafting of the amendment. Recognising that the Secretary of State is subject to usual public law principles, the restriction of the power to amend Standard Terms Notices to circumstances in which there has been an error is in itself a satisfactory safeguard against capricious use.
- 3.40. The limited scope of the grounds means that the government does not anticipate this forming a common feature of Allocation Rounds. The government notes that the 'minor and necessary' and Standard Terms Notice revision timelines are independent of one another, and although it is conceivable that a revision to the CFD Contract incorporated within an amended Standard Terms Notice may conflict with a previously submitted request for a 'minor and necessary' modification, we would wish to limit the impact of this where possible by making post-issue amendments to the CFD Contract, both narrow in their drafting and with sufficient time to allow modification requests to be re-submitted if truly necessary. We would also note that the tying of the Notice amendment limitation to the commencement of an Allocation Round, rather than the later closing of that round's application window, provides additional surety to generators, granting a minimum of ten working days additional time.

Issue 12: Harmonisation of 'working day' definitions

- 3.41. The majority of respondents were in favour of changing the definition of 'working day' in the Standard Terms Regulations to refer to days that are not bank holidays in England and Wales only, thereby bringing the definition in the regulations in line with that in the CFD Contract and Supplier Obligation Regulations.
- 3.42. A smaller number of respondents agreed that the definition of 'working day' should be harmonised, but suggested that bank holidays either across the whole of the UK or in Scotland or Northern Ireland individually should be used instead of England and Wales due in part to the high amount of renewables deployment in these regions. However, respondents did not identify a substantial disadvantage represented by the proposed amendment.

Response

- 3.43. In line with the majority of consultation responses, the government has decided to amend the Standard Terms Regulations to refer within the 'working day' definition to bank holidays in England and Wales only.
- 3.44. As noted in the consultation document, this will bring the Standard Terms regulations in line with the definition of 'working day' within the CFD itself and the Supplier Obligation Regulations.
- 3.45. We note the concerns expressed by some respondents about the potential impact on generators operating in Scotland or (in future) Northern Ireland. We do not believe that this outweighs the likely difficulty any successful generator would experience if the definition was misaligned with that contained in the CFD Contract.

© Crown copyright 2015
Department of Energy & Climate Change
3 Whitehall Place
London SW1A 2AW
www.gov.uk/decc
URN 15D/341