

2014 No. 0000

ELECTRICITY

The Contracts for Difference (Allocation) Regulations 2014

Made - - - - - ***

Coming into force - - - - - ***

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Contracts for Difference (Allocation) Regulations 2014 and will come into force on [date].

Interpretation

2. In these Regulations—

“2014/2015 delivery year” means [date of regulations] 2014 to 31st March 2015;

“2015/2016 delivery year” means 1st April 2015 to 31st March 2016;

“2016/2017 delivery year” means 1st April 2016 to 31st March 2017;

“2017/2018 delivery year” means 1st April 2017 to 31st March 2018;

“2018/2019 delivery year” means 1st April 2018 to 31st March 2019;

“2019/2020 delivery year” means 1st April 2019 to 31st March 2020;

“Authority” means the Gas and Electricity Markets Authority;

“applicant” means an eligible generator who makes an application for a CFD under these Regulations;

“CFD budget” means the amount of money that is available to be paid to generators under CFDs where CFDs have been allocated to generators by the national system operator in accordance with these Regulations;

“delivery year” means any of the following—

(a) 2014/15 delivery year;

(b) 2015/16 delivery year;

(c) 2016/17 delivery year;

(d) 2017/18 delivery year;

(e) 2018/19 delivery year;

(f) 2019/20 delivery year;

“eligible generator” has the meaning in Regulation [3];

“qualifying applicant” has the meaning given in Regulation [8(2)].

Meaning of eligible generator

3.—(1) An eligible generator is a person who—

- (a) intends to establish an electricity generating station or alter an existing station;
- (b) intends to operate or participate in the operation of an electricity generating station that is to be established or altered;
- (c) has an interest in a company falling within (a) or (b).

(2) [An eligible generator is a person who—

- (a) intends to [establish] a qualifying electricity generating station [wording needs to be wide enough to include biomass conversion station];
- (b) intends to alter an existing qualifying electricity generating station (such alteration must constitute an addition of 5 megawatts or more of capacity);
- (c) intends to alter an existing offshore wind generating station [by extending it so as to increase capacity];
- (d) intends to operate or participate in the operation one of the types of electricity generating station mentioned in paragraphs (a) to (c);
- (e) has an interest in a company falling within (a) to (d).]

(3) A qualifying electricity generation is one which is intended to generate one of the types of electricity generation mentioned in paragraph [(4)].

(4) The types of electricity generation are—

- (a) advanced conversion technology;
- (b) AD;
- (c) [CCS];
- (d) dedicated biomass with CHP;
- (e) [electricity generated from [a biomass conversion station]];
- (f) [electricity generated from] landfill gas;
- (g) [electricity generated from] sewage gas;
- (h) energy from [qualifying] waste with CHP;
- (i) geothermal;
- (j) hydroelectric;
- (k) electricity generated from nuclear energy;
- (l) electricity generated from offshore wind;
- (m) electricity generated from onshore wind;
- (n) solar photovoltaic;
- (o) [tidal impoundment – tidal barrage;]
- (p) [tidal impoundment – tidal lagoon;]
- (q) tidal stream;
- (r) wave.

(5) In this Regulation—

“AD” means electricity generated from gas formed by the anaerobic digestion of material which is neither sewage nor material in a landfill;

“advanced conversion technology” means electricity generated from—

- (a) standard gasification/ pyrolysis;
- (b) advanced gasification/ pyrolysis;

“advanced fuel” means a liquid or gaseous fuel which is produced directly or indirectly from the gasification or the pyrolysis of—

- (a) waste; or
- (b) biomass;

“anaerobic digestion” means the bacterial fermentation of organic material in the absence of free oxygen;

“Authority” means the Gas and Electricity Markets Authority;

“biomass” is to be construed in accordance with regulation [5];

“biomass conversion station” has the meaning given by regulation [4];

[“CHP” means combined heat and power produced from a combined heat and power generating station;]

“CHQPA” means the Combined Heat and Power Quality Assurance Standard, Issue 5, [date] 2013, as published by the Department of Energy and Climate Change [as amended from time to time];

“civil works”, in relation to a hydro generating station, are to be regarded as all man-made structures, and man-made works for holding water which are located on the inlet side of a turbine (turbine A), excluding any such structure or works which supply another turbine before water is supplied to the structures and works which supply turbine A;

“combined heat and power generating station” means a station which generates electricity and is (or may be) operated for purposes including the supply to any premises of—

- (a) heat produced in association with electricity;
- (b) steam produced from, or air or water heated by, such heat;

“combustion unit” means a boiler, turbine or engine;

“commissioned”[, in relation to a generating station,] means the completion of such procedures and tests in relation to that station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that that generating station is capable of commercial operation;

“declared net capacity”, in relation to a generating station, means the maximum capacity at which the station could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption) less the amount of electricity that is consumed by the plant;

“dedicated biomass with CHP” means electricity generated from solid biomass by a qualifying combined heat and power generating station—

- (a) which is not a relevant fossil fuel generating station or unit at a relevant fossil fuel generating station (see regulation 4(2));
- (b) only uses solid biomass that does not contain more than 10% fossil fuel by energy content in [defined time period in which payments will be made under CFD] and that fossil fuel was not added to it with a view to the fossil fuel being used as a fuel;
- (c) only uses fossil fuel in the way described in sub-paragraph (b) and for permitted ancillary purposes, and the fossil fuel used for these purposes does not exceed 10% of the energy content of all the fuels used at the generating station in the [defined time period in which payments will be made under CFD];

“energy content”, in relation to any substance, means the energy contained within that substance (whether measured by a calorimeter or determined in some other way) expressed in terms of the substance’s gross calorific value within the meaning of British Standard BS 7420:1991 (Guide for determination of calorific values of solid, liquid or gaseous fuels (including definitions) published by the British Standard Institute on 28th June 1991)(a);

(a) ISBN 0580194825. Copies can be obtained from the British Standards Institution: www.bsi-global.com/en/.

“energy from [qualifying] waste with CHP” means electricity generated from [biomass] in a generating station which—

- (a) [does not [use] anaerobic digestion, advanced conversion technology, landfill gas or sewage gas];
- (b) is a qualifying combined heat and power generating station;
- (c) only uses solid biomass that does not contain more than 10% fossil fuel by energy content in [defined time period in which payments will be made under CFD??], and that fossil fuel was not added to it with a view to the fossil fuel being used as a fuel;
- (d) only uses fossil fuel in the way described in sub-paragraph (c) and for permitted ancillary purposes, and the fossil fuel used for these purposes does not exceed 10% of the energy content of all the fuels used at the generating station in the [defined time period in which payments will be made under CFD];

“gasification” means the substoichiometric oxidation or steam reformation of a substance to produce a gaseous mixture containing two or all of the following: oxides of carbon, methane and hydrogen;

“geothermal” means electricity generated using naturally occurring subterranean heat;

“hydroelectric” means electricity generated by a hydro generating station;

“hydro generating station” means a generating station driven by water (other than a generating station driven by tidal flows, ocean currents or geothermal sources) and includes all turbines supplied with water by or from the same civil works, except any turbine driven by a compensation flow supplied by or from those civil works in a natural water course where there is a statutory obligation to maintain that compensation flow in that water course (in which case that turbine and associated infrastructure is to be regarded as a separate hydro generating station);

“landfill” has the meaning given in Article 2(g) of Council Directive 1999/31/EC;

“landfill gas” means gas formed by the digestion of material in a landfill;

“offshore”, in relation to a generating station which generates electricity from wind, means a generating station which—

- (a) has its wind turbines situated wholly in offshore waters; and
- (b) is not connected to dry land by means of a permanent structure which provides access to land above the mean low water mark;

“offshore waters” means—

- (a) waters in or adjacent to the United Kingdom which are between the mean low water mark and the seaward limits of the territorial sea; and
- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964;

“offshore wind” means electricity generated from wind by a generating station that is offshore;

“onshore wind” means electricity generated from wind by a generating station that is not offshore;

“pyrolysis” means the thermal degradation of a substance in the absence of any oxidising agent (other than that which forms part of the substance itself) to produce char and one or both of gas and liquid;

“qualifying combined heat and power generating station” means a combined heat and power generating station which has been accredited under CHQPA;

[“qualifying waste” is to be construed in accordance with regulation [6];]

“relevant material” means material which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae;

“ROC” means a renewables obligation certificate issued by the Authority under the [Renewables Obligation Order 2009];

“sewage gas” means gas formed by the anaerobic digestion of sewage (including sewage which has been treated or processed);

“solar photovoltaic” means electricity generated from the direct conversion of sunlight into electricity;

“tidal impoundment – tidal barrage” means electricity generated by a generating station driven by the release of water impounded behind a barrier using the difference in tidal levels where the barrier is connected to both banks of a river and the generating station has a declared net capacity of less than 1 gigawatt;

“tidal impoundment – tidal lagoon” means electricity generated by a generating station driven by the release of water impounded behind a barrier using the difference in tidal levels where the barrier is not a tidal barrage and the generating station has a declared net capacity of less than 1 gigawatt;

“tidal stream” means electricity generated from the capture of the energy created from the motion of naturally occurring tidal currents in water;

“waste” has the meaning given to it in section 75(2) of the Environmental Protection Act 1990 but does not include gas derived from landfill sites or gas produced from the treatment of sewage;

“wave” means electricity generated from the capture of the energy created from the motion of naturally occurring waves on water.

(6) Where a waste or biomass is used in a generating station (whether alone or together or in combination with another fuel) and—

(a) a proportion of that waste or biomass is, or is derived from, fossil fuel; and

(b) in any month during which that waste or biomass is used that proportion varies;

references in these Regulations to the energy content of that waste or biomass and fossil fuel are references to the overall energy content of that waste or biomass and fossil fuel used to fuel the generating station during that month.

(7) Where two or more of the fuels listed in paragraph (7) are mixed together to form one substance which is then used in a generating station to generate electricity, the provisions of these Regulations apply in relation to the electricity so generated in the same way as they would apply if the electricity had been generated using those fuels without mixing them together.

(8) The fuels referred to in paragraph [(6)] are—

(a) biomass;

(b) waste which constitutes a renewable source (not being biomass);

(c) fossil fuel including waste (other than waste falling within sub-paragraph (b)).

Meaning of biomass conversion station

4.—(1) For the purpose of Regulation [3], a biomass conversion station is a generating station which—

(a) generates electricity from solid biomass;

(b) is a relevant fossil fuel generating station or unit at a relevant fossil fuel generating station;

(c) only uses solid biomass that does not contain more than 10% fossil fuel by energy content in [defined time period in which payments will be made under CFD??], and that fossil fuel was not added to it with a view to the fossil fuel being used as a fuel;

(d) only uses fossil fuel in the way described in sub-paragraph (c) and for permitted ancillary purposes, and the fossil fuel used for these purposes does not exceed 10% of the energy

^a Words in italics denote parts of the Renewables Obligation which might need altering depending on the requirements for the CFD allocation regime and the definitions of biomass/ waste – see section on eligibility criteria in the consultation document.

content of all the fuels used at the generating station in the [defined time period in which payments will be made under CFD].

- (2) A “relevant fossil fuel generating station” means a generating station—
- (a) which has, [in any 6 month period] since it was first commissioned, generated electricity from fossil fuel, where the energy content of the fossil fuel was more than 15% of the energy content of all of the energy sources used by the station to generate electricity during that [6 month] period;
 - (b) in respect of which no ROCs have been claimed for one of the following generation types—
 - (i) station conversion;
 - (ii) unit conversion;
 - (iii) dedicated biomass (prior to [date of creation of conversion band]).
- (3) For the purposes of paragraph [(1)(d)], fossil fuel [or waste (which includes anything derived directly or indirectly from waste)] is used for permitted ancillary purposes if—
- (a) it is used in a generating station for—
 - (i) cleansing other fuels from the generating station’s combustion system prior to using fossil fuel or waste to heat the combustion system to its normal temperature;
 - (ii) the heating of the station’s combustion system to its normal operating temperature or the maintenance of that temperature;
 - (iii) the ignition of fuels of low or variable calorific value;
 - (iv) emission control;
 - (v) standby generation or the testing of standby generation capacity;
 - (vi) corrosion control; or
 - (vii) fouling reduction, and
 - (b) the energy content of the fossil fuel or waste so used during a month (or, where both are so used during a month, their combined energy content) does not exceed 10% of the energy content of all the energy sources used by that generating station to generate electricity during that month.

(4) In this Regulation—

“standby generation” means the generation of electricity by equipment which is not used frequently or regularly to generate electricity and where all the electricity generated by that equipment is used by the generating station;

“energy crops” means—

- (a) a perennial crop planted at high density, the stems of which are harvested above ground level at intervals of less than 20 years and which is one of the following—
 - (i) *Acer pseudoplatanus* (also known as sycamore);
 - (ii) *Alnus* (also known as alder);
 - (iii) *Betula* (also known as birch);
 - (iv) *Castanea sativa* (also known as sweet chestnut);
 - (v) *Corylus avellana* (also known as hazel);
 - (vi) *Fraxinus excelsior* (also known as ash);
 - (vii) *Populus* (also known as poplar);
 - (viii) *Salix* (also known as willow);
 - (ix) *Tilia cordata* (also known as small-leaved lime); or
- (b) a perennial crop which is one of the following—
 - (i) *Arundo donax* (also known as giant reed);

- (ii) Bambuseae, where the crop was planted after 31st December 1989 and is grown primarily for the purpose of being used as fuel;
- (iii) Miscanthus;
- (iv) Panicum;
- (v) Pennisetum (other than Pennisetum setaceum (also known as fountain grass), Pennisetum clandestinum (also known as kikuyu grass) and Pennisetum villosum (also known as feathertop grass));
- (vi) Phalaris;

“regular biomass” means biomass other than—

- (a) sewage gas;
- (b) landfill gas;
- (c) energy crops;
- (d) fuel produced by means of anaerobic digestion;
- (e) advanced fuel;

“station conversion” means electricity generated—

- (a) from regular biomass or from energy crops;
- (b) [by a relevant fossil fuel generating station;] and
- (c) in a month in which the station generates electricity only from biomass or only from energy crops;

“unit conversion” means electricity generated from energy crops or regular biomass burned in a combustion unit in a month in which—

- (a) that combustion unit burns only biomass or burns only energy crops;
- (b) the generating station generates electricity partly from fossil fuel and partly from renewable sources.

Meaning of biomass(a)

5. In these Regulations, “biomass” means fuel which—

- (a) falls within paragraph (2); or*
- (b) falls within paragraph (3).*

(2) Fuel falls within this paragraph if—

- (a) at least 90% of its energy content is derived from relevant material; and*
- (b) any fossil fuel forming part of the fuel is present following a process—*
 - (i) to which the relevant material has been subject, and*
 - (ii) the undertaking of which has caused the fossil fuel to be present in, on or with that material even though it was not the object of the process.*

(3) Fuel falls within this paragraph if—

- (a) at least 90% of its energy content is derived from relevant material;*
- (b) it is waste; and*
- (c) any fossil fuel forming part of it was not added to it with a view to the fossil fuel being used as a fuel.*

(4) For the purposes of these Regulations, a fuel which is used in a generating station with biomass but which is not biomass (including, where 2 or more of the fuels listed in paragraph [(10)] are mixed together before being so used, each of those fuels which is not biomass) is to be treated as biomass if—

(a) This needs to be altered – see section on eligibility criteria in the consultation document.

- (a) *the energy content of the fuel is derived in part from relevant material and in part from fossil fuel;*
- (b) *either—*
 - (i) *the fossil fuel is present in it following a process—*
 - (aa) *to which its relevant material has been subject, and*
 - (bb) *the undertaking of which has caused the fossil fuel to be present in, on or with that material even though that was not the object of the process; or*
 - (ii) *it is waste and the fossil fuel forming part of it was not added to it with a view to its being used as a fuel; and*
- (c) *at least 90% of the total energy content of the fuel and the biomass with which the fuel is used is derived from relevant material.*

(5) *Any reference in these Regulations to biomass is to be construed as a reference to biomass or fuel which (by virtue of paragraph (4)) is to be treated as biomass.*

(6) *Where biomass (not being waste) is used, whether on its own or not, to fuel a generating station and a proportion of it is composed of fossil fuel, the proportion of it which is composed of fossil fuel—*

- (a) *is to be determined by [the Authority];*
- (b) *is the energy content of the fossil fuel from which it is in part composed expressed as a percentage of its energy content as a whole.*

(7) *It is for the [operator of the generating station] to demonstrate to [the Authority's] satisfaction what proportion of the biomass is fossil fuel.*

(8) *When determining that proportion [the Authority] is entitled to have regard to any material (whether or not produced to it by the [operator of the generating station] if, in [its] opinion, that material indicates what proportion of the biomass is fossil fuel.*

(9) *For the purposes of this Regulation, fossil fuel is not to be regarded as being derived directly or indirectly from plant matter, animal matter, fungi or algae.*

(10) *The fuels referred to in paragraph [(4)] are—*

- (a) *[biomass];*
- (b) *waste (not being [bioliquid or] biomass);*
- (c) *fossil fuel including waste (other than waste falling within sub-paragraphs (a) and (b)*

Meaning of qualifying waste(a)

6.—(1) *In these Regulations, “qualifying waste” means waste of which not more than 90% is waste which is, or is derived from, fossil fuel.*

(2) *The proportion of waste which is, or is derived from, fossil fuel—*

- (a) *is to be determined by [the Authority]; and*
- (b) *is the energy content of the fossil fuel from which the waste is in part composed or derived expressed as a percentage of the energy content of that waste as a whole.*

(3) *Where waste is used (whether on its own or not) to fuel a generating station, it is for the [operator of a generating station] to demonstrate to [the Authority's] satisfaction what proportion of the waste is, or is derived from, fossil fuel.*

(4) *Without prejudice to paragraph (3), when determining that proportion [the Authority] is entitled to have regard to any material (whether or not produced to it by the [operator of the generating station]) if, in [its] opinion, that material indicates what proportion of the waste is, or is derived from, fossil fuel.*

(a) This needs to be altered – see section on eligibility criteria in the consultation document.

(5) *But where the [operator of a generating station] in which municipal waste is used satisfies [the Authority]—*

- (a) *by reference to data published by an allocating authority, a waste disposal authority or a waste collection authority, that the proportion of municipal waste so used which is, or is derived from, fossil fuel, is unlikely to exceed 50%; and*
- (b) *that the municipal waste so used has not been subject to any process before being so used that is likely to have materially increased that proportion,*

that constitutes sufficient evidence of the fact that the proportion of the municipal waste so used which is, or is derived from, fossil fuel is 50%.

(6) *Where—*

- (a) *municipal waste is used in a generating station and—*
 - (i) *[the Authority] is not satisfied as to the matters identified in paragraph [(5)], or*
 - (ii) *[the operator of the station] is claiming that the proportion of that waste which is, or is derived from, fossil fuel is less than 50%; or*
- (b) *waste (not being municipal waste) is used in a generating station and [the Authority] is not satisfied as to what proportion of the waste is, or is derived from, fossil fuel,*

[the Authority] may require the [operator of the generating station] to arrange for samples of any fuel used (or to be used) in the station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner approved by [the Authority], and for the results of that analysis to be made available to [the Authority].

(7) *In this Regulation—*

“allocating authority”, “municipal waste” and “waste disposal authority” have the same meaning as in Chapter 1 of Part 1 of the Waste and Emissions Trading Act 2003;

“waste collection authority” has the same meaning as in Part 2 of the Environmental Protection Act 1990.

PART 2

CFD notifications

CHAPTER 1

Eligibility

Application for CFD

7.—(1) An applicant must apply to the national system operator for a CFD.

(2) Where the Secretary of State has given notice of when an allocation round will commence, an applicant must apply to the national system operator for a CFD during the relevant application window.

(3) An application for a CFD—

- (a) must show that the applicant satisfies the relevant eligibility criteria;
- (b) must contain any other information specified by the Secretary of State in the allocation framework; and
- (c) may contain information as specified by regulation [20].

(4) The relevant eligibility criteria are—

- (a) where the applicant intends to generate any of the types of electricity generation in regulation [3(4)(a), (b), (d), (f) to (j) and (m) to (r)], the criteria in regulations [9] to [17];
- (b) where the applicant intends to generate electricity from offshore wind, the criteria in regulations [9] to [17] and [19];

- (c) where the applicant intends generate electricity from a biomass conversion station, the criteria are those in regulation [18] [and others].

Consideration of application by national system operator

8.—(1) The national system operator must decide if an applicant is a qualifying applicant.

(2) An applicant is a qualifying applicant if the national system operator decides that the applicant satisfies the relevant eligibility criteria (“a determination of eligibility”).

(3) The national system operator must not decide that an applicant is a qualifying applicant if the applicant has previously submitted an application for a CFD in respect of the qualifying generating station but no allocation decision has yet been made.

(4) Where the national system operator decides that an applicant is a qualifying applicant, the national system operator must—

- (a) inform the applicant of this decision and the reasons for it; and
- (b) [consider whether to make an allocation decision in respect of the qualifying applicant in accordance with Chapter 4 of Part 2 of these Regulations].

[Eligibility criterion: relevant type of electricity generation]

9. The applicant must intend to generate one of the types of electricity generation in [regulation 3(4)(a), (b), (d) to (j) and (l) to (r)].

[Eligibility criterion: non-excluded generating station]

10.—(1) The applicant must not be [intending to establish or operate] an excluded generating station within the meaning of this regulation.

(2) An excluded generating station is one which—

- (a) is not supported, in whole or in part, by another scheme; and
- (b) if it is a type of electricity generation specified in paragraph (5), is intended to have a [capacity] of 5 megawatts or less.

(3) A generating station is not supported, in whole or in part, by another scheme if—

- (a) it is not accredited under the Renewables Obligation Order 2009[, the Renewables Obligation (Scotland) Order 2009][or the Renewables Obligation Order (Northern Ireland) 2009];
- (b) the generator has not applied for accreditation under the Renewables Obligation Order 2009[, the Renewables Obligation (Scotland) Order 2009][or the Renewables Obligation Order (Northern Ireland) 2009];
- (c) it is not registered on the central FIT register as an accredited FIT installation pursuant to Part 3 of the Feed-in Tariffs Order 2012;
- (d) the generator has not applied for registration on the central FIT register as an accredited FIT installation pursuant to Part 3 of the Feed-in Tariffs Order 2012.

(4) [The Authority must provide the applicant, upon request, with information showing that the applicant satisfies paragraph (2)(a) to (d).] [ongoing discussions with Ofgem on this]

(5) For the purposes of paragraph (2)(b), the types of electricity generation are AD, hydroelectric, onshore wind and solar photovoltaic.]

[Eligibility criterion: planning requirements]

11.—(1) The applicant must have planning consent for the [proposed] generating station.

(2) Planning consent means—

- (a) for a [proposed][small] onshore generating station, planning permission under Part 3 of the Town and Country Planning Act 1990;

- (b) for a [proposed][large] onshore generating station, one of the documents in paragraph [(3)];
 - (c) for a [proposed][offshore] generating station, the documents in paragraph [(4)].
- (3) The documents (for proposed large onshore generating stations) are—
- (a) a development consent order under the Planning Act 2008;
 - (b) a consent under section 36 of the Electricity Act 1989.
- (4) The documents (for proposed offshore generating stations) are—
- (a) one of the documents mentioned in paragraph (5); and
 - (b) any of the documents in paragraphs (2)(a) and (3) which have been issued in respect of the [onshore works] [associated with] the generating station which is the subject of the application.
- (5) For the purpose of paragraph (4)(a), the documents are—
- (a) a development consent order under the Planning Act 2008;
 - (b) a consent under section 36 of the Electricity Act 1989;
 - (c) an order under section 3 of the Transport and Works Act 1992; or
 - (d) a marine licence under Part 4 of the Marine and Coastal Access Act 2009.
- (6) For the purpose of this Regulation—
- “[large] onshore generating station” means a generating station which—
- (a) is situated wholly onshore; and
 - (b) has a capacity of more than 50 megawatts;
- “offshore generating station” means a generating station which is situated [wholly or mainly in offshore waters];
- “[small] onshore generating station” means a generating station which—
- (a) is situated wholly onshore; and
 - (b) has a capacity of 50 megawatts or less.

12. The applicant must confirm that it can comply with any conditions or requirements which are attached to any of the documents listed in regulation [11].

[Eligibility criterion: offer of connection to a transmission or distribution network]

- 13.** The applicant must have one of the following—
- (a) an agreement with the [owner] of a transmission system for connection to[, and use of,] that system;
 - (b) an agreement with the [operator] of a distribution system for connection to[, and use of,] that system.

[Eligibility criterion: formation of business entity]

- 14.**—(1) The applicant must be [validly] formed as a business entity.
- (2) Valid formation as a business entity means that the applicant is—
- (a) [established as a legal entity]; and
 - (b) registered for tax purposes [in the country in which it is established].

[Eligibility criterion: supply chain plan]

15. Where the applicant intends to establish [or alter] a generating station which has a [capacity] of 300 megawatts or more, the applicant must provide a [supply chain plan] that has been approved by the Secretary of State.

[Eligibility criterion: acceptance of CFD terms]

16. The applicant must have done one of the following—

- (a) [indicated an intention][agreed] to accept the standard terms of the CFD;
- (b) [agreed] adjustments to the standard terms of the CFD with the CFD counterparty.

[drafting for CPB telling national system operator that content that contract terms are agreed]

[Eligibility criterion: project information]

17.—(1) The applicant must provide the following information—

- (a) the name of the applicant or the applicant’s representative who will enter into the CFD;
- (b) the [company number] of the applicant;
- (c) the [VAT registered number] of the applicant;
- (d) the name of the [proposed] generating station;
- (e) the location of the [proposed] generating station;
- (f) the capacity of the [proposed] generating station;
- (g) the target commissioning date;
- (h) the administrative strike price;
- (i) confirmation of whether the electricity to be generated by the [proposed] generating station will be [baseload generation] or [intermittent generation];
- (j) confirmation of whether the [proposed] generating station will connect to the transmission system or a distribution system [or private wire network];
- (k) [FMS];
- (l) [such other information as the Secretary of State may determine.]

(2) The [capacity] of the generating station must be expressed in megawatts.

(3) In this Regulation “target commissioning date” means the date on which the applicant intends to commence generating electricity at the [proposed] generating station [using the total capacity of the generating station].

Biomass conversion: additional criteria

18. The applicant must provide—

- (a) a letter from each [feedstock provider] showing that the feedstock provider intends to provide [feedstock] required for the [proposed] [converted] generating station to generate all the [nameplate capacity of the plant];
- (b) any information determined by the Secretary of State as necessary to ensure that [relationship between the RO and CFD is properly structured].

[Offshore wind: additional criteria]

19.—(1) The applicant must provide—

- (a) [Crown Estate agreement for lease]; and
- (b) where the applicant is a [phased] offshore wind generator, the information specified in paragraph (2).

(2) The specified information is—

- (a) information determined by the Secretary of State as necessary to ensure that [relationship between the RO and CFD is properly structured];

- (b) confirmation that the [proposed] [installed capacity] of the generation station when all [phases are generating] is 1500 megawatts or less;
 - (c) confirmation that it is intended that at least 35% of the [proposed installed capacity] will be [generating/built] in the first phase;
 - (d) target commissioning dates for each of the phases which must be—
 - (i) for the first phase, no later than 31st March 2019;
 - (ii) for the final phase, no later than 2 years after the target commissioning date for the first phase.
- (3) A phased offshore wind generator is a person who—
- (a) operates or intends to operate a generating station in offshore waters which generates electricity using wind (GS);
 - (b) [[is or was] registered for[, and has received,] renewable obligations certificates for the electricity it generates at GS];
 - (c) is applying for a CFD for [one or more offshore generating station or stations (which may include GS)] [within the same Crown Estate lease area as GS and [other criteria]].

Sealed bid

20.—(1) An applicant may provide to the [national system operator] a sealed envelope containing details of an alternative strike price.

(2) An alternative strike price is a price [per megawatt hour of electricity produced] that the applicant would be willing to be paid under the CFD for the electricity it generates in the event that a competitive allocation process is held (see regulation [43]).

CHAPTER 2

Allocation: general(a)

Allocation procedure

21. [drafting to introduce initial allocation process [first come, first served] and competitive allocation process]

Allocation framework

22.—(1) The Secretary of State may make an allocation framework.

(2) An allocation framework must relate to one or more allocation rounds.

(3) The allocation framework [may][must] contain any of the information required to be published in regulations [23] to [29].

(4) [amendments to allocation framework]

(5) The Secretary of State must publish any allocation framework in such manner as the Secretary of State considers appropriate.

Determination of CFD budget

23.—(1) The Secretary of State must determine the CFD budget for every delivery year.

(2) [The Secretary of State must publish the CFD budget for every delivery year in any allocation framework made under regulation 22.]

(a) Chapters 2, 3 and 4 are subject to review in light of what will go in regulations and what will go in an allocation framework.

24.—(1) Subject to paragraph (2), the Secretary of State may alter the CFD budget at any time provided he has complied with the notice requirements in this regulation.

(2) The Secretary of State must not reduce the CFD budget for a competitive allocation round at any time during that round.

(3) The Secretary of State must give notice of any reduction in the CFD budget—

- (a) at least 28 days before the reduction is to take effect when applications are being considered by the [national system operator] in accordance with regulation 33;
- (b) at least 14 days before the reduction is to take effect when applications are being considered in a competitive allocation process (see regulations 39 to 45).

(4) In paragraph (3)(b), the date on which the reduction is to take effect must precede the date when the [application window opens for the competitive allocation round where it is the budget for that competitive allocation round which is being reduced].

(5) Notice must be given to [the national system operator], a CPB counterparty [and [others]].

(6) [The Secretary of State must publish a copy of the notice.]

Determination of reserved budgets

25.—(1) The Secretary of State may determine that a specified part of the CFD budget for any delivery year should be paid only to generators who generate particular types of electricity generation (a “reserved budget”).

(2) — Where the Secretary of State has determined that there will be a reserved budget, the Secretary of State may determine that [it be divided into] two or more parts, each of which is reserved to particular types of electricity generation (a “generation type reserved budget”).

26.—(1) Where the Secretary of State has determined that there will be a reserved budget or any generation type reserved budgets,, the Secretary of State must determine the amount of a reserved budget or generation type reserved budgets.

(2) A reserved budget or generation type reserved budgets must be expressed as one of the following—

- (a) a portion of the CFD budget [monetary terms];
- (b) a volume of [capacity];
- (c) such other [amount] as the Secretary of State may determine [in the allocation framework].

(3) The reserved budget for a particular delivery year must be less than the CFD budget for that delivery year.

(4) [The Secretary of State may alter the amount of a reserved budget or generation type reserved budget at any time.]

Determination of maximum budgets

27.—(1) The Secretary of State may determine that no more than a specified part of the CFD budget for any delivery year should be paid to generators who generate particular types of electricity generation (a “maximum budget”).

(2) — Where the Secretary of State has determined that there will be a maximum budget, the Secretary of State may determine that it be divided into two or more generation type maximum budgets.

(3) A generation type maximum budget means that part of a maximum budget which represents the total amount which can be paid under CFDs to generators which generate a particular type of electricity generation.

28.—(1) Where the Secretary of State has determined that there will be a maximum budget or any generation type maximum budgets, the Secretary of State must determine the amount of a maximum budget or generation type maximum budgets.

(2) A maximum budget or generation type maximum budgets must be expressed as one of the following—

- (a) a portion of the CFD budget [monetary terms];
- (b) a volume of [capacity];
- (c) such other [amount] as the Secretary of State may determine [in an allocation framework].

29.—(1) Subject to paragraph (2), the Secretary of State may alter the amount of a maximum budget or a generation type maximum budget at any time provided he has complied with the notice requirements in this regulation.

(2) The Secretary of State must not alter a maximum budget or generation type maximum budget for a competitive allocation round during that round.

(3) The Secretary of State must give notice of any increase in the amount of a maximum budget or a generation type maximum budget at least [14 days] before the increase is to take effect when applications are being considered in a competitive allocation round.

(4) The Secretary of State must give notice of any reduction in the amount of a maximum budget or a generation type maximum budget —

- (a) at least [28 days] before the alteration is to take effect when applications are being considered by the [national system operator] in accordance with regulation 33;
- (b) at least [14 days] before the alteration is to take effect when applications are being considered in a competitive allocation round.

(5) In paragraphs (3) and (4)(b), the date on which the increase or reduction is to take effect must precede the date when the [application window opens for the competitive allocation round where it is the budget for that competitive allocation round which is being increased or reduced].

(6) Notice must be given to [the national system operator] [a CPB counterparty] [and any others?].

(7) [The Secretary of State must publish a copy of the notice.]

CHAPTER 3

Publication of information

Publication of information by the national system operator

30.—(1) The national system operator must publish the following information—

- (a) the total CFD value for each delivery year (within the meaning of regulation [33(2)]);
- (b) the [sum of the] total CFD value for all delivery years;
- (c) the methodology mentioned in [regulation 33(3)];
- (d) whether the Secretary of State has set any reserved budget or generation type reserved budget;
- (e) the types of electricity generation to be paid from any reserved budget [or generation type reserved budgets];
- (f) the amount of any maximum budget or generation type maximum budgets (see regulation 28);
- (g) the types of electricity generation to be paid from any maximum budget [or generation type maximum budgets];
- (h) the value of all CFDs entered into for each delivery year;
- (i) the value of all CFDs entered into for which there is a maximum budget or generation type maximum budgets;
- (j) [the value of all CFDs entered into for which there is a reserved budget or generation type reserved budgets];

(k) [breakdown of the budget allocation for each project awarded a CFD, including milestone dates and whether these have been met].

(2) Where a decision of the national system operator is the subject of an appeal under [Part 3] of these Regulations, the national system operator must, if the Secretary of State determines, publish [list categories from para (1)].

Updating of published information by the national system operator

31.—(1) The national system operator must publish updated information for each relevant category of information in regulation [30] [as soon as reasonably practicable] after the CFD counterparty has notified the national system operator of—

- (a) signature of a CFD;
- (b) notice being given to terminate a CFD;
- (c) any adjustments made to the [capacity] in respect of which payments will be made under a CFD in force;
- (d) [any adjustments in the [value of CFDs which are in force] in a delivery year].

CHAPTER 4

Allocation process

Allocation process: general

32.—(1) The national system operator must make an allocation decision in accordance with regulation [33] except where paragraph (2) applies.

(2) Where an application is made for a CFD by an eligible generator who is intending to generate a type of electricity which is subject to a maximum budget or a generation type maximum budget, the national system operator must make an allocation decision in accordance with regulation [36].

(3) An allocation decision is made when the national system operator decides whether to make a CFD notification.

Initial allocation process: no maximum budget

33.—(1) The national system operator must make a CFD notification where the total CFD value for a delivery year is less than the stated percentage of the CFD budget for that delivery year.

(2) The total CFD value is the amount given by—

$$QA + (AA - TA)$$

where—

QA is the value of the CFD for which the qualifying applicant has applied;

AA is the value of all CFDs for which CFD notifications have been made for that delivery year;

TA is the value of any CFDs for which—

- (a) a CFD notification has been made by the national system operator but the qualifying applicant has not entered into a CFD;
- (b) notice has been given to terminate the CFD by a CFD counterparty or the generator;
- (c) [any other circumstances?]

(3) The value of a CFD must be calculated by the national system operator in accordance with a methodology determined by the Secretary of State and published in [the allocation framework].

(4) The stated percentage is one of the following—

- (a) [50%]; or

(b) such other percentage as the Secretary of State may determine.

34.—(1) The national system operator must notify the Secretary of State where the total CFD value for a delivery year is equal to or more than [the stated percentage] of the CFD budget for that delivery year.

(2) A notification must include [the amount of] the total CFD value for that delivery year.

35.—(1) Upon receipt of a notification under regulation 34 the Secretary of State must do one of the following things—

- (a) increase the CFD budget for that delivery year;
- (b) [increase the stated percentage for that delivery year];
- (c) [instruct] the [national system operator] not to make a CFD notification in respect of the qualifying applicant unless it concludes that it must do so following a competitive allocation round (see regulation [40]).

(2) Where the Secretary of State has given an [instruction] under paragraph (1)(b), the national system operator must make all subsequent allocation decisions in accordance with the competitive allocation process.

Initial allocation process: maximum budgets

36.—(1) This regulation applies where a qualifying applicant is intending to generate a type of electricity in respect of which a maximum budget or generation type maximum budget applies.

(2) In this Regulation—

- (a) “GTMB” means any generation type maximum budget determined under regulation [27];
- (b) “GTMB CFD value” has the meaning given in paragraph [5];
- (c) “GTMB generation” means the type of electricity generation in respect of which a generation type maximum budget has been determined;
- (d) “MB” means any maximum budget determined under regulation [27];
- (e) “MB CFD value” has the meaning given in paragraph [4];
- (f) “MB generation” means the types of electricity generation in respect of which a maximum budget has been determined.

(3) The national system operator must make a CFD notification where—

- (a) if a MB has been determined, the MB CFD value for the MB generation for a delivery year is less than the MB for [MB generation] for that delivery year;
- (b) if two or more GTMBs have been determined, the GTMB CFD value for each GTMB for a delivery year is less than the relevant GTMB generation for that delivery year.

(4) The MB CFD value is the amount given by—

$$QAMB + (AAMB - TAMB)$$

where—

QAMB is the value of the CFD for which the qualifying applicant has applied;

AAMB is the value of all CFDs for which CFD notifications have been made by the national system operator for that delivery year in respect of MB generation;

TAMB is the value of any CFDs for MB generation for which—

- (a) a CFD notification has been made by the national system operator but a generator has not entered into the CFD;
- (b) notice has been given to terminate the CFD by a CFD counterparty or the generator;
- (c) [any other circumstances?]

(5) The GTMB CFD value is the amount given by—

$$QAGTMB + (AAGTMB - TAGTMB)$$

where—

QAGTMB is the value of the CFD for which the qualifying applicant has applied;

AAGTMB is the value of all CFDs for which CFD notifications have been made by the national system operator for that delivery year in respect of GTMB generation;

TAGTMB is the value of any CFDs for GTMB generation for which—

- (a) a CFD notification has been made by the national system operator but a generator has not entered into the CFD;
 - (b) notice has been given to terminate the CFD by a CFD counterparty or the generator;
 - (c) [any other circumstances?].
- (6) The national system operator must not make a CFD notification where—
- (a) if a MB has been determined, the MB CFD value for the MB generation for a delivery year is equal to or more than the MB for [MB generation] for that delivery year;
 - (b) if two or more GTMBs have been determined, the GTMB CFD value for each GTMB for a delivery year is equal to or more than the relevant GTMB generation for that delivery year.

Competitive allocation process: general

37.—(1) The national system operator must determine allocation decisions in accordance with a competitive allocation process where the Secretary of State has instructed it not to make a CFD direction under regulation [35].

(2) Allocation decisions mentioned in paragraph (1) will be those in respect of—

- (a) the qualifying applicant whose application was under consideration by the national system operator when it gave a notification to the Secretary of State under regulation [34] (the “date of notification”);
- (b) all qualifying applicants in respect of whom CFD notifications have not yet been made at the date of notification.

Commencement of a competitive allocation process

38.—(1) The national system operator must determine—

- (a) 1 or more dates in each delivery year by when an application must be submitted to the national system operator in order for an allocation decision to be made (“competitive allocation round closing dates”);
- (b) the date, not being less than 14 days before the relevant competitive allocation round closing date, from which applications can be submitted to the national system operator in order for an allocation decision to be made (“competitive allocation round opening dates”).

(2) The period between the competitive allocation round opening dates and the competitive allocation round closing dates is the “application window”.

(3) The national system operator must notify the Secretary of State of all of the dates determined in paragraph (1).

(4) The Secretary of State must publish notice of when an allocation round commences by publishing each competitive round opening date.

Competitive allocation process: determination of eligibility

39.—(1) [As soon as reasonably practicable] after each competitive allocation round closing date, the national system operator must make a determination of eligibility in respect of each application submitted during the application window.

(2) Where the national system operator decides that an applicant is a qualifying applicant, the national system operator must—

- (a) inform the applicant of this decision and the reasons for it; and
- (b) [consider whether to make an allocation decision in respect of the qualifying applicant in accordance with Regulations [40] to [43]].

Competitive allocation process allocation decisions: general

40.—(1) [As soon as reasonably practicable] after determinations of eligibility have been made (allowing for appeals of determinations of eligibility under regulations [45] and [47]), the national system operator must make an allocation decision in respect of each qualifying applicant.

(2) The national system operator must determine the value of the CFDs—

- (a) for which qualifying applicants have applied; and
- (b) in respect of which no maximum budget or generation type maximum budget has been determined (“QACAP”),

using a methodology determined by the Secretary of State [in the allocation framework].

(3) If QACAP is less than the total CFD value (to be calculated in accordance with regulation [33(2)]), the national system operator must make a CFD notification in respect of all qualifying applicants.

(4) If QACAP is more than the total CFD value, the national system operator must notify the Secretary of State.

41.—(1) On receipt of a notification under regulation [40(4)], the Secretary of State must do one of the following things—

- (a) increase the CFD budget;
- (b) [instruct] the national system operator to make an allocation decision in accordance with the process set out in regulation [43] (the “constraint process”).

(2) If the Secretary of State increases the CFD budget under paragraph [(1)(a)] so that QACAP is less than the total CFD value, the national system operator must make a CFD notification in respect of all qualifying applicants.

Competitive allocation process: maximum budgets

42. [explain what happens if applications for technologies subject to maxima are dealt with in the competitive process]

Competitive allocation: [constraint process]

43.—(1) The Secretary of State must set out in the allocation framework the rules to be applied when QACAP is more than the total CFD value (the “rationing rules”).

(2) The allocation framework must contain rationing rules which provide for—

- (a) [allocation decisions to be made on the basis of comparing the price bid by each qualifying applicant;]
- (b) [allocation decisions to be made first in respect of qualifying applicants who intend to generate a type of electricity generation for which there is a reserved budget;]
- (c) [allocation decisions to be made in respect of qualifying applicants who intend to generate a type of electricity generation for which there is a maximum budget only up to the maximum budget;]
- (d) [a method of determining the strike prices to be paid to each applicant;]
- (e) [a method of determining in respect of whom CFD notifications will be made on an objective basis if determination cannot be made on price alone.]

CHAPTER 4
CFD notification

44. The national system operator must make a CFD notification to a CFD counterparty specifying—

- (a) the name of the person who will enter into the CFD;
- (b) [other information [as may be specified in an allocation framework].

PART 3

Appeals

CHAPTER 1

National system operator decisions

Application to the [national system operator] for reconsideration

45.—(1) An affected person may apply to the national system operator for reconsideration of—

- (a) a determination of eligibility;
- (b) [an allocation decision].

Application for reconsideration: procedure

46.—(1) An application to the national system operator for reconsideration must be made within [5 working] days of the start date.

(2) In paragraph (1), the “start date” means the date on which the affected person receives notification of the determination [or decision].

(3) The application must set out—

- (a) [insert information].

(4) On receipt of an application for reconsideration, the national system operator must—

- (a) reconsider the determination or decision;
- (b) determine whether to uphold the determination or decision or substitute a new determination or decision (the “reconsidered decision”);
- (c) notify the affected person [and CFD counterparty][and anyone else?] of its reconsidered decision.

(5) The national system operator must comply with the requirements of paragraph [(4)] within [10 working] days of [receipt of the application for reconsideration].

Application to the Authority for review

47.—(1) Subject to paragraph (2), an affected person may apply to the Authority for a review of—

- (a) a determination of eligibility; or
- (b) [an allocation decision].

(2) If an affected person has made an application to the national system operator for reconsideration of a determination or decision under regulation [48], then an affected person may not apply to the Authority under paragraph (1) unless—

- (a) the affected person has, in accordance with regulation [48], requested the national system operator to reconsider the determination or decision; and
- (b) either—

- (i) [the national system operator has reconsidered the decision and the affected person remains dissatisfied with the reconsidered decision; or] [ongoing discussions with Ofgem]
- (ii) the time specified for the national system operator to reconsider its decision has expired.

Application for review: procedure

48.—(1) An application to the Authority for a review of a determination of eligibility [or an allocation decision] must be made within [5] business days after the start date.

(2) In paragraph (1), “the start date” means—

- (a) if a request for reconsideration has been made, the earlier of—
 - (i) the date on which the affected person receives the reconsidered decision; or
 - (ii) the day after the date by which the national system operator is required to reconsider the decision;
- (b) in any other case, the date on which the affected person receives the determination or decision.

(3) The application—

- (a) must set out the affected person’s reasons for applying for a review;
- (b) must include the letter confirming that no determination of eligibility will be made [or that no CFD notification will be made];
- (c) if a request for reconsideration was made under regulation [48], must contain a copy of the national system operator’s reconsidered decision;
- (d) if made by the applicant, must include a copy of all information previously submitted to the national system operator;
- (e) must not include information which has not previously been provided to the national system operator.

(4) Upon receiving an application, the Authority must—

- (a) notify the national system operator of receipt of the application; and
- (b) invite the national system operator to submit a response to the application to the Authority within [x] days.

(5) After expiry of the time limit mentioned in paragraph (4)(b), the Authority must—

- (a) subject to paragraph (6), review the decision;
- (b) determine whether to uphold the delivery body’s decision or to substitute a different decision; and
- (c) notify the affected person, the national system operator and the [settlement agent][CFD counterparty] [anyone else?] of its determination.

(6) [time limits for Authority under this regulation]

(7) The Authority may, to assist it in determining an application for review of a decision, appoint a person to consider the application or any matter relating to it and provide a report to the Authority; but the Authority remains responsible for determining the application.

[Appeal against determination of review

49.—(1) An affected person may appeal to the court against a determination by the Authority under regulation [50].

(2) [In paragraph (1), “the court” means—

- (a) the High Court; or
- (b) in Scotland, the Court of Session.]

- (3) [time limit for appeal?]
- (4) On an appeal relating to a determination of eligibility the court may—
 - (a) dismiss the appeal;
 - (b) [direct the national system operator to make a determination of eligibility]; or
 - (c) remit the matter to the national system operator with a direction to reconsider it and make a new decision in accordance with the findings of the court.
- (5) [On an appeal relating to [an allocation decision] the court may—
 - (a) dismiss the appeal;
 - (b) [direct the national system operator to make a CFD notification];
 - (c) remit the matter to the national system operator with a direction to [make a CFD notification].
- (6) [?further drafting on what we would like the court not to do]

Consequences of successful review or appeal

50. [drafting to reflect what the consequences are for the rest of the process of a successful review or appeal]