



# Contract for Difference: Change in Law (CiL)

6 November 2013

# Contents

## 1. Objective and Purpose

- November & August publications recap, current approach

## 2. What Qualifies?

- Process, CiL Definition, Foreseeability Definition, Other CiL

## 3. Compensation

- Overview, Construction Payment, Operations Cessation Payment

## 4. Other Policy Responses

# Objective and Purpose

November 2012 Operation Framework set out Government's intention in providing CiL protection:

- CiL protection needed so long-term price certainty for low-carbon generators offered by CfD is not undermined by legislative and regulatory changes
- Focus on laws that target CfD generators, either individually, by technology type or because a generator holds a CfD
- Cover formal changes in law plus range of legislative and regulatory interventions and changes to Industry codes
- There are a range of risks that developers can, do and should take without material incremental pressure on strike prices - the CfD will not be designed to pass otherwise bearable risks fully to the consumer

# Objective and Purpose

In August much remained the same but:

- Scope of protection broadened e.g. by inclusion of “other CiL” category
- Focus still on laws that target CfD generators (individually, by technology type or because a generator holds a CfD) but expanded to include comparisons of the effect of change on other major generation facilities and other facilities of the same generation type
- A more defined set of foreseeable changes in law

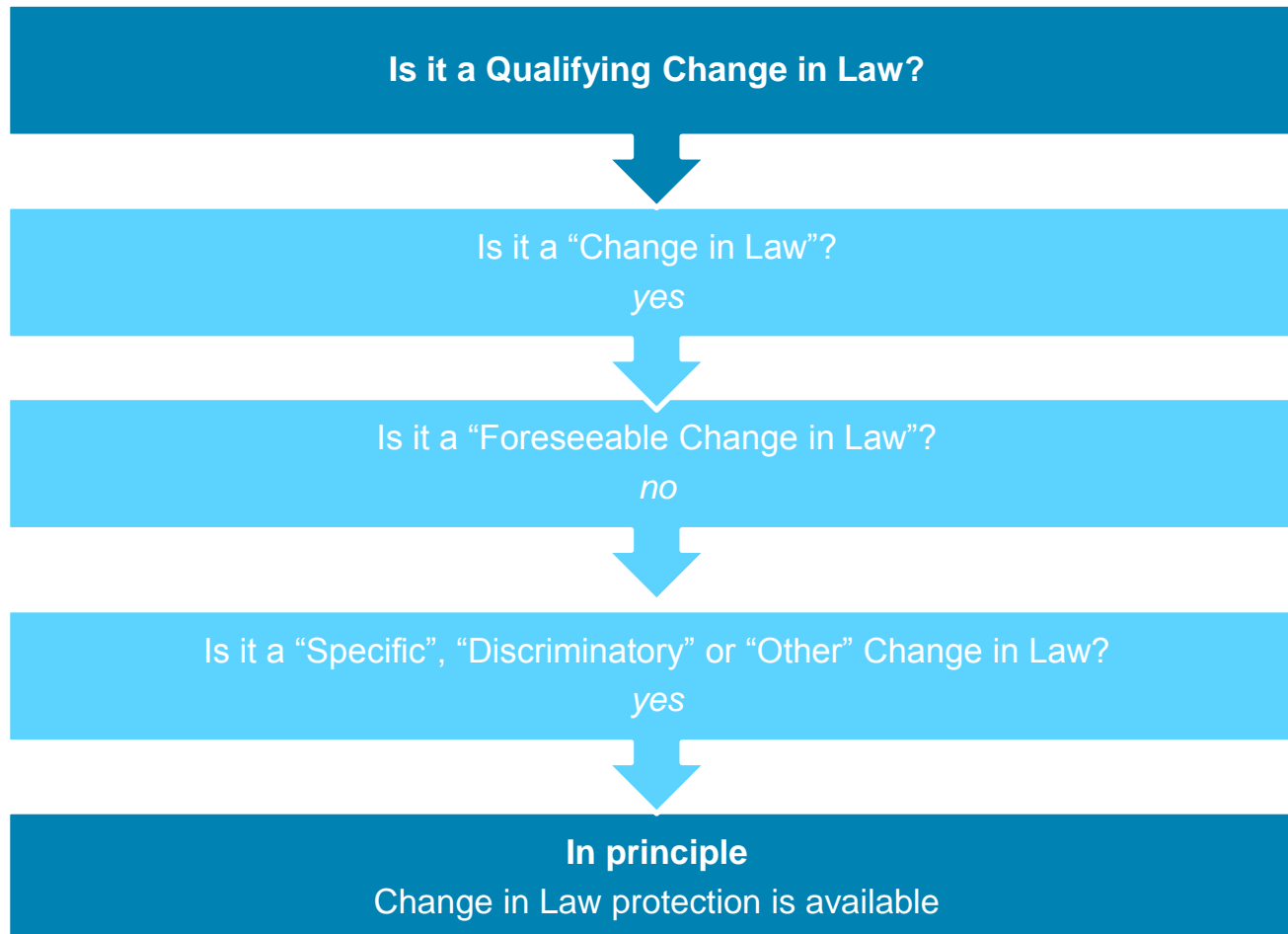
Currently minded to retain much of the position set out in the August draft CfD.

However we propose amendments in light of feedback, still bearing in mind the provision’s objectives, balance of risks and the wider package of benefits the CfD will offer e.g.

- compensation for changes to BSUoS, TLM and curtailment
- price stabilisation
- flexibility in capacity
- reduced termination provisions and cure periods

# What Qualifies?

Qualifying process same as August publication





# What Qualifies? Change in Law Definition

## August Publication

### Covers changes to:

- Acts of Parliament and regulations
- Directives issued by relevant bodies e.g. Ofgem
- Industry documents e.g. BSC
- Required Authorisations e.g. generation licences

### “Change” covers:

- New provisions
- Amendments / supplements
- Withdrawal / termination / repeal / replacement
- Change in interpretation

### Exclusions:

- Change in Law (CIL) due to breach or default of the relevant law by the generator
- CIL due to failure of the generator to act to a Reasonable and Prudent Standard
- CIL which is continued development of industry standards

## Current Position

- Concern about meaning of ‘Industry Standards’
- Intention: to carve out updates to processes and practices that occur through usual course of improvements
- Not intended to exclude statutory changes that affect standards
- Considering how to revise words so it is clear this will carve out only updates to good practice
- Narrowed definition of Representatives to only those who are acting for/on behalf of the generator



# What Qualifies? Foreseeable Change in Law

## August Publication

- Removed general test in the November 2012 CfD Heads of Terms which included all documents “reasonably foreseeable by a Reasonable and Prudent Operator” due to concerns over scope
- Instead foreseeability assessed against a list of documents either published or of which a generator has received a copy of before contract signature

## Current Position

- Concern about length of detail and foreseeability dating back to January 2000
- Not our intention to produce an exhaustive list of all of the foreseeable laws – generic contract
- Retain January 2000 date
- Taken on board editing suggestions
- Clarified law will have to take effect in substantially the same form or has substantially the same effect to be foreseeable

# What Qualifies? Other Change in Law

## August Publication

- New category introduced since November HoT – response to stakeholder feedback to broaden scope
- Laws made by the UK Government or Competent Authority
- Undue, not objectively justifiable, discriminatory effect when compared with the effect on:
  1. Material Generation Technologies
  2. All other generators of the same technology type

## Current Position

- Confusion over comparator to Material Generation Technologies
- Clarity sought on objective justification test
- Defined in law and commonly linked to discrimination law
- In summary: there needs to be a legitimate aim for difference in treatment of one party against another or there is a proportionate relationship between the aim and the way it is carried out.
- Extend comparator groups to include:
  - All non-cfd generators
  - All non-[tech type] generators



# Compensation

**Is there compensation?**

Will it prevent construction by making the Facility or its generation illegal?

Will it permanently prevent operation by making the Facility or its generation illegal?

Does it materially affect OpEx, CapEx or Revenues?



Different forms of compensation apply

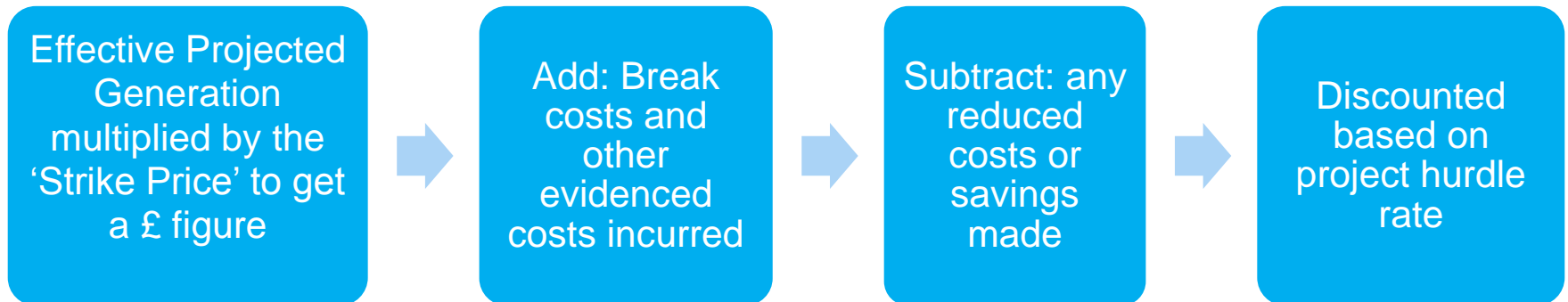
# Compensation Scope

## Construction Event



# Compensation Scope

## Operations Cessation Event



# Other Policy Responses

## Use of IFRS

- Question whether need this definition
- Will retain – useful and appropriate

## Generator paying Counterparty fees

- Concern re: subsidising the Counterparty's out of pocket fees
- Scaled back to only when generator raises a change in law

## True Ups

- Responses in favour
- One true up following compensation for OpEx, CapEx & Revenues (timing?)

## Excluded losses

- Agree with stakeholder comments CiL compensation should be included

## Other issues under consideration

- Phasing
- Capacity adjustment
- Payment method