



Department
of Energy &
Climate Change

EMR: Contracts for Difference Regulations

Consultation on Directions to Offer Contracts for
Difference

March 2014
URN 14D/090

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The consultation can be found on DECC's website:

<https://www.gov.uk/government/consultations/electricity-market-reform-emr-contracts-for-difference-regulations>

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General information

Purpose of this consultation:

The Government is seeking views on proposed regulations that will cover the process by which the Secretary of State can direct the CfD Counterparty to offer a CfD.

Issued: 24 March 2014

Respond by: 23 April 2014

Enquiries to:

Electricity Market Reform, CfD Design and Implementation Team
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Email: SecondaryLegislationEMR@decc.gsi.gov.uk

Consultation reference: URN 14D/090

Territorial extent:

This consultation applies to England, Scotland, Wales and Northern Ireland.

How to respond:

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/electricity-market-reform-emr-contracts-for-difference-regulations>

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An

automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at <https://www.gov.uk/government/consultations/electricity-market-reform-emr-contracts-for-difference-regulations>. This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

<http://www.bis.gov.uk/files/file47158.pdf>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator

3 Whitehall Place

London SW1A 2AW

Email: consultation.coordinator@decc.gsi.gov.uk

Introduction

Overview of Electricity Market Reform (EMR)

Objectives and Challenges

1. Our electricity market faces major challenges throughout the next decade and beyond. Electricity Market Reform (EMR) creates a framework to transform the UK electricity market to meet these challenges, and will:
 - Maintain a secure supply of electricity, despite the closure of around a fifth of our 2011 capacity expected over the coming decade.
 - Enable the UK to meet its ambitious climate and renewable targets to build a cleaner energy future for Britain and the world; and
 - Power an increasing electricity demand over the next 40 years as we increasingly turn to electricity for heat and transport.
2. EMR is aimed at incentivising increased investment in secure, low-carbon electricity generation; not only to meet these challenges, but to improve affordability for consumers. We estimate up to £110 billion of investment is needed in the sector by the end of the decade to achieve our objectives.
3. EMR will support a range of forms of low carbon generation and thus diversify our domestic energy supply, helping to improve our energy security and reduce reliance on energy imports. This will help to avoid blackouts, while also protecting consumers against global spikes in fossil fuel prices.
4. Therefore, EMR is a set of arrangements to take us through this transition, working with the existing market to address market failures. It will ensure that the UK remains a leading destination for investment in low carbon electricity – boosting our economy and generating skills, expertise and hundreds of thousands of jobs in this sector.
5. Further information on the objectives and benefits of EMR can be found on the DECC website¹.

¹ <https://www.gov.uk/government/policies/maintaining-uk-energy-security--2/supporting-pages/electricity-market-reform>

6. The legislative provisions for EMR are set out within the Energy Act 2013². This Act provides the Secretary of State with powers to enact the changes to the electricity market to meet the challenges set out above. This includes supporting investment through the Contracts for Difference and the Capacity Market, and associated measures to support these mechanisms.

Contracts for Difference (CfDs)

7. EMR will create a new mechanism to provide long-term revenue stabilisation to incentivise investment in low-carbon generation – Contracts for Difference (CfDs). CfDs will help to ensure that low carbon and reliable electricity generation is an attractive investment opportunity.
8. On 10 October 2013 the Government published a detailed consultation³ on the proposed policy designs which will be implemented through Secondary Legislation. This consultation included detail on draft regulations with the title “Contracts for Difference (Allocation) Regulations 2014”. This consultation closed on 24 December and responses are currently being analysed. The intention is to publish a Government Response and lay secondary legislation in Parliament later this year.
9. On 16 January 2014 the Government published a consultation on competitive allocation⁴ that sought views on the Government’s approach to the allocation of CfDs on the standard terms in the generic regime. This consultation closed on 12 February 2014 and the Government response will be published in spring 2014.

Purpose of this consultation

10. In previous consultations the Government has said that the Secretary of State will retain the power to direct the CfD Counterparty Body to enter into bespoke CfDs outside the generic CfD allocation process. This consultation is to provide clarity to stakeholders on our intention to retain this power and to seek stakeholder views on the regulations that will govern the way it is exercised.

² <http://www.legislation.gov.uk/ukpga/2013/32/contents/enacted>

³ <https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform>

⁴ <https://www.gov.uk/government/consultations/electricity-market-reform-allocation-of-contracts-for-difference>

Consultation questions

Consultation Question

- | | |
|----|--|
| 1. | Do you agree that the regulations contained in Annex A set out an appropriate process for the Secretary of State to direct the CfD Counterparty to offer a CfD to an eligible generator? |
|----|--|

Consultation Question

- | | |
|----|--|
| 2. | Do you have any other comments on the wording of the regulations contained in Annex A? |
|----|--|

Consultation Question

- | | |
|----|---|
| 3. | Do you agree that the definition of an eligible generator should follow the principles set out in paragraph 14 and 15 of this consultation? |
|----|---|

Proposal

Background

11. The Energy Act 2013 includes provisions for two distinct situations where the CfD Counterparty must enter into a Contract for Difference (CfD):
 - a. CfD notification: When the National System Operator gives a CfD notification to the CfD Counterparty the CfD Counterparty must enter into a CfD with the eligible generator specified in the notification (see sections 11-14 of the Energy Act 2013). Regulations may make more detailed provision about the circumstances in which a notification is to be given. In October 2013, the Government published a draft of the regulations that will govern the generic CfD allocation process. These regulations will provide that a generator will be specified in a CfD notification if they are a successful applicant to an allocation round. This process has been referred to as 'generic CfD allocation' and this is the process that will apply to most renewable technologies. In January 2014 the Government published additional details competitive allocation in the generic CfD allocation process.⁵
 - b. Secretary of State direction: In accordance with Section 10 of the Energy Act 2013, the Secretary of State can direct the CfD Counterparty to offer a CfD to an eligible generator. It is our intention that such a direction would be made outside the generic CfD allocation process. The direction might be given following a bilateral negotiation between the Secretary of State and an eligible generator or following a competitive process defined by the Secretary of State. Before making a direction, the Secretary of State would have to take into account relevant factors such as the impact on the LCF budget and any State aid considerations.
12. The Government has not previously consulted on regulations related to Secretary of State directions under Section 10 of the Energy Act. The purpose of this consultation is to confirm that the Government intends to retain this power and to seek views from stakeholders on the regulations that will govern the process.

Proposal

13. The Government proposes to introduce regulations about directions from the Secretary of State to the CfD Counterparty to offer a CfD to an eligible generator. A draft of these regulations is included in Annex A of this consultation. We intend that these regulations will form part of the CfD Allocation Regulations⁶.
14. The Secretary of State may only direct the CfD counterparty to offer a CfD to a person who is an 'eligible generator'. In October 2013 we consulted on regulations defining who is an

⁵ <https://www.gov.uk/government/consultations/electricity-market-reform-allocation-of-contracts-for-difference>

⁶ A draft of the CfD Allocation Regulations was published for consultation in October 2013 <https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform>

“eligible generator” as part of the draft “Contracts for Difference (Allocation) Regulations 2014”⁷. This set out two possible definitions of eligible generator, one of which was:

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).

15. The Government is minded to build on the above definition (and therefore, not pursue the second formulation in the October consultation). These changes are intended to accommodate a variety of possible commercial structures that may be adopted for CfDs which are subject to a Secretary of State direction. In particular, the Government proposes extending the definition so that in construing whether a person has “an interest” in a company falling within paragraph (a) or (b), that will be ascertained by application of a test that is the same as the ‘associated’ test set out in section 67 of the Energy Act 2008⁸.
16. These regulations are being prepared in addition to the generic CfD allocation process and are not intended to replace this. The Government does not expect that Secretary of State will direct the CfD Counterparty to enter into a CfD with any generator that is within the scope of the generic CfD allocation regime as such a generator would be expected to apply for a CfD through the generic CfD allocation process. In any case, the Secretary of State would not consider a direction for any generator that has an on-going application in the generic CfD allocation. The Government may publish an updated policy position if appropriate before the CfD regulations come into force in order to provide further clarity on the circumstances in which the Secretary of State might consider making a direction under the regulations in this consultation.
17. The draft regulations included in Annex A would allow the Secretary of State to direct the CfD Counterparty to enter into a CfD with an eligible generator. The contract terms that can be offered in such a contract are not restricted to the Standard Terms that will be issued under s.11 of the Energy Act 2013 and which will be applicable to CfDs offered through the generic CfD allocation process⁹. The direction-making power could therefore be used in relation to large or unusual projects for which the standard terms and generic allocation process would not be suitable.

Consultation questions

Consultation Question

⁷ <https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform>

⁸ http://www.legislation.gov.uk/ukpga/2008/32/pdfs/ukpga_20080032_en.pdf

⁹ On 19 December 2013 the Government published a draft of the Standard Terms <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

1.	Do you agree that the regulations contained in Annex A set out an appropriate process for the Secretary of State to direct the CfD Counterparty to offer a CfD to an eligible generator?
Consultation Question	
2.	Do you have any other comments on the wording of the regulations contained in Annex A?
Consultation Question	
3.	Do you agree that the definition of an eligible generator should follow the principles set out in paragraph 14 and 15 of this consultation?

Annex A – Draft Regulations

Notes:

- *these Regulations are to be made under the affirmative procedure, as per s.6(8)(b) of the Energy Act 2013;*
- *there is a statutory requirement for the Secretary of State to consult various parties before making these Regulations, as set out in s.24 of the Energy Act 2013;*
- *the Regulations are made under s.10(4) of the Energy Act 2013.*

Directions by the Secretary of State

- 1.—(1) A direction made by the Secretary of State under section 10(1) of the Energy Act 2014 (a “direction”) must—
 - (a) be in writing;
 - (b) specify a date by which the CfD counterparty must comply with the direction; and
 - (c) specify the period for which the offer of a contract for difference on the specified terms must remain open for acceptance unless it is rejected by any person specified in the direction.

(2) The date specified in accordance with paragraph (1)(b) above must fall no earlier than [30 days] from and including the date on which the direction is made.
- 2.—(1) No later than [7] days after the date on which a direction is made, the Secretary of State must give notice of the following to any person specified in the direction—
 - (a) the date on which the direction was made;
 - (b) the terms specified in the direction; and
 - (c) the period for which the offer to contract is to remain open for acceptance.
- 3.—(1) A direction will cease to have effect if any person specified in it:
 - (a) rejects the offer to contract on the specified terms;
 - (b) does not accept the offer to contract on the terms specified before the expiry of the period specified in the direction.

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