



Department  
of Energy &  
Climate Change

# Ofgem & Fuel Measuring and Sampling/Sustainability under the CFD

Consultation on Proposed amendments to  
Regulations

31 October 2014



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The consultation can be found on DECC's website: <https://www.gov.uk/decc>

Published by the Department of Energy and Climate Change

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# General information

## **Purpose of this consultation:**

DECC intends to extend Ofgem's role so that Ofgem can provide advice to the CFD counterparty in relation to FMS and Sustainability to the Contract for Difference (CFD) regime. This consultation concerns the policy supporting this approach. DECC intends to implement the relevant provisions via amendment to the *Electricity Market Reform (General) Regulations 2014*.

This consultation is particularly relevant to electricity generators, electricity suppliers, electricity consumers and their representatives, network operators, Ofgem, the Delivery Body (National Grid), environmental and energy efficiency organisations, electricity service companies, the construction sector, financial institutions and other stakeholders with an interest in the energy sector. DECC invites interested parties to submit comments and evidence.

**Issued:** 31 October 2014

**Respond by:** 28 November 2014

## **Enquiries to:**

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Consultation reference: URN 14D/415 – Ofgem & Fuel Measuring and Sampling under the CFD

**Territorial extent:** This consultation applies throughout Great Britain.

**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.

Please send responses to the above e-mail address.

**Additional copies:**

You may make copies of this document without seeking permission. An electronic version can be found at <https://gov.uk/government/consultations/ofgem-and-fuel-measuring-and-sampling-under-the-cfd>.

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

**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 the [GOV.UK website](https://gov.uk). 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 Consultation Principles](#).

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:

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3 Whitehall Place  
London SW1A 2AW  
Email: [consultation.coordinator@decc.gsi.gov.uk](mailto:consultation.coordinator@decc.gsi.gov.uk)



# 1. Background

- 1.1. This consultation seeks views on the proposed policy to provide Ofgem with a formal legal basis on which it can enter into arrangements with the Low Carbon Contracts Company ('LCCC') regarding Fuel Measurement and Sampling ('FMS') and Sustainability obligations under the Contract for Difference ('CFD').
- 1.2. FMS under the Renewables Obligation ('RO') is a process that many fuelled stations have to undertake on a monthly basis to determine both the number of renewable certificates to be issued, and which Renewables Obligation Certificate ('ROC') band applies. Similar procedures will also apply to fuelled stations under the CFD regime. Additionally under the RO many fuelled stations have to comply with sustainability requirements. Similar sustainability requirements will also apply under the CFD regime.
- 1.3. The CfD is a private law contract to which a generator and the CFD Counterparty, designated as the Low Carbon Contracts Company ('LCCC'), are party. Under that contract there are requirements for the LCCC to approve, monitor and ensure compliance with FMS procedures, FMS obligations and Sustainability Criteria. However the LCCC is not currently able to undertake these requirements directly. The CfD therefore permits the LCCC to enter into arrangements whereby another body performs any or all of its obligations under the CFD.
- 1.4. Given that Ofgem presently undertakes a role under the RO scheme in relation to FMS and Sustainability requirements, DECC intends to provide Ofgem, as a statutory body, with a formal legal basis on which it can enter into arrangements with the LCCC in order to provide advice on FMS procedures and the enforcement of FMS and Sustainability obligations under the CFD. This policy does not obligate the LCCC to enter into arrangements with Ofgem.
- 1.5. Under the RO it is Ofgem that acts upon the data it gathers from Generators, offering greater or fewer ROCs, or suspending their issuance altogether. Payment under a CFD flows either from the LCCC to the Generator or vice versa, and it is the LCCC that retains discretion to act where a Generator fails to comply with one of its obligations, those relating to fuelling and sustainability included.
- 1.6. DECC does not intend to provide for Ofgem to hold a function in acting against such Generators. Instead, it is intended that regulations will enable Ofgem to enter into an agreement with the LCCC to provide relevant analysis, advice and recommendations to the LCCC on the FMS and Sustainability requirements under the CFD. In response to that information and advice the LCCC will then choose whether to act and in what way.
- 1.7. In line with section 24(1) of the Energy Act 2013, the Department is consulting on this policy in order to inform the relevant secondary legislation enabling Ofgem to undertake

this role. Responses should be sent to [emrcfddesign@decc.gsi.gov.uk](mailto:emrcfddesign@decc.gsi.gov.uk) by 28 November 2014.

- 1.8. Ofgem will be provided with a formal legal basis to undertake this role via amendment to the *Electricity Market Reform (General) Regulations 2014*. We intend to publish the Government response to this consultation and lay amended implementing secondary legislation before Parliament in early 2015.

## The roles of Ofgem under the RO and under the CFD

- 1.9. Ofgem engages in a number of different roles within the RO, from assessing and quantifying the renewable component of fuels used for electricity generation, to issuing RO Certificates and maintaining a register of these. These functions are described below in paragraph 2.1.
- 1.10. Under the CFD regime Generators operating certain technologies are also subject to a set of obligations relating to FMS and Sustainability<sup>1</sup> which are broadly equivalent to those mechanisms already existing under the RO. The relevant technologies affected are:

- Advanced Conversion Technology (ACT)
- Energy from Waste with CHP
- Anaerobic Digestion (AD)
- Landfill Gas
- Dedicated Biomass with CHP
- Sewage Gas
- Biomass Conversion

- 1.11. As mentioned earlier, under the CfD contract the LCCC retains the ability to enter into arrangements whereby any person is to perform any or all of its obligations under the CFD.<sup>2</sup> DECC intends to draft regulations to enable Ofgem to provide information, advice and recommendations to the LCCC relating to:

- The agreement, enforcement and amendment of FMS procedures;
- The measurement and sampling of fuel; and
- The sustainability of the fuel used.

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<sup>1</sup> For greater detail on these policies, see [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/307060/CFD\\_policy\\_drafting\\_update.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307060/CFD_policy_drafting_update.pdf) and [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/267735/EMR - Update on Terms for the Contract for Difference v8.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/267735/EMR_-_Update_on_Terms_for_the_Contract_for_Difference_v8.pdf)

<sup>2</sup> Condition 79 of the CfD Standard Terms and Conditions, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/348142/Generic CfD TCs 29 August 2014 .pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/348142/Generic_CfD_TCs_29_August_2014_.pdf)



## 2. Ofgem functions under the CFD

### Agreement of procedures and subsequent amendment

- 2.1. Under the RO, Ofgem may only issue ROCs for generation that derives from renewable sources. In support of this, Ofgem agrees procedures with relevant generating stations enabling it to make the necessary assessments in order to determine, amongst other things:
- a. The mass or volume of the fuel;
  - b. the gross calorific value of the fuel;
  - c. the extent of any fossil fuel (or fossil derived) contamination; and
  - d. the compliance with sustainability criteria of any fuel consignment.
- 2.2. Given Ofgem's expertise in relation to the FMS and Sustainability requirements under the RO, DECC intends to lay regulations that will allow Ofgem to enter into arrangements with the LCCC so that it can advise the LCCC on the appropriateness of a Generator's FMS proposals under the CFD.
- 2.3. DECC also proposes to enable Ofgem to negotiate amendments, on behalf of the LCCC, with Generators that will be operating under the CFD procedures, and to present the proposed revisions to the LCCC, accompanied by its advice on whether the LCCC should accept these changes.

### Compliance monitoring – Fuelling and Sustainability

- 2.4. There are standards contained within the CFD terms relating to the determination of both the absolute renewable content of a Generator's fuel and its adherence to the minimum fuelling criteria that define the relevant technology.
- 2.5. DECC proposes to enable Ofgem to enter into arrangements with the LCCC to allow it to monitor compliance with these undertakings. It would do so through the assessment of data provided by generators and the exercise of rights of access to generating facilities on behalf of the LCCC.
- 2.6. Similarly, DECC also proposes to provide for Ofgem to undertake a function in monitoring compliance with the Sustainability Criteria contained within the CFD on behalf of the LCCC.
- 2.7. In both cases, decisions on actions to be taken in relation to non-compliance with paragraphs 2.5-2.7, following supporting analysis by Ofgem, will rest with the LCCC.

## Role & Costs

2.8. In developing the FMS and Sustainability requirements for the CFD DECC was told by Generators that it would be preferable for Ofgem to be able to fulfil a similar role under the CFD as it does under the RO. This was because Ofgem has experience of assessing FMS/Sustainability arrangements and the on-going monitoring and enforcement of them. Generators said that given this experience it made sense for Ofgem to have a similar role under the CFD regime. This was felt to be especially appropriate given that the FMS and Sustainability requirements under the CFD regime are largely based on those of the RO.

2.9. These costs will arise only from those arrangements undertaken within the context of the CFD, and neither the LCCC, nor consumers, will become liable for costs attributable to the RO.

2.10. DECC therefore considers that enabling Ofgem to enter into an agreement with the LCCC allowing it to advise the LCCC on aspects of the CFD that relate to FMS and Sustainability requirements to be the most effective means at present of ensuring continuity of process for generators.

2.11. The initial costs associated with the development of the systems required in order for Ofgem to undertake the roles described within this Consultation will be met from funding already held and budgeted for by the LCCC and will not result in any increase in cost to the consumer.

2.12. The LCCC's on-going operating costs, including for FMS and Sustainability, will be met through the operational cost levy. The LCCC may reimburse a body, such as Ofgem, undertaking these roles on its behalf. For further detail on on-going operational costs attributable to the LCCC, please see a forthcoming consultation from the Department relating to this matter.

### Consultation Questions

1.	Do you agree with the proposal that Ofgem be enabled to enter into arrangements with the LCCC so that Ofgem can advise the LCCC on the appropriateness of a Generator's FMS under the CfD? If not, why, and what alternatives would you suggest?
2.	Do you agree with the proposal that Ofgem be enabled to enter into arrangements with the LCCC to allow it to monitor and provide advice on compliance related matters in relation to the FMS and Sustainability obligations under the CfD? If not, why, and what alternatives would you suggest?
3	Do you agree with the proposal that these functions will continue to be undertaken by Ofgem, due to its existing role and relevant expertise? If not, why, and what alternatives would you suggest?

## 3. Next Steps

- 3.1. This consultation will close on 28 November 2014. Following the close of the consultation, the Secretary of State will consider responses and make any appropriate changes to the proposals. Our final policy decision will be announced in a Government response to the consultation, which we plan to publish at the same time as amended Regulations are laid in Parliament in early 2015.
- 3.2. If taken forward, we expect that Ofgem is likely to take on FMS and Sustainability activities on behalf of the LCCC from early 2015. Their responsibilities will then apply to all fuelled CFD applicants awarded contracts in the first allocation round onwards.

