Department of Energy & Climate Change

Supporting Independent Renewable Investment: Offtaker of Last Resort

Government Response

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The consultation [and Impact Assessment] can be found on DECC's website:
https://www.gov.uk/government/consultations/supporting-independent-renewable-investment-offtaker-of-last-resort

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Contents

Executive Summary

Overview

1) On 11 February 2014 the Government released a consultation on a mechanism to support independent renewable investment: the Offtaker of Last Resort (OLR). The OLR will reduce the cost of investment in renewable electricity generation, boost competition, and lower costs to consumers. At its simplest, the OLR will achieve this by providing renewable CfD generators with a guaranteed, 'backstop' route-to-market for the duration of their CfD: a BPPA.

2) We received responses from thirty-five organisations, representing a wide range of stakeholders including generators, suppliers, consumer groups and trade associations. A full list of respondents can be found in Annex 1.

3) The consultation demonstrated that there is widespread support for the mechanism, with few respondents suggesting that the introduction of the OLR would not be beneficial. Further, we have updated our Impact Assessment and remain of the view that consumers will be better off with the OLR in place. On this basis, the **Government confirms its intention to implement the OLR policy**.

4) Below we summarise the responses received and any proposed changes to the policy design.

Generator Eligibility (Chapter 2)

5) The great majority of respondents agreed with our proposals that all renewable CfD and Investment Contract holders should be eligible for the OLR, whilst a small number questioned whether baseload generators (who do not face the same significant imbalance risk as intermittent generators) should be eligible for the OLR.

6) We have some sympathy with the view that baseload renewable generators are unlikely to require the OLR in practice. However, there are benefits to taking a simple and consistent approach across renewable technologies and we intend to include them, with the same BPPA at the same discount as intermittent generators.

7) We therefore intend to retain the policy position as set out in the consultation.

Offtaker Identity (Chapter 3)

Mandatory Offtakers

8) The majority of respondents agreed with our proposals that some suppliers would be mandated to bid for each BPPA contract, with the threshold to determine which suppliers were ‘mandatory offtakers’ set based on supplying a share of between 5% and 8% of GB electricity supplied.

9) Following further analysis, we propose that the mandatory offtaker threshold is set at 6% of GB supply volumes. To reduce administrative burdens, we intend that Ofgem use supply volume data for the financial year, collected under the RO and ssFiT for levelisation

purposes and collated in the summer following the financial year end. This data will be used to establish the Mandatory Offtakers under the OLR for the following financial year.

Creditworthiness

10) To ensure the bankability of the OLR, we proposed that either offtakers would need to meet credit requirements or a mechanism would be needed to compensate generators in the event of offtaker default.

11) A majority of respondents agreed that credit requirements were necessary, either through meeting a minimum credit rating, or through providing a letter of credit. Several respondents suggest that collateral provision from an affiliated company should also be permissible. However, some respondents stressed that credit requirements would increase costs on smaller suppliers in bidding for BPPAs and could inhibit the ability of such suppliers to compete.

12) If we decided against requiring credit from suppliers, the majority of respondents supported the use of mutualisation provisions to compensate generators in the event of offtaker insolvency. However, some respondents had concerns that mutualisation in lieu of credit requirements would increase the likelihood of BPPAs being awarded to suppliers with higher risk of insolvency and the extent to which consumers would then have to underwrite costs via mutualisation.

13) Based on the responses and further work since the consultation was released, we propose ensuring the bankability of the OLR through a credit requirement on offtakers and do not intend to pursue the option of mutualising compensation payments. Following engagement with lenders, it is clear that credit requirements are more readily understood, more closely aligned to the commercial PPA market and administratively simple to implement. Concerns over payment delays via the mutualisation proposals were evident in comparison to relative ease of a generator calling upon a Letter of Credit.

Generator Access (Chapter 4)

14) The vast majority of respondents agreed with our proposals to place few limitations on access to a BPPA, and allow generators to apply at any point during their CfD subject to a start date which would be no later than April 2016.

15) Some suppliers felt that a generator should have to commit to a BPPA for more than six months, whilst some generators felt that they should be able to exit a BPPA at any point without penalty. We feel that our proposal - one year contracts with the option for termination with notice after six months – best balances the ability for generators to exit a BPPA and return to the open market with the need to ensure the BPPA is viewed as a last resort and for offtakers to be able to price their bids efficiently.

16) Some generators also questioned whether their termination of a BPPA outside of any accepted scenarios should disqualify the generator from further BPPAs. Several generators favoured a 'three strikes then out' rule, however we feel that generators should be sufficiently incentivised to remain within a BPPA in order for suppliers to have confidence of the minimum period of the contract.

Allocation (Chapter 5)

17) The majority of respondents agreed that offtakers should be allocated BPPAs on a competitive basis via a sealed bid, with large projects split between multiple BPPAs.

Timeline

18) However, the majority of respondents disagreed with our high-level allocation timeline and the allocation period of no more than six weeks: generally, suppliers felt that six weeks was too short to ensure that they were able to assess bids and reassign meters whilst generators felt that six weeks was too long since it would leave a generator exposed to greater losses in the event that an offtaker went insolvent and create greater collateral requirements for offtakers thus reducing competition.

19) There is clearly a balance to be struck between ensuring a generator can access the BPPA within a reasonable amount of time whilst ensuring that Ofgem can comply with their allocation duties and suppliers can bid competitively to minimise costs to consumers. In light of the feedback, we have adopted an amended timeline that: gives adequate notice to Ofgem and suppliers that a generator is seeking a BPPA; sufficient time for suppliers to consider and submit bids for each BPPA; yet ensures generators can commence a BPPA in the shortest time possible:

i.	Expression of Interest (EoI)	Day 0
ii.	Eligibility verification starts[1]	Day 5
iii.	OLR Notice circulated to all licensed suppliers	Day 9
iv.	Deadline for bids returned	Day 19
v.	Lowest bidder identified and informed	Day 20
vi.	BPPA agreed	Day 21
vii.	BPPA commences	Day 26

20) Under this timeline, generators can enter into a BPPA within 26 WDs of their expression of interest, with the option of withdrawing their EoI up until they submit their project information.

Ensuring the timeline is met

21) Respondents had mixed views regarding whether the allocation timetable should be ensured through a Key Performance Indicator (KPI) on Ofgem or whether they should be compensated for any delays via a mutualisation process.

22) Some respondents felt that the KPI was most appropriate, since they had concerns with mutualisation which would ultimately see consumers compensating generators if Ofgem failed to allocate to time. Many were wary of mutualisation provisions, given the difficulty in calculating compensation, the cash-flow implications for generators, and the complexity involved for lenders in understanding the risks.

23) However, most generators also felt that a KPI on Ofgem would not give sufficient comfort to lenders over the maximum allocation period and that stronger requirements on Ofgem would be needed to give certainty to the market. In discussions since the consultation, lenders have indicated a strong preference for firmer deadlines and requirements on Ofgem rather than KPIs or compensation through mutualisation.

24) Based on these responses we intend to place a duty on Ofgem to undertake the various steps involved in the allocation process within a certain amount of time. Feedback from

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[1] Subject to Ofgem receiving a generator's Statement of Confirmation that full project information (PI) has been completed. A generator can submit this to Ofgem up to ten working days after submitting an EoI. Eligibility verification will commence either five working days after the EoI was received, or immediately once the Statement of Confirmation has been sent, whichever is the later.

lenders suggested that this would provide the most robust and bankable solution to doubts over the allocation timing.

Splitting capacity across BPPAs

25) Based on the feedback received, we also intend to split capacity from generators above 150MW across multiple BPPAs, with the generator remaining the lead party for notifying the System Operator. Each BPPA will be for equal capacity, with the number of applicable BPPAs calculated by dividing the total capacity by 100 and rounding to the nearest integer.

Cost Assessment and Levelisation (Chapter 6)

26) The vast majority of respondents agreed with our proposals to levelise the cost incurred by suppliers in managing BPPAs across all licensed suppliers. There was broad support for us to align the process with that already undertaken by suppliers for the small-scale Feed-in-Tariff (ssFiT) with a quarterly process.

Pricing (Chapter 7)

27) The vast majority of respondents agreed that the discount to the generator's market reference price that they are paid under the BPPA is set in £/MWh, fixed for the duration of their CfD and indexed to CPI.

Discount modelling approach

28) However, responses were more mixed regarding the approach taken to assessing the discounts and the discounts proposed.

29) On the approach, some respondents believed that the modelling was too speculative and based on lots of assumptions; the uncertainties suggesting that Government should adopt a cautious approach and adopt a higher discount to best protect consumers.

30) Other respondents stated that the modelling work was based on strike prices within the draft rather than final EMR Delivery Plan for some technologies and needed to be updated. Further questions were raised regarding whether lenders would accept the OLR scenario we modelled. Some respondents felt that we should have looked at an OLR discount that provided a project with that same gearing as under a long-term PPA.

31) Whilst we accept that there is no perfect way to approach discount setting, we continue to believe that a combination of two qualitative judgements – a discount that should remain a last-resort and a discount that should allow a reasonable level of gearing – and a quantitative assessment is the correct approach.

32) The quantitative component seeks to find a discount that would provide generators with two route-to-market options with similar returns so as not to promote one option over the other.

Discount level

33) Whilst the vast majority of respondents agreed with a discount between £20/MWh and £30/MWh, only a minority supported our preference for a £25/MWh discount.

34) Generally, generators were keen for a discount of £20 or lower. Reasons stated included that the £25/MWh had been calculated on a higher strike price than in the final EMR Delivery Plan for some technologies, and before the prospect of immediate competitive

CfD allocation. These respondents felt that the discount would therefore be too low to attract sufficient gearing without securing a long-term PPA.

35) Generally, suppliers and consumer groups were keen for a discount of £30/MWh or higher. This was to protect customers who would bear the costs if BPPAs were accessed. Respondents highlighted the modelling results showing a reasonable level of gearing for projects even at a £30/MWh discount. A high discount also helps to ensure that the OLR remains a last resort.

36) We have revisited the modelling internally in light of requests to do so from respondents, adopting the strike prices in the final EMR Delivery Plan with the results presented in the final Impact Assessment published alongside this Government Response. These show that a discount of £25/MWh remains the level at which a generator achieves a similar project IRR through either a long-term or short-term route-to-market if debt is sized on the guaranteed OLR revenues.

Single Discount

37) Finally, the majority of respondents agreed that a single discount for all technologies was appropriate under the BPPA, though this was disputed by baseload generators who considered the £25/MWh discount to be too high. We do not consider that renewable baseload generators should receive a different, lower discount to that received by intermittent generators since we remain unconvinced of the benefits of OLR eligibility for baseload generators given their significantly lower exposure to imbalance risk and their ability to manage this at lower cost. However, by offering access on the same terms for all technologies we believe that we are striking the correct balance between ensuring the OLR is a last resort, encouraging market-based solutions where appropriate, and retaining a backstop offering for all technologies.

Contract Terms (Chapter 8)

38) The majority of respondents agreed that a single set of terms and conditions should be applicable to all contracts, with any fundamental differences being dealt with in a technology-specific schedule appended to the contract. This is consistent with the approach we have taken to the drafting.

39) A large proportion of respondents expressed concern over whether offtakers should have the right to curtail a generator, either when the index price falls below a certain point or when their business need requires it. These concerns stemmed from both the associated accounting risks and the technical feasibility. We believe that providing the generator with protection from negative revenues in the event of very negative prices is something that will evolve in commercial PPAs under the CfD over time and should therefore be provided in the BPPA. In light of the responses we have therefore developed an approach that affords this protection, but does not grant direct control to the offtaker.

40) Views were divided on whether to make SCADA access a universal requirement for all OLR generators, given the relative costs and practicalities of implementing this for different projects and technologies. We have decided to step back from specifying minimum standards for data transfer, as this is something that is best left to commercial arrangements to decide the appropriate form. The BPPA will follow the market by obliging generators to specify in their project information what data transfer system they have and to provide access to this system during the term of the contract, allowing offtaker to price bids on this basis.

41) Views were divided on penalties for poor communication between generators and offtakers, given that these don't currently exist in open market PPAs. It was particularly

noted that exposure to cash-out prices was an uncapped liability that could affect the bankability of the contract. We believe that due to the different nature of the relationship between the generator and the offtaker it is important to incentivise good communication. However, we do not want to introduce an uncapped liability and have therefore decided to include a ‘reasonable endeavours’ qualifier and to change the penalties to liquidated damages subject to an aggregate cap.

42) Views were also divided over leaving any Direct Agreements open to bilateral negotiation. Given the timescale available in which to get a Direct Agreement in place we do not think it is feasible to leave this to bilateral negotiation and therefore intend to include a standard form Direct Agreement in the Schedules to the BPPA.

Scheme Review (Chapter 9)

43) The vast majority of respondents agreed with our proposal for a combination of annual updates and a comprehensive review to establish the continuation of the OLR beyond the current EMR Delivery Plan. As set out in the accompanying consultation, we intend to implement this through regulations that allow for annual reviews and a commitment that the OLR will remain in place for generators that sign their CfDs before April 2019. We will consider eligibility beyond this point as the market develops.

Information provision

44) Respondents were mixed in their views as to whether DECC should require generators to submit details of their initial PPAs in order to inform the setting of OLR parameters for new CfD signatories. Whilst respondents were keen that DECC kept abreast of developments in the PPA market, some respondents felt there were more effective ways to obtain this information than requiring generators to submit information. Respondents had concerns about the value of providing key contract terms to DECC without the context of the full contract and over the commercial sensitivity of the data being provided.

45) Based on this feedback and our own concerns that this requirement could result in the provision of information with little value and potentially perverse consequences, we intend not to require generators to provide initial PPA information. Instead we will seek to keep abreast of the PPA market through stakeholders.

Glossary

Agreement Date	The date on which the generator signs their Backstop PPA
Allocation Date	The date on which Ofgem sends the generator a Backstop PPA to sign
Backstop PPA	PPA contract offered under the OLR (BPPA)
CfD	Contract for Difference
CfD Agreement	The initial section of a CfD which details the project-specific information relating to that particular contract, such as the eligible generator's name and the location of the facility
Contract for Difference	The combination of the Standard Terms and a CfD Agreement, which when signed by the CfD counterparty and an eligible generator comprise a legally binding contract
CfD counterparty	The counterparty for CfDs, which will be the Low Carbon Contracts Company Limited
Commencement Date	means the later of the generator's Preferred Commencement Date (as specified in Schedule One of their project information) and the date falling five (5) days after the Agreement Date.
Eligible Generator	Any electricity generator eligible for the OLR
EMR	Electricity Market Reform
IRR	Internal Rate of Return
Generator	Any legal entity which might apply for a CfD
IC	Investment Contract
IRGs	Independent Renewable Generators
LCCC	Low Carbon Contract Company Limited
LEC	Levy Exemption Certificate
LoC	Letter of Credit
MRP	Market Reference Price
MW	Mega Watt
Ofgem	Office of Gas and Electricity markets, the Authority
Offtaker	Licensed supplier party to a PPA or Backstop PPA (BPPA) with a generator
OLR	Offtaker of Last Resort
OLR Notice	The notice sent to all licensed suppliers, informing that one or more BPPAs are to be subject to an OLR auction
OLR Year	A period of 12 months commencing on 1 April and ending on the next 31 March
PPA	Power Purchase Agreement
REGO	Renewable Energy Guarantees of Origin
RO	Renewables Obligation
SCADA	Supervisory Control and Data Acquisition
ssFiT	Small Scale Feed in Tariff
Statement of Confirmation	A signed 'Statement of Confirmation' from a director of the electricity generator confirming that the PI is complete, true and accurate, and a declaration that the provision of the statement commits the generator to entering into the OLR

System Operator	The operator of the national electricity transmission system in Great Britain, which will act as the Delivery Body for the CfD regime
T&Cs	Terms and Conditions
£/MWh	Pound per Megawatt hour

Chapter 1 : Introduction

1.1 Between 11 February and 24 March 2014 the Government consulted on its proposed intervention to assist independent renewable generators (IRGs) to secure a route-to-market under the CfD: the Offtaker of Last Resort (OLR). This document sets out the issues raised by stakeholders to the questions posed, and the Government's response, setting out the final policy positions regarding the OLR.

1.2 This document should be read in conjunction with those published alongside it, including the final Impact Assessment, a Consultation on how we will implement the OLR, and draft Supply Licence Conditions, Regulations and a BPPA.

1.3 We received responses from thirty-five organisations, representing a wide range of stakeholders including generators, suppliers, consumer groups and trade associations. A full list of respondents can be found in Annex 1.

1.4 We continue to deem the OLR a suitable and proportionate response to the issues facing IRGs. By guaranteeing a route-to-market, the OLR will help such generators secure project finance without requiring them to sign up to a long-term PPA, the availability of which is currently limited. Equally, by setting the terms such that the BPPA should remain a last resort, we mitigate the risk that the intervention harms the commercial PPA market or burdens consumers with unnecessary additional costs.

1.5 The **Government therefore confirms its intention to implement the OLR policy**. The consultation demonstrated that there is widespread support, with few respondents suggesting that the introduction of the OLR would be problematic. Further, we have updated our Impact Assessment and remain of the view that consumers will be better off with the OLR in place.

1.6 The following chapters summarise the responses given to each question. For ease of reading we have categorised responses, most usually into whether respondents felt the answer to the question was 'yes', 'no' or 'maybe'. This interpretation is subjective, and only indicative of the level of support or not of a proposal. Where answers have been categorised differently, we have made this clear.

Chapter 2: Eligibility

Questions

2.1 In the Eligibility chapter, we set out our proposal for eligibility to extend to all renewable CfD holders, including those signing Investment Contracts.

Consultation Question					
(1)	**Do you agree that eligibility for the OLR should include all renewable CfD generators? Please provide evidence as to why not.**				
Yes:	**20**	**Maybe:**	**3**	**No:**	**5**

2.2 The vast majority of respondents supported our position that all renewable CfD holders should be eligible for the OLR.

2.3 Concerns were focussed on the question of whether baseload generators should be eligible. Five respondents felt that they shouldn't be given their relative lack of imbalance risk, such that under the CfD lenders should become comfortable lending to such generators without a long-term PPA. Some also highlighted the large size of some baseload projects which both made OLR access unnecessary and increased risks for consumers were route-to-market costs for baseload to increase significantly. One respondent argued that CCS projects should also be eligible.

2.4 Whilst we have some sympathy over the question of whether renewable baseload generators need the OLR, by offering access at the same discount as intermittent generators we believe that we are striking the correct balance between ensuring the OLR is a last resort, encouraging market-based solutions where appropriate, yet retaining a backstop offering for all technologies.

2.5 We acknowledge feedback from the CCS industry on the need for similar support for CCS generators. Inclusion of non-renewable generators was out of scope of the initial Call for Evidence and the design of the OLR, which focusses on route-to-market issues stemming from imbalance risks. Whilst baseload renewable generators will be included in the OLR's eligibility criteria for consistency (albeit at the same discount as intermittent generators), we do not consider that it is appropriate for CCS to be included at the present time, nor that the OLR would necessarily be suitable for CCS, given that their route-to-market concerns appear to stem from technology risks rather than those associated with imbalance costs. We will engage with the CCS industry on this issue over the next six months, to improve our understanding of their route-to-market issues and gather further evidence to help establish whether intervention is required.

Consultation Question					
(2)	**Do you agree that renewable CfD generators of all sizes should be eligible under the OLR?**				
Yes:	**24**	**Maybe:**	**1**	**No:**	**2**

2.6 The vast majority of respondents agreed that we should not differentiate eligibility on the basis of generator size.

2.7 Some respondents expressed concern that the possibility of large baseload plants entering the OLR and increasing costs to consumers; as above, we intend to reduce this risk by keeping a consistent discount between intermittent and baseload generators.

2.8 Some respondents questioned whether large generators who are parties to the BSC should have access to the OLR. Whilst it may be the case that smaller licence-exempt generators are more likely to use the OLR, it is equally the case that larger licensed generators could need to transfer imbalance risk through a PPA in order to secure project finance. As such we propose that these generators can access the OLR.

2.9 Some respondents requested further detail on how we intend to split output from large generators across numerous offtakers – we have set out this position in Chapter 5 of this document.

Consultation Question					
(3)	**Do you agree that projects with Investment Contracts should be eligible for support under the OLR?**				
Yes:	**21**	**Maybe:**	**1**	**No:**	**3**

2.10 The vast majority of respondents supported our position that renewable generators signing Investment Contracts should be eligible for the OLR.

2.11 Some respondents questioned whether generators would be getting a bonus having applied for an Investment Contract without confidence in their eligibility for the OLR. As set out in the consultation, we feel that generators were aware of plans for OLR support when applying, had been aware of the OLR Consultation before signing the contracts, and that including them within the scheme would be beneficial in aligning the Investment Contracts with the enduring regime.

2.12 Other respondents reflected previously expressed views over baseload generators not being eligible.

Overall Response

2.13 Based on the positive responses from the majority of respondents, we are minded to keep our preferences around eligibility:

i. Open to all renewable CfD and Investment Contract holders

ii. No restriction on project size

2.14 We are currently considering the applicability of the OLR for private wire CfD-holders, subject to feedback received on the Government's Private Wire Explanatory Note in summer 2014.

Chapter 3: Offtaker identity

Questions

3.1 In the Offtaker Identity chapter we set out which licensed suppliers would have to bid for BPPAs, and how generators and their lenders could be assured as to the credit-worthiness of the OLR.

Consultation Question					
(4)	**Do you agree that some licensed suppliers should be mandated to bid for Backstop PPAs?**				
Yes:	**17**	**Maybe:**	**5**	**No:**	**4**

3.2 The vast majority of respondents agreed that some licensed suppliers should be mandated to bid for each BPPA in order to give generators and their lenders assurance that there will always be an offtaker that bids for a contract, and therefore a guaranteed route-to-market for a generator’s output.

3.3 Where respondents questioned the proposal it was because they felt mandatory offtakers were unnecessary to guarantee an offtaker, they thought that all suppliers should be required to bid, or they thought that non-licensed suppliers should have access.

3.4 We are minded to continue with our proposal for mandatory offtakers. Offtakers should be naturally incentivised to bid and bid competitively, firstly to procure power at a lower price than it costs to manage, and secondly to minimise any rents that might accrue to their competitors via the levelisation process.

3.5 Since we do not intend to restrict or cap the bids that mandatory offtakers submit, there should be limited burden on them. Similarly, other licensed suppliers will be able to bid for each contract voluntarily. Since the powers of the Energy Act (2013) do not extend to allow participation in the scheme by non-licensed suppliers s, it is not possible for non-licensed suppliers to bid directly (though they could work with a licensed supplier indirectly).

Consultation Question					
(5)	**Is our approach to setting the mandatory offtaker threshold appropriate?**				
Yes:	**17**	**Maybe:**	**1**	**No:**	**2**

3.6 The vast majority of respondents agreed with our approach to setting the mandatory offtaker threshold based on volume of electricity supplied across domestic and non-domestic markets.

3.7 Several respondents stressed the need to keep the threshold under review to account for changes to the marketplace. One respondent suggested the same threshold is used as in the Small-Scale Feed-in-Tariff.

3.8 As a result, we intend to continue with our proposed method of setting the mandatory offtaker threshold. Based on data collected by Ofgem for the Renewables Obligation, we intend to set the threshold at six per cent of electricity supplied in GB. To reduce administrative burdens, we intend that Ofgem use supply volume data for the financial year, collected under the RO and ssFiT for levelisation purposes, and collated in the summer following the end of the financial year. This data will be used to establish the Mandatory Offtakers under the OLR for the following financial year.

Consultation Questions				
(6)	**Are specific credit requirements necessary and if so what form should these take?** **(1) Should all offtakers be required to provide a Letter of Credit?** **(2) If not, what credit rating would an offtaker need to have to negate the requirement for a Letter of Credit?**			
Credit support needed: 14		**Maybe: 5**	**No credit support: 4**	
(7)	**If no specific credit cover is required, would it be appropriate to rely on the mutualisation provisions to provide compensation in the event that any monies cannot be recovered from an insolvent offtaker?**			
Yes: 11		**Maybe: 6**	**No: 3**	

3.9 Most respondents agreed that for the OLR to be a bankable proposition for securing project finance there would need to be a credit requirement on offtakers. Many respondents suggested that a LoC should only be required if a supplier, or an affiliated company, does not meet a given credit rating, and that allowing this would reduce costs to consumers. Some respondents stressed that credit requirements would increase costs on smaller suppliers bidding for BPPAs, and that it was not needed for a one-year PPA.

3.10 Most respondents also favoured mutualisation provisions to compensate generators if an offtaker suffered insolvency and offtakers weren't required to meet credit requirements. Some respondents were keen that both credit requirements and mutualisation provisions were in place. However, some respondents had concerns that mutualisation in lieu of credit requirements would increase the likelihood of BPPAs being awarded to suppliers with higher risk of insolvency and the extent to which consumers would then have to underwrite costs via mutualisation. Many respondents requested further detail on how mutualisation would work, and stressed that lenders would have to be comfortable about the provisions for the BPPA to be bankable.

Government Response

3.11 We intend to require suppliers who supply more than six per cent of GB electricity to act as mandatory offtakers, requiring that they submit a bid for each BPPA. These offtakers will be identified and informed by Ofgem before the beginning of the OLR Year. Sufficient notice will be provided such that they are able to register as suppliers in all grid supply points and be capable of accepting power from the generator from the start of the OLR Year.

3.12 Based on the responses and further work since the consultation was released, we propose ensuring the bankability of the OLR through a credit requirement on offtakers and do not intend to pursue the option of mutualising compensation payments. Following engagement with lenders, it is clear that credit requirements are more readily understood, more closely aligned to the commercial PPA market and administratively simple to implement. Concerns over payment delays via the mutualisation proposals were evident in comparison to relative ease of a generator calling upon a Letter of Credit.

3.13 Therefore we propose to require offtakers to provide evidence to generators and Ofgem that they meet the credit requirements within a week of being awarded the BPPA contract. This enables offtakers to factor the cost of any credit support into their bids without having to commit to the costs beforehand. Offtakers who fail to evidence the credit support by the Commencement Date of the BPPA would be in breach of their licence conditions *and* the BPPA contract.

3.14 We propose that the credit requirement is to provide evidence of:

i. Minimum Credit Rating for the entity or a Qualifying Guarantor of BBB- with Standard and Poor or the equivalent ratings with Moody's or Fitch Ratings

ii. If at any point during the BPPA, the offtaker or the Qualifying Guarantor does not hold this credit rating, they must deliver to the generator a Credit Support Document within 5 working days. This document must cover an amount equal to the Collateral Amount and be with a bank or financial institution having a minimum short term rating of A- with Standard and Poor's or the equivalent ratings with Moody's or Fitch Ratings.

3.15 The calculation for the Collateral Amount is set out in the BPPA Contract (clause 12.5) and is intended to cover the generator for the amount they would receive from the offtaker for their electrical output for 87 days. We have assumed that the generator will still be able to export power via their meter and therefore would still receive their CfD top-up payment from the Low Carbon Contracts Company. The 87 days is intended to cover the maximum period between the previous paid invoice and an insolvency event (40 days), the termination notice period (10 days) and the period until a new BPPA can be put in place (37 days).

Chapter 4: Access

Consultation Questions

4.1 In the Access chapter, we set out our proposals for the circumstances in which eligible generators would be able to access a BPPA.

Consultation Question					
(8)	**Do you agree that a generator's entitlement to a Backstop PPA should be revoked in the event that they have a Backstop PPA terminated for material breach?**				
Yes:	**20**	**Maybe:**	**4**	**No:**	**1**

4.2 The clear majority of respondents agreed that material breach of a BPPA should result in loss of eligibility for a further BPPA. Several respondents stressed the need for 'material breach' to be clearly defined and for the BPPA to allow for cure periods. Some respondents felt that a 'three strikes' approach could be appropriate.

4.3 On balance, we feel that a well-defined material breach clause, together with a Direct Agreement for lenders, should give comfort that eligibility would not be lost over such automatic loss of eligibility. We are also not convinced that a 'three strikes' approach would be effective in a scheme that is designed to be a backstop, and therefore likely to be infrequently used.

Consultation Question					
(9)	**Do you agree that generators should be allowed access to Backstop PPAs if they have agreed early termination or suspension of a long-term PPA (such as when route-to-market costs exceed the Backstop PPA discount)?**				
Yes:	**18**	**Maybe:**	**3**	**No:**	**3**

4.4 The vast majority of respondents agreed that this should be allowed, with the caveat that this would need to be mutually agreed (by definition with appropriate compensation between parties). Where respondents disagreed, the reason was a concern that generators or offtakers would use this option to free themselves from unprofitable contracts at costs to consumers.

4.5 We do not consider there is a significant risk of generators or offtakers unilaterally terminating their open market PPAs because a generator has the opportunity to enter the OLR. Unjust termination of a PPA would be a matter for contractual dispute. Most likely, mutual termination with compensation would be agreed, such that the offtaker was no longer party to an unprofitable contract, and so that the generator was better off entering the OLR. It would be difficult to prevent this happening without detailed records of all commercial PPAs; indeed, preventing this might skew the market towards shorter-term PPAs to minimise offtaker risk. As a result, we do not intend to prevent generators entering BPPAs in this scenario.

Consultation Question

(10)	Do you agree that a Backstop PPA should have a minimum period of six months, with six weeks' notice required for exit beyond this?				
Yes:	**15**	**Maybe:**	**2**	**No:**	**7**

4.6 Generally, generators supported the proposal, on the condition that the minimum period was for no more than six months. Some suppliers felt that generators should have to commit to these contracts for at least 12 months in order for the management fee to better reflect supplier costs over the contract.

4.7 Our proposal - one year contracts with the option for termination after six months - aims to combine the ability for generators to exit a BPPA and return to the open market, with the need to ensure the BPPA is viewed as a last resort, and for offtakers to be able to price their bids efficiently. We continue to feel that the minimum term of six months strikes the appropriate balance between the two positions.

Consultation Question					
(11)	**Should a generator's early termination of a Backstop PPA lead to their eligibility for the OLR being revoked?**				
Yes:	**14**	**Maybe:**	**4**	**No:**	**6**

4.8 The majority of respondents agreed that early termination should disqualify a generator from a further BPPA. Whilst, several generators favoured a 'three strikes then out' rule, we feel that our proposal is appropriate in order that generators are sufficiently incentivised to remain within a BPPA such that suppliers have confidence of the minimum period of the contract and can price their bids efficiently.

Consultation Question					
(12)	**Do you agree that generators should be able to access Backstop PPAs throughout the duration of their CfD?**				
Yes:	**21**	**Maybe:**	**2**	**No:**	**2**

4.9 The clear majority of respondents agreed that, subject to the no later than early 2016 start date, a generator should be able to access a BPPA throughout their CfD. Some suppliers felt that access should only be open after an initial PPA or a period of three years.

4.10 We would expect that generators would always seek open market solutions, particularly at the outset of their CfD. Therefore making this a requirement would have little benefit but could restrict independent generators in securing project finance on the OLR alone for the entirety of the CfD should they favour such an approach.

Government Response

4.11 Based on the responses, we intend to pursue the approach whereby a generator is eligible for a BPPA unless it has a BPPA terminated for material breach or exited a BPPA early or without the required notice period.

4.12 We feel that requiring a generator to remain within a BPPA for six months provides the right balance between allowing them back into the commercial market, ensuring the BPPA is only used when required, and minimising management fees from offtakers.

4.13 No later than April 2016, eligible generators will be able to enter into a BPPA throughout their CfD[2]. Generators will be able to apply for a BPPA once they have triggered their CfD Start Date and so long as their CfD has not expired or terminated.

[2] We are exploring with Ofgem options for bringing this date forward.

Chapter 5: Allocation

Consultation questions

Consultation Question					
(13)	Do you agree that competitively allocating generators to offtakers is the most appropriate and efficient approach to use? Please provide evidence as to why not.				
Yes:	16	Maybe:	7	No:	1

5.1 Most respondents agreed that competitively allocating BPPAs was the most appropriate approach, subject to concerns from some that six weeks was too lengthy a process. We therefore intend for BPPAs to be allocated competitively.

Consultation Question					
(14)	Do you agree that splitting the output of large generators (above 100MW) would help increase competition between offtakers when bidding for Backstop PPAs?				
Yes:	16	Maybe:	8	No:	0

5.2 Most respondents agreed that large generators should be split across multiple offtakers in order to increase competition. Many respondents requested further detail on how we proposed to implement the splitting. This is set out in the Government Response section below.

Consultation Question					
(15)	Do you agree that the method used should be a sealed bid, with Ofgem able to move to a more comprehensive auction when in consumers' interests to do so?				
Yes:	19	Maybe:	1	No:	2

5.3 There was broad agreement that a sealed bid approach was most appropriate at the outset of the OLR, with the option for Ofgem to adopt a different approach. Some respondents preferred a descending clock auction for each BPPA, the immediate move to a regular auction, or less discretion for Ofgem over the choice as to when to move to a regular auction.

Consultation Questions					
(16)	Does our high-level timeline for allocating a Backstop PPA look appropriate?				
Yes:	6	Maybe:	5	No:	13
(17)	Do you agree that an allocation period of no more than 6 weeks is appropriate for				

	generators, offtakers and Ofgem?

Yes:	**8**	**Maybe:**	**4**	**No:**	**12**

5.4 The majority of respondents disagreed with the high level allocation timeline and the six week allocation period. For those disagreeing, the reasons were evenly split: suppliers felt that six weeks was too short to ensure that they were able to assess bids and reassign meters; generators felt that six weeks was too long since it would leave a generator exposed to greater losses in the event that an offtaker went insolvent and create greater collateral requirements for offtakers thus reducing competition.

5.5 There is clearly a balance to be struck between ensuring a generator can access the BPPA within a reasonable time and to minimise collateral requirements, and to ensure suppliers and Ofgem can comply with a process and bid competitively to minimise costs to consumers. In the Government Response section, we set out an updated timeline of 26 days.

Consultation Question							
(18)	**Should the allocation timetable be ensured through a KPI on Ofgem and/or should generators be fully compensated for losses via the levelisation process?**						
KPI:	**9**	**Mutualisation:**	**7**	**Both:**	**6**	**Neither:**	**1**

5.6 Respondents were split on the most appropriate approach to give comfort over the allocation timeline to participants. Suppliers largely welcomed a Key Performance Indicator (KPI), whilst some generators felt that a KPI would not provide sufficient confidence that Ofgem would fulfil its obligations in the expected time.

5.7 Several respondents were wary of mutualisation provisions, given the difficulty in calculating compensation, the cash-flow implications for generators, and the complexity involved for lenders in understanding the risks. In discussions since the consultation, lenders have indicated a preference for firmer deadlines and requirements on Ofgem rather than compensation through mutualisation.

5.8 Seven respondents requested stronger requirements on Ofgem as a more appropriate way to assure all participants that BPPAs would be allocated on time.

Government Response

5.9 Based on the responses we intend for BPPAs to be allocated competitively, open to all licensed suppliers (subject to meeting the credit requirement), with mandatory offtakers required by licence conditions to bid for each contract. Below we summarise some of the key developments regarding allocation following the consultation responses:

Splitting Capacity across BPPAs

5.10 Small suppliers are unlikely to be able to manage the total output of very large generators. Since the Meter Volume Reallocation Notification process allows for the splitting of output across multiple offtakers under the BSC, to promote competition and ultimately reduce costs to consumers we propose splitting the output for any generator above or equal to 150MW into a series of identical BPPAs of equal capacity.

5.11 The number of BPPAs will be calculated using the following simple formula with the capacity of each contract will be the total capacity divided by the number of BPPAs:

= Round to nearest integer (Total capacity MW / 100 MW)

5.12 Mandatory offtakers will need to submit bids such that they could act as offtaker to each BPPA. Voluntary offtakers can choose the number of BPPAs that they wish to submit bids for.

5.13 The System Operator requires one 'lead party' to provide expected volumes – we propose that the generator takes this role.

5.14 Bids for all BPPAs will be pooled into one list and awarded in order of lowest bids.

Allocation Timeline

5.15 Following consultation responses and more detailed analysis of the steps involved in applying for and allocating a BPPA, we have developed an updated Allocation timeline We have provided a high level overview below:

i. **Expression of Interest (EoI)** **Day 0**
Generators submit an EoI including basic project details and contact information. Generators must submit the Statement of Confirmation in their Project Information (PI) within 10 working days or else they must submit a further EoI. Submission of full project information represents a commitment to proceed with the OLR; withdrawal beyond this point would see the generator no longer eligible for BPPAs.

ii. **Eligibility verification starts** **Day 5**
Once a generator submits their Statement of Confirmation or no more than five working days after receiving the EoI (whichever is later), Ofgem must begin to verify eligibility.

iii. **OLR Notice circulated to all licensed suppliers** **Day 9**
By the end of the fifth working day after beginning their verification, Ofgem must have circulated an 'OLR Notice' containing all generator information and the relevant BPPA(s) to all licensed suppliers.

iv. **Deadline for bids to be returned** **Day 19**
Suppliers must return their bids no more than ten working days after the date that Ofgem circulates the OLR notice. The bid includes a signed copy of the BPPA(s).

v. **Lowest bidder identified and informed (Allocation date)** **Day 20**
Ofgem identifies the lowest bidder

vi. **BPPA agreed (Agreement date)** **Day 21**
The generator agrees the BPPA by countersigning and dating the contract.

vii. **BPPA commences (Commencement date)** **Day 26**
The BPPA commences for the purpose of payment to the generator five working days after the Agreement date. The offtaker must have demonstrating that they meet the credit requirement by this date.

5.16 Each stage in this timeline is documented in more detail in both the accompanying consultation and the draft OLR Licence Conditions, Regulations and BPPA. Ofgem retain the discretion to switch to a regular auction should they deem it in consumers interests to do so. Any regular auction would need to meet the deadlines outlined, such that it would need to operate every fortnight if the generator is to be guaranteed a BPPA within the time limit.

Ofgem KPI

5.17 Following responses on the relative merits of a Key Performance Indicator or mutualisation provisions to reassure participants over robustness of the allocation timeline, it was clear that neither option provided sufficient comfort: a KPI was considered insufficient to give certainty over the maximum time a generator would reasonably expect to wait for contract award; whilst mutualisation provisions were considered complex, untested, with delays to payment leaving the generator in a difficult position.

5.18 We agree with stakeholders arguing for greater certainty on the maximum time period for BPPA allocation. Therefore we intend to place a duty on Ofgem to undertake the various steps involved in the allocation process within a certain amount of time. Feedback from lenders suggested that this would provide the most robust and bankable solution to doubts over the allocation timing.

Chapter 6: Cost Assessment and Levelisation

Consultation Questions

Consultation Question					
(19)	**Do you agree that all licensed suppliers should be obligated to participate in the levelisation process?**				
Yes:	**10**	**Maybe:**	**6**	**No:**	**2**

6.1 Most of those responding to the question agreed that all licensed suppliers should be obligated to participate in the levelisation process, though some respondents requested further detail on how the process would work.

6.2 Some respondents suggested that only large suppliers should take part in the levelisation process, in part to help incentivise competitive bidding for BPPAs, in part because credit requirements might make it difficult for smaller suppliers to compete for BPPAs.

6.3 Other respondents suggested that we align the process with the small-scale Feed-in-Tariff to minimise administrative burden on suppliers. We agree that this is a sensible suggestion.

Consultation Question					
(20)	**Do you agree that management fees should initially be levelised quarterly, with scope to review this approach if there is high uptake of Backstop PPAs?**				
Yes:	**11**	**Maybe:**	**5**	**No:**	**0**

6.4 Most of those responding to the question agreed with a quarterly levelisation process with scope for review. Some respondents stressed the need for the review to consider both the size of generators within BPPAs alongside the number of BPPAs signed. Other respondents queried whether levelisation could be more frequent or incorporated into the supplier levy. Given our expectation that BPPAs will rarely be used at the outset of the CfD, we feel alignment with the small-scale FiT process best balances an appropriate levelisation frequency with use of existing processes familiar to suppliers.

Consultation Question					
(21)	**Do you agree that mutualisation provisions are included, without a cap on the sum that could be mutualised?**				
Yes:	**13**	**Maybe:**	**5**	**No:**	**1**

6.5 The majority of respondents agreed that mutualisation provisions should be included to protect offtakers party to a BPPA from a shortfall in management fee payment if a licensed supplier was unable to make its contribution to the levelisation account. There was some confusion over whose shortfall payments were being mutualised: in this instance it is the payments owed to an offtaker as a management fee due to one (or more) suppliers being unable to make their contributions.

Consultation Question					
(22)	**Do you agree that suppliers should not be required to post collateral to cover their share of the levelisation payments?**				
Yes:	**14**	**Maybe:**	**4**	**No:**	**0**

6.6 The clear majority of respondents agreed that suppliers should not be required to post collateral under the OLR.

Government Response

6.7 The OLR levelisation process is being designed to be as similar to the ssFIT process as possible so as to maximise the benefits of aligning the two schemes.

6.8 All suppliers will be included so the burden of levelisation payments is not a disproportionate burden on mandated suppliers only, following the process under the RO, FIT and CfD.

Chapter 7: Pricing

Consultation Questions

Consultation Question		
(23)	Do you agree that discounts in Backstop PPAs should be set on a £/MWh basis?	
Yes: 21	Maybe: 1	No: 3

7.1 The vast majority of respondents agreed that the discounts to the market reference price should be set on a £/MWh basis.

7.2 Where respondents disagreed, it was because they felt this was out of line with typical PPAs at present, and that a percentage discount better reflects costs for offtakers in managing output. Whilst we have some sympathy with this view, we expect the market to change in this regard under the CfD, and believe an absolute discount offers the most certain revenues for project finance.

Consultation Question		
(24)	Do you agree that discounts should be fixed in real terms for the duration of a generator's CfD?	
Yes: 23	Maybe: 1	No: 1

7.3 The great majority of respondents agreed that the discounts should be fixed in real terms since setting variable discounts ex-ante would be difficult and increase the chance the OLR would be accessed throughout a generator's CfD. Opposing views suggested a truly variable discount (not set in advance) which would appear to offer no protection to generators or lenders.

Consultation Question		
(25)	Do you agree that discounts should be indexed to CPI, in line with the CfD strike price?	
Yes: 24	Maybe: 1	No: 1

7.4 The clear majority of respondents agreed with the need to index the discount to CPI.

Consultation Question		
(26)	Do you agree with our general approach to understanding the impact of different discounts?	
Yes: 5	Maybe: 10	No: 7

7.5 Respondents had differing views on the approach taken to understanding the level of BPPA discount. Some respondents believed that the modelling was too speculative and based on a series of assumptions with the uncertainties suggesting that Government should adopt a cautious approach and adopt a higher discount to protect consumers.

7.6 Other respondents stated that the modelling work was based on strike prices from the draft EMR Delivery Plan rather than final version for some technologies and therefore needed to be updated. Further questions were raised regarding whether lenders would accept the OLR scenario we modelled: a five year PPA and guaranteed OLR revenue for debt sizing, with rolling one year PPAs assumed for equity investors. Some respondents felt that we should have looked at an OLR discount that provided a project with an equal gearing as under a typically long-term PPA, rather than an equal rate of return.

7.7 Whilst we accept that there is no perfect way to approach discount setting, we continue to believe that a combination of two qualitative judgements – a discount that should remain a last-resort and a discount that should allow a reasonable level of gearing – and a quantitative assessment is the correct approach.

7.8 The quantitative component seeks to find a discount that would give offtakers two approaches that could give similar returns so as not to promote one option over the other; these route-to-market options differ in that one that has more risk but more upside potential, whereas the other removes risk and upside. Crucially, generators should have access to the former in the unlikely event that they cannot secure a viable long-term PPA.

Consultation Question		
(27)	**Do you agree that the discount within Backstop PPAs should be between £20 and £30/MWh? Do you agree with our preference for a discount of £25/MWh? Please provide evidence if you consider this would not be a suitable discount.**	
Yes (£25/MWh): 6	**Maybe (£20/£30/MWh): 15**	**No: 5**

7.9 Respondents had differing views on the appropriate discount though few provided evidence that the preferred discount would be inappropriate.

7.10 Generally, generators were keen for a discount of £20/MWh or lower. Reasons stated included that the £25/MWh had been calculated on a higher strike price than in the final EMR Delivery Plan for some technologies, and before the prospect of immediate competitive CfD allocation. These respondents felt that the discount would therefore be too low to attract sufficient gearing without securing a long-term PPA. Instead they advised that the discount be lowered to £20/MWh, a level at which they felt that BPPAs would remain unused so consumers would avoid the costs but would benefit from more competition between generators. It was pointed out that a £25/MWh discount was around 50% of the current wholesale price.

7.11 Generally, suppliers and consumer groups were keen for a discount of £30/MWh or higher. The reason given for this was to protect customers who would bear the costs if BPPAs were accessed. Respondents highlighted the modelling results showing a reasonable level of gearing for projects even with a £30/MWh discount and that a high discount ensures that the OLR remains a last resort.

7.12 Baseload generators felt the discount was too low for their technologies.

Consultation Question					
(28)	**Do you agree that we should use a single discount for all eligible generators? Please provide evidence of why a single discount would not work.**				
Yes:	**14**	**Maybe:**	**5**	**No:**	**6**

7.13 The majority of respondents agreed with our proposal for a single discount for all eligible generators. Baseload generators argued that the discount was inappropriate for non-intermittent technologies, and that a distinct baseload discount should be set at a lower level.

Government Response

7.14 Following the consultation responses, we intend to continue with our proposal for a single fixed discount in £/MWh, indexed to CPI.

Discount modelling

7.15 We have revisited the modelling internally in light of requests to do so from respondents and adopting the strike prices in the final EMR Delivery Plan. The results are presented in the final IA published alongside this Government Response.

7.16 The modelling shows that a discount of £25/MWh remains most appropriate for delivering a similar project IRR if a generator attained a route-to-market through an efficiently priced long-term PPA or through a 5yr PPA followed by rolling 1yr PPAs, with debt sized against the initial PPA and the guaranteed OLR revenue. The modelling shows that, as the project costs increase (or strike price reduce), the OLR scenario at a £25/MWh discount becomes relatively more attractive compared to the long-term PPA scenario. This is because the absolute difference in PPA revenues between the scenarios remains constant as overall returns are squeezed such that the short-term/OLR scenario becomes relatively more attractive as returns reduce.

Additional revenues

7.17 The BPPA contract sets out how additional revenue is allocated under the terms of the agreement. Specifically:

i. LECs will be transferred by the generator to the offtaker for no additional revenue

ii. Embedded benefits will accrue to each party according to where those benefits fall.

7.18 Both of these aspects have been factored into the discount modelling. Since we do not expect lenders to treat LECs and Embedded Benefits as bankable long-term revenues when debt sizing, and we assume that a project would have a commercial PPA covering the first 5 years of operation, this decision should not affect the level of gearing that a project should achieve. Our modelling does not anticipate a generator ever needing to enter into a BPPA, so equity does lose out on revenues.

7.19 The alternative - ascribing a value to LECs and Embedded Benefits - was considered to be difficult in practice, and of little benefit in terms of a generator’s ability to raise debt. Practical concerns focussed on the difficulty of setting the value of each in advance for the entirety of the project’s CfD, and the significant risk that this value is in excess of that considered by the market. Having the BPPA discount cover the entirety of revenues, with the exception of some embedded benefits accruing directly to generators, is a simpler solution in line with the intention of the OLR.

Single Discount

7.20 We do not consider that renewable baseload generators should receive a different, lower discount to that received by intermittent generators since we remain unconvinced of the benefits of OLR eligibility for baseload generators given their significantly lower exposure to imbalance risk and their ability to manage this at lower cost. However, by offering access on the same terms for all technologies we believe that we are striking the correct balance between ensuring the OLR is a last resort, encouraging market-based solutions where appropriate, and retaining a backstop offering for all technologies.

Chapter 8: Contract Terms

Consultation Questions

Consultation Question					
(29)	**Are there specific issues that would prevent a single set of terms and conditions being applied to all contracts?**				
Yes:	**4**	**Maybe:**	**2**	**No:**	**10**

8.1 The majority of responses felt that there were no significant barriers to developing a single set of terms being applied to all projects that require a BPPA. Many added that any differences resulting from the needs of specific technology types could be dealt with in a technology-specific schedule to the contract.

Consultation Questions					
(30)	**Do you agree that the offtaker should curtail or notify the generator if the index price falls below a certain point, and would this be technically feasible? Do you agree that this point should be determined by the generator? Could this result in any unintended consequences?**				
Yes:	**4**	**Maybe:**	**6**	**No:**	**10**
(31)	**Do you agree that allowing the offtaker to curtail the generator at any time (with full compensation) would enable the offtaker to act more efficiently in the Balancing Market or in the event of extreme price volatility?**				
Yes:	**7**	**Maybe:**	**3**	**No:**	**8**

8.2 The majority of respondents noted concern over our proposal that offtakers should curtail or be required to notify the generator if the index price falls below a certain point. Their reasons were that curtailment would be difficult to implement and could worry funders as it would impact on a generator's entitlement to CfD revenues, and that curtailment and notification are not features of current open market PPAs. Those that supported notification highlighted that it would be an important factor for the generator, who may not be monitoring the market with the same regularity as their offtaker. Only one respondent supported the requirement for offtakers to curtail generators directly, giving the caveat that this would only be acceptable if generators were not left commercially disadvantaged in any way.

8.3 Concerns were also raised regarding the offtaker taking direct control (or indirect control) of the generator's asset, including the accounting implications. Our view is that although this is not currently typical, the fact that the terms of the BPPA will be grandfathered for the duration of the CfD, means that negative prices may become more of an issue and that market PPAs are likely to respond and include protection in time. Details on our proposed approach are set out in the Government Response at the end of this chapter.

8.4 Although a large proportion of responses overall could see value in the offtaker having the ability to curtail the generator at any time and to provide full compensation, these responses were not from the stakeholders that the mechanism is intended to help. This idea was intended to assist offtakers to make use of the intra-day market to respond to events of extreme volatility, and contribute to system stability. None of the offtakers that responded to this question thought that it would be a mechanism they would value, and some had significant concerns regarding the assumption of ultimate control over the asset. We are therefore not intending to develop this mechanism further, but note that should circumstances mean that a mechanism of this sort would add value then it would be possible for the Parties to a BPPA to negotiate a bilateral arrangement to similar effect.

Consultation Question					
(32)	Is the requirement for SCADA access appropriate for all generators, or should there be a threshold below which it is not required? Is the process and are the timings appropriate for aligning SCADA systems? What minimum standards should there be on data provision and timing of connection?				
Yes:	7	Maybe:	5	No:	8

8.5 Respondents were divided over our proposed requirement for all generators participating in the OLR to provide their offtaker with SCADA access. A small majority thought that this requirement should not be universal and that some projects should be exempt from the requirement to provide SCADA. Specific exemptions were requested for solar generators, nascent technologies, decentralised generators, and small generators, with small generators being the group of most concern. Several of these respondents also highlighted that offtaker bids should be able to price in whichever data transfer technology is used, and that it will be important to let the market take the lead in terms of its preference for particular technologies.

8.6 Most of those respondents in the ‘maybe’ category agreed with the SCADA requirement in principal but disagreed with the tight timescale. They felt the timescale threatened the feasibility of installing or connecting SCADA in time, and suggested that failure to install or connect SCADA within the specified timeframe should not be considered a material breach. Other respondents noted that issues may emerge from the fact that different offtakers use different interfaces with SCADA systems and emphasised that this would require minimum standards to be enforced.

Consultation Questions					
(33)	Do you agree that the proposed tolerance levels for penalties for poor performance are appropriate for intermittent and baseload technologies?				
Yes:	10	Maybe:	1	No:	10
(34)	Other than Force Majeure, should there be exceptions to the penalties for breaching the tolerance limit?				
Yes:	2	Maybe:	2	No:	8

8.7 Respondents were divided over the importance of penalties, with the majority of offtakers agreeing with them and the majority of generators disagreeing. The main reason for disagreeing was that such penalties do not exist in current open market PPAs. There was, however, some confusion over whether these are penalties for unplanned outages themselves or rather penalties for poor communication. Some respondents also raised concerns that penalising generators by exposing them to cash-out prices would be an unlimited liability that could affect the bankability of the contract.

8.8 The majority of respondents stated that there should be no exceptions to the penalties for breaching the tolerance limit, other than Force Majeure. Of the two that stated there should be additional exceptions, one suggested an exception for small generators and one suggested an exception for intermittent technologies. Both of these exceptions, however, appear to have stemmed from the same confusion over whether these are penalties for unplanned outages themselves or for poor communication.

Consultation Question					
(35)	**Is it appropriate to leave any direct agreement to bilateral negotiations?**				
Yes:	**11**	**Maybe:**	**0**	**No:**	**7**

8.9 Responses were mixed as to whether it is appropriate to leave any direct agreement to bilateral negotiations, although a majority of responses felt that parties to the BPPA (and their funders) would want the ability to negotiate bilaterally any Direct Agreement. Those who thought that minimum terms should be specified stated that this would be most practicable given the tight timescale for entering into the BPPA Contract. They also stated that it could provide greater comfort to lenders knowing the terms of the direct agreement from day one.

Government Response

8.10 The terms of the BPPA Contract are intended to be as close to those of an open market PPA as possible. They will be grandfathered from the point of CfD signature, to ensure that the nature of support offered by the OLR is fixed for the duration of renewable generators' CfDs.

8.11 The BPPA Contract has been designed to be as simple as possible, whilst remaining bankable for lenders and striking an appropriate balance of risk between the parties. As a result of this intention and the feedback received from respondents, we intend to apply a single set of terms and conditions to all contracts. Any differences between projects (e.g.: between intermittent and baseload technologies) will be dealt with in Schedules, which will contain specific information regarding the facility. The information contained in the Schedule will be sent to potential offtakers with the OLR notice to enable them to take this into account when considering their bids.

8.12 To help protect generators against the possibility of negative pricing in the energy market resulting in negative revenue at some point over the course of their CfD, we have worked with stakeholders to develop the following variant on the option included in our consultation:

- The generator has the choice whether to specify a price below which it does not want to sell power – this will be specified in Schedule 1 to the BPPA.
- If the generator specifies a price, the offtaker has an obligation to not sell their power for the relevant period(s) and to notify the generator as such.
- The generator then has the choice whether to curtail the facility or to continue to generate and to take the System Sell Price for the relevant period(s).

This approach provides the option of protection from very negative prices, but does not require the generator to relinquish ultimate control of its asset.

8.13 To help ensure appropriate data provision arrangements in a way that does not lead the market, we have decided not to specify a requirement for all generators to provide their offtakers with SCADA access. Instead, generators will be required to specify their data provision system, including the specific data provided and the file transfer forma, as part of their project information, before bids are placed. The offtakers will then be expected to take this into account in their bids. We would expect a project's specific choice of data transfer system to be guided by a range of factors including the generation technology, the project's size and the preferences of their initial commercial PPA provider.

8.14 We believe that appropriate penalties for a generator's failure to notify the offtaker of an unplanned outage within a reasonable timeframe will be important. This is particularly due to the regulated nature of the BPPA contract, and the resulting relationship between the generator and offtaker, which will be different from that in open market PPAs. We are, however, keen to emphasise that these will be penalties for poor communication, rather than for the unplanned outage itself.

8.15 Given respondents' concerns that exposure to cash-out prices would be an unlimited liability that could affect the bankability of the contract, particularly given Ofgem's recent announcements that they intend to move towards a marginal cash-out price, we have decided that the penalty for poor communication will instead take the form of liquidated damages. The proposed damages will be a fixed amount for each event and shall be calculated as a function of the Contracted Capacity, the Assumed Load Factor, the average Market Reference Price over the previous 12 months and are intended to represent a genuine estimate of the offtaker's trading losses over a 24 hour period as a result of failure by the generator. These will be subject to an annual cap proportionate to the facility's capacity.

8.16 We also intend to move away from a time-bound commitment to one that is covered by 'reasonable endeavours' within a 'reasonable timeframe'. This will provide better flexibility for different generators with different monitoring approaches and different capacity to respond. We therefore no longer consider tolerance limits to be a necessary part of penalties for poor communication. Moreover, we believe tolerance limits could undermine the incentive for good communication between the parties, which will be crucial throughout the course of their BPPA.

8.17 As there is only a short period between the BPPA being allocated to an offtaker and the start of the operational period of the contract, we do not believe that the form of the Direct Agreement should be individually negotiated. This will also provide comfort to lenders, who are keen to have certainty on the terms of the Direct Agreement. The terms of this Direct Agreement will be included as a Schedule to the BPPA contract, providing the information and certainty that offtakers will need during the OLR bidding process.

8.18 In addition to the questions originally posed in the consultation, it should be noted that the BPPA will transfer title of any renewables benefits (e.g.: LECs and REGOs) to the offtaker and that embedded benefits will not be transferred or apportioned between the Parties. There are two reasons why we decided to follow this approach:

- First, to reflect the fact that the value of renewables benefits is uncertain, particularly beyond a few years. We understand that lenders do not therefore consider these benefits to provide a bankable revenue stream for the long-term. Although lenders may ascribe a bankable value to LECs in the shorter term, we would not expect projects to be relying on OLR revenues for debt sizing for the duration of the debt tenor, but would expect them to secure a short-term PPA or similar arrangement for the first few years which may include a value for the LECs.

- Second, there is no robust market index price for LECs which could be used for payment in the contract. It would be disproportionately complex to construct a market reference price for the LEC in the absence of a liquid transparent market from which to draw data.

We have therefore decided to ascribe no value to renewables benefits in the financial modelling and the overall discount should be considered with this in mind.

Chapter 9: Scheme Review

Consultation Questions

9.1 In the Scheme Review chapter we set out the provisions to review the OLR to ensure that the mechanism continues to provide the appropriate level of support to new CfD signatories.

Consultation Question					
(36)	**Do you agree that generators should be required to post information about their initial open-market PPAs in order for the appropriateness of the OLR to be assessed effectively?**				
Yes:	**9**	**Maybe:**	**9**	**No:**	**5**

9.2 Respondents generally agreed that DECC should keep abreast of developments in the PPA market through the sharing of PPA information.

9.3 However, some respondents felt there were more effective ways to obtain this information than requiring generators to submit information on their open-market PPAs. Respondents also felt that requiring the submission of key project information may not fully represent the commercial balance of the PPA, and that only the full contract would reveal its value.

9.4 A major concern amongst respondents was the protection and storage of confidential information provided to the Government. Respondents felt that the data collected would be commercially sensitive and would need to be protected.

Consultation Question					
(37)	**Do you agree with the proposed combination of annual updates and comprehensive review?**				
Yes:	**22**	**Maybe:**	**2**	**No:**	**0**

9.5 The majority of respondents agreed that there should be a combination of annual OLR updates and a comprehensive review to consider whether the OLR should continue beyond 2018/19, the end of the first EMR Delivery Plan, for new signatories.

9.6 Some respondents wanted the OLR kept in place past the 2018/19 review, with a guarantee that the OLR would be in place for at least 10 years.

Government Response:

9.7 Based on responses, and as set out in the accompanying consultation, we intend to implement our scheme review proposals through regulations that allow for annual reviews and a commitment that the OLR will remain in place for generators that sign their CfDs before April 2019. We will consider eligibility beyond this point as the market develops.

9.8 However, the Government proposes a move away from our position that generators should be required to submit information about their initial open-market PPAs. Though the approach was supported by the majority, after further analysis we consider that it will be difficult to attain the appropriate information in a way that would support the Government's ability to set appropriate BPPA terms for new CfD signatories.

9.9 Our key concerns are that:

i. Requiring the submission of 'headline' PPA parameters does not give the full picture of commercial value.

ii. Offtakers unwilling to have their PPA details disclosed could refuse to enter into initial PPAs, worsening route-to-market issues for generators, or creating very short-term PPAs for the purpose of solely fulfilling the regulatory requirement.

9.10 Instead, we feel that the more appropriate approach is to request information from participants on a formal or informal basis.

Annex 1 - List of respondents

Banks Group
Carbon Capture & Storage Association
CCS
Centrica
Consumer Futures
Co-operative energy
Ecotricity
EdF
EDP Renewables
ELEXON
ENER-G
Energy UK
EON
ESA
FoE
Gazprom
Good Energy
Helius Energy
Infinergy Limited
Infinis Energy
IREGG
Mainstream
Morgan Stanley
National Grid
NFPA
Pelamis
REA
RES
RUK/Scottish Renewables
RWE
Scottish Power
Smartest Energy
SSE
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Velocita

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