



Department
of Energy &
Climate Change

Electricity Market Reform

Consultations on “EMR: Changes to the
CFD Supplier Obligation”

and

“Electricity Intensive Industries exemption
from CFD costs: Amendments to the
Balancing and Settlement Code”

Government Response

January 2015

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Overview

Summary of Consultations

- i The Government's Electricity Market Reform programme is promoting investment in secure and low carbon electricity generation, while improving affordability for consumers. Integral to this is the introduction of Contracts for Difference (CFDs). Introduced by the Energy Act 2013 as a mechanism to encourage investment in low carbon generation, a CFD is a private law contract between an eligible generator and a CFD Counterparty.
- ii This document sets out the Government Response to two recent CFD consultations:
 - *EMR: Changes to the CFD supplier obligation*¹, and
 - *Electricity Intensive Industries exemption from CFD costs: Amendments to the Balancing and Settlement Code*²
- iii The *EMR: Changes to the CFD supplier obligation* consultation was published on 23rd September 2014, and set out proposals for:
 - a) The implementation of **an exemption from the costs of the supplier obligation and operational cost levies for electricity supplied to electricity intensive industries (EII)s**. In the consultation we set out our broad proposals for how the electricity supplied to EII)s would be identified and the appropriate exemption then applied by the CFD Counterparty.
 - b) The implementation of **an exemption from the costs of the supplier obligation for eligible electricity supplied to GB consumers sourced from renewable generators located in other EU Member States**. We set out our intention to set a cap on the level of the exemption that could be claimed each year, and restrict eligibility for the exemption to electricity sourced from generators that first became operational from 1st April 2015. The consultation sought views on the way in which suppliers apply for the exemption, and how the exemption is applied to a supplier's liabilities under the CFD supplier obligation payments.
 - c) Some **minor and technical changes to the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 (the "ESO Regulations")**.
- iv We received nineteen responses to the consultation from stakeholders.
- v This was followed by the *Electricity Intensive Industries exemption from CFD costs: Amendments to the Balancing and Settlement Code* consultation that was published on 24th November 2014. The consultation set out two options for identifying electricity supplied to exempt electricity intensive businesses:
 - Option A proposed assigning exempt meters to separate additional balancing mechanism units (A.BMUs)
 - Option B proposed the identification of data from exempt meters by half hourly data aggregators (HHDAs).

¹ <https://www.gov.uk/government/consultations/emr-changes-to-the-cfd-supplier-obligation>

² <https://www.gov.uk/government/consultations/supplier-obligation-consequential-amendments-to-the-balancing-and-settlement-code>

- vi Twelve responses were received from stakeholders.
- vii Having considered the stakeholder submissions to both consultations, this Government response sets out the final decisions on the matters covered by the consultations.
- viii In addition to the two consultations referred to above, the Department for Business Innovation and Skills (BIS) published a consultation on 31st July 2014³ seeking views on the proposed criteria to determine which electricity intensive businesses would be eligible for an exemption from CFD costs or compensation for the costs of the Renewables Obligation (RO) and Feed in Tariff (FIT) schemes, and the level of exemption or compensation that they would receive. A response to this consultation has been published separately⁴.
- ix The following chapters set out a summary of the responses received, issues raised by stakeholders to the consultation questions, and the Government's final decisions. Chapter 1 covers the exemption for electricity intensive industries, Chapter 2 covers the exemption for electricity supply sourced from renewable generators in other EU Member States, and Chapter 3 sets out the response to the Minor and Technical amendments consulted upon.

Decisions taken following consultation

Exemption for electricity supplied to EILs

- x Taking into account the feedback received to both consultations, we can confirm that the way in which exemption certificates will be issued and the exemption claimed by suppliers will be as follows:
 - EIL exemption certificates will be issued by the Secretary of State, and will come into force on the day after they are issued or, where there is already a certificate in force in relation to that meter, on the 1st April in the financial year following the one in which the certificate is issued.
 - Certificates will be valid from the date that they come into force until the end of the financial year in which that date falls. This means that certificates issued on 1st October 2015 (the earliest date that a certificate may be issued, subject to State aid clearance) will be valid for six months.
 - An EIL's supplier can claim the exemption on electricity supplied to an EIL if, at the time of supply, a valid certificate is in force and 'relevant arrangements' are in place to enable the CFD Counterparty to identify the volume of electricity supplied to the EIL. Regulations will require the CFD Counterparty to publish a document by 30th September 2015 setting out approved 'relevant arrangements' for identifying exempt electricity. The modifications to the BSC that we are directing provide for arrangements that the CFD counterparty may wish to adopt to enable it to identify exempt electricity supplied to eligible EILs.
 - Suppliers will have requirements under the modifications to the BSC to put in place certain arrangements:

³ *Electricity intensive industries: relief from the indirect costs of renewables - consultation on eligibility*
<https://www.gov.uk/government/consultations/electricity-intensive-industries-relief-from-the-indirect-costs-of-renewables>

⁴ <https://www.gov.uk/government/consultations/electricity-intensive-industries-relief-from-the-indirect-costs-of-renewables>

- For Supplier Meter Registration Service (SMRS) registered EIs, after being notified by an EI that they hold a valid exemption certificate, suppliers will be required to instruct their HHDA to send data from the relevant meters directly to EMR Settlement (EMRS) within the later of 30 days of that notification or by the effective date stated on the EI certificate. The exemption will be applied to the metered data received directly from their supplier's HHDA, utilising the data flows that are being introduced for the Capacity Market. The exemption will be applied to electricity supplied to the EI from the date that the HHDA accepts the supplier's instruction to provide the data to EMRS.
- For Central Meter Registration Service (CMRS) registered EIs, the exemption will be applied to the metered data from the EI's BM Unit. If the EI has multiple meters with different exemption percentages allocated to the same BM Unit, their supplier will need to register an extra BM Unit for each meter with a different exemption percentage. The process by which suppliers confirm that the arrangements are in place so that the exemption can be applied will be set out in the document to be published by the CFD Counterparty.
- Exemption certificates can be revoked by the Secretary of State through the issuing of a revocation notice. The certificate will no longer be valid from the sixth working day after the revocation notice is issued. Suppliers will be required to 'unflag' meters within 30 days of being notified that an exemption certificate is being revoked in order to avoid unnecessary data being sent to EMRS.
- An EI's exemption proportion may be changed after a certificate has been issued if the Secretary of State concludes that the proportion is incorrect. Changes to the exemption proportion will take effect from the sixth working day after a notice is issued.
- Suppliers will no longer receive the copies of the exemption certificates, revocation or variation notices directly from BIS. Instead, EIs will need to send their supplier the exemption certificate when it is issued in order for the supplier to put in place the necessary arrangements. The CFD Counterparty will be required to inform suppliers if a revocation or variation notice is issued to enable suppliers to fulfil their requirements to 'unflag' meters under the BSC.

Exemption for electricity sourced from EU renewable generators

- xi The *EMR: Changes to the CFD supplier obligation* consultation sought views on the process for implementing the exemption and the way in which a supplier's market share would be adjusted once evidence of eligible imports had been provided.
- xii Taking into account the feedback received, we can confirm that the exemption will be implemented as follows:
 - As proposed in the consultation, only electricity supplied to GB consumers that was generated from renewable stations that commissioned from 1st April 2015 will be eligible for an exemption from CFD costs.
 - To claim an exemption, suppliers will need to submit evidence about the source of the electricity to the CFD Counterparty no more than six months after the end of the quarter in which the electricity was supplied. The CFD Counterparty will set out the nature of the evidence that will be acceptable and the process for making claims.

- The CFD Counterparty will publish a notice of the total volume of electricity for which claims have been received in respect of a quarter as soon as reasonably practicable after the six-month period following the end of the quarter.
- Suppliers' underlying liabilities for both daily and quarterly CFD payments will be adjusted through the quarterly reconciliation process to account for exempt imported electricity in that quarter:
- The total amount of imported renewable electricity that will be able to claim an exemption from CFD costs will be capped each year. In 2015/16 the cap will be 7,376,984MWh. The cap will increase by 10% from 1st April each subsequent year. The total amount of imported renewable electricity that may be exempted in any one quarter will be a maximum of 25 per cent of the annual cap for that year.

Minor and technical changes to the ESO Regulations

- xiii We have made a number of minor and technical amendments to the ESO regulations. Our *EMR: Changes to the CFD supplier obligation* consultation sought views on the amendments.
- xiv Taking into account the feedback received, we can confirm that we will be making the amendments proposed in the original consultation.

Next steps

- xv Alongside the publication of this Government Response, we are laying the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 that give effect to the exemptions and the amendments, and amendments to the Balancing and Settlement Code (BSC) to allow the CFD Counterparty to apply the EII exemption. An updated Impact Assessment on the EII exemption accompanies the Regulations.
- xvi The earliest that an EII certificate may be issued is 1st October 2015, subject to State Aid approval and Parliamentary process. BIS will issue guidance in advance of the scheme's commencement.
- xvii The Green Import Exemption will apply from 1st April 2015. The CFD Counterparty intends to engage with stakeholders shortly, with a view to publishing guidance outlining the evidence that suppliers will need to provide in order to claim the exemption before 1st April.
- xviii We will be considering further minor changes to the Supplier Obligation over the coming months, and will review its wider impact as part of the evaluation of the EMR programme.

Chapter 1: Exemption for electricity supplied to Electricity Intensive Industries (EIs)

Background

- 1.1 In the Autumn Statement 2011, the Chancellor announced the Government's intention to reduce the impact of Government policy on the cost of electricity for the most electricity intensive industries (EIs) that are at risk of 'carbon leakage'. This included the costs of supporting renewable deployment through the Renewables Obligation (RO), small-scale Feed-in Tariff (FIT), and Contracts for Difference (CFDs).
- 1.2 The Department of Energy and Climate Change (DECC) and the Department for Business Innovation and Skills (BIS) published a series of consultations seeking stakeholder views on the approach, including eligibility for and implementation of the mechanisms. Decisions on eligibility and the level of exemption to which an EI's supplier will be entitled are set out in the separate Government Response to the consultation on eligibility⁵.
- 1.3 In Chapter One of our *EMR: Changes to the CFD supplier obligation* consultation published on 23rd September 2014, we set out our broad proposals for how the electricity supplied to EIs would be identified and the appropriate exemption then applied by the CFD Counterparty. We received nineteen responses, a summary of which, and our final decisions, are set out in Section 1 below.
- 1.4 The *Electricity Intensive Industries exemption from CFD costs: Amendments to the Balancing and Settlement Code*⁶ consultation was published on the 24th November 2014 following the closure of the previous consultation. It concerned amendments to the BSC required to enable the CFD Counterparty to identify the volume of electricity supplied to EIs that hold a valid exemption certificate.
- 1.5 In light of the feedback received to the preceding consultation, we sought views on two alternative approaches:
 - Option A, where suppliers register and allocate exempt meters to Additional Balancing Mechanism Units (A.BMUs). In a change to the previous consultation, we consulted on the introduction of a cost-reflective set-up fee for suppliers in order to allow them to pre-register A.BMUs whilst reducing the risk to the CFD Counterparty of having to meet the costs of a potentially large number of EI A.BMU pre-registrations.
 - Option B: an alternative whereby suppliers instruct their half-hourly data aggregator (HHDA) to send the volumes supplied to specific meters directly to the CFD Counterparty.

⁵ *Electricity intensive industries: relief from the indirect costs of renewables - consultation on eligibility* consultation. <https://www.gov.uk/government/consultations/electricity-intensive-industries-relief-from-the-indirect-costs-of-renewables>

⁶ <https://www.gov.uk/government/consultations/supplier-obligation-consequential-amendments-to-the-balancing-and-settlement-code>

- 1.6 The consultation stated that our preference was to implement Option B. In our view this approach addressed many of the concerns raised by the respondents to the preceding consultation, notably:
- The **arrangements can be put in place much more quickly**, improving the ability for EIs to switch supplier quickly whilst retaining the exemption.
 - The **CFD Counterparty have direct oversight of the metered volumes** supplied to each EI and can apply the correct exemption percentage to the EI metered data rather than to an A.BMU that (potentially) contains a number of different meters. The exemption can be removed or adjusted centrally and at short notice, with suppliers only required to instruct their HHDA to stop sending the metered data after the EI ceases to be exempt in order to tidy the data flows.
 - The approach utilises existing data flows and BSC processes introduced for the Capacity Market. It is therefore **much simpler to implement**.
- 1.7 We received twelve responses to the consultation. Eleven responded to the specific question on which option was favoured (question 14), with all eleven favouring Option B. **Given the unanimous preference for Option B our decision is to make BSC changes to enable this option.**
- 1.8 Section 2 summarises the responses we received to the BSC consultation.

Section 1 – EMR: Changes to the CFD supplier obligation, questions EII1-5

Question EII1	<i>Are you content with the proposed process by which EII certificates are issued and with what they contain?</i>
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Consultation Position

- 1.9 The consultation proposed that BIS would assess eligibility for electricity intensive businesses wishing to apply for the exemption certificate. These EIIs would need to submit an application to BIS, providing evidence to support their claim. BIS would also determine the percentage of electricity (rounded to the nearest 1%) supplied to an eligible business that would be exempt from CFD costs. Certificates would be valid from the date specified on the certificate (but no earlier than 1st October 2015 and subject to State aid approval) until the end of the calendar year in which they took effect.

Consultation Responses

- 1.10 Of the seventeen responses to this question, there was broad agreement with the proposed process for issuing certificates. Thirteen of those respondents agreed but some caveated their agreement by requesting clarity on:
- The length of the first exemption period: four respondents questioned whether, if the exemption is available from October 2015, the first certificates issued would only cover three months, with new certificates issued for 1st January 2016.
 - Whether it would be preferable for exemption certificates to align with the financial year rather than the calendar year.
 - Changes to exemption percentages whilst a certificate is in effect: two respondents questioned whether the exemption could be changed once a certificate was issued and how the process for this would work.
 - The commencement of the exemption certificate and how this relates to the date on which certificates are issued.
- 1.11 Four respondents disagreed with the proposals. Two of these raised concerns that, regardless of how certificates were issued, market forces would not be sufficient for suppliers to pass the exemption through to their electricity intensive customers. Three respondents were concerned that having numerous exemption percentages could be administratively challenging for EIIs and suppliers. One respondent highlighted a concern that suppliers may not receive a copy of the EII certificate in the event the EII changed supplier after making an application for the exemption.

Decisions taken since consultation

- 1.12 In line with the majority of responses to this question, we remain of the view that the broad process as set out in the consultation is appropriate. However, we have made a number of changes to the draft regulations (laid alongside this Government Response) to address some of the concerns, and to make the processes more efficient. BIS will also issue further, detailed guidance in advance of EIIs applying for the exemption which will provide the further clarity requested.

1.13 The specific changes that we have made to the regulations affecting how EII certificates are issued and what they contain are:

- Certificates will come into force on the day after they are issued or, where there is already a certificate in force in relation to that meter, on the 1st April in the *financial year* following the one in which the certificate is issued.
- Certificates will be valid from the date they come into force until the end of the financial year in which that date falls. This means that certificates issued on 1st October 2015 (the earliest date that a certificate may be issued, subject to State aid clearance) will be valid for six months.
- An EII's supplier can claim the exemption on electricity supplied to an EII if, at the time of supply, a valid certificate is in force and 'relevant arrangements' are in place enabling the CFD Counterparty to identify the volume of electricity supplied to the EII. Regulations will require the CFD Counterparty to publish a document by 30th September 2015 setting out the approved 'relevant arrangements' for identifying exempt electricity. The modifications to the BSC that we are directing provide for arrangements that the CFD counterparty may wish to adopt to enable it to identify exempt electricity supplied to eligible EIIs.
- There will no longer be a requirement on BIS to send a copy of the EII's exemption certificate, as well as any revocation or variation notice, to the EII's supplier as listed in their application. This is because, in the event that an EII changed supplier after applying for or being issued with a certificate, it would not be clear who the certificate should be sent to. Instead, it will be the EII who is issued with the certificate who will be responsible for notifying their supplier in order that the supplier can put in place the arrangements necessary for the exemption to come into effect. Additionally, in the event that a variation or revocation notice is issued, we have placed a new requirement on the CFD Counterparty to inform the EII's supplier before the notice comes into effect so that the supplier is aware of the changes.
- We have put in place a process whereby an EII's exemption proportion may be changed after a certificate has been issued if the Secretary of State concludes that the proportion is incorrect. A notice of the updated exemption proportion would be issued to the EII, the CFD Counterparty and Balancing and Settlement Code Company (BSCCo) (Elexon). Changes to the exemption proportion will take effect from the sixth working day after the notice is given.

1.14 In response to concerns over the efficacy of market forces in incentivising the pass-through of the exemption to consumers, we consider that our approach remains appropriate. The retail market for electricity supply to industrial customers is competitive, so should some suppliers not pass through the exemption then this should be clear in the tariffs on offer and it is open to EIIs to choose their supplier.

Question EII2	<i>Do you agree with the proposed mechanism for identifying exempt electricity?</i>
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Consultation Position

1.15 We proposed that EIIs would need to inform their supplier that they were eligible for an exemption from CFD costs, and should provide the supplier with the certificate issued to them by BIS as evidence.

- 1.16 To claim the exemption, we proposed that suppliers to eligible EII's would need to allocate the meters listed on the certificate to an A.BMU. Suppliers could allocate exempt meters to existing empty A.BMUs if all meters within the A.BMU were located within the same Grid Supply Point (GSP) and eligible for an identical exemption percentage. However, if a supplier did not have an existing A.BMU to which the meters could be added, they would be required to register a new A.BMU. The consultation set out a maximum time period of three months for A.BMU registration.

Consultation Responses

- 1.17 Fifteen responses were received to this question with ten respondents disagreeing that the use of A.BMUs was the most effective method of identifying exempt electricity. Most of those in disagreement expressed concern over the time it would take to register A.BMUs. Respondents felt that a process with such a lengthy registration period would disadvantage suppliers who did not already have A.BMUs registered. Respondents were also concerned that the registration process was complicated and could be challenging for suppliers to implement.
- 1.18 Five respondents to this question suggested an alternative option using Half Hourly Data Aggregators (HHDAs) to 'flag' the metered data from the meters to which the exemption should apply and sending this directly to EMR Settlement Ltd (EMRS). A similar approach was recently adopted to meter capacity providers under the Capacity Market. Those respondents felt that identifying exempt electricity in this way would reduce administrative complexity, be more transparent for delivery partners and reduce the time it would take for EII's to switch electricity supplier and ultimately benefit from the exemption.

Decisions taken since consultation

- 1.19 We agree with the concerns raised by respondents over the time it can take to register A.BMUs. To mitigate these concerns we originally proposed that suppliers should be able to pre-register EII A.BMUs (for which there would be no charge to suppliers), but this would either expose the CFD Counterparty to the risk of excessive costs or require suppliers to meet a cost-reflective set up fee. We also recognise the administrative complexity for suppliers of this option.
- 1.20 In light of these issues, in the consultation on BSC changes published on 24th November 2014, we consulted upon the alternative solution raised by stakeholders whereby suppliers instruct their HHDA to send metered data from EII's directly to EMR Settlement. This was unanimously supported by respondents, and we can confirm that we will be making changes to the BSC to enable this solution rather than the A.BMU approach. Further details of how this will be implemented are set out in Section 2 below.

<i>Question EII3</i>	<i>Do you agree with the proposed process for revoking certificates?</i>
<i>Question EII5</i>	<i>Do you agree that suppliers will be able to adjust metering arrangements accordingly within six working days of a certificate being revoked?</i>

Consultation Position

- 1.21 We proposed that BIS would issue the EII's supplier with a revocation notice if a certificate needed to be revoked. The certificate would no longer be valid from the sixth working day after BIS issued the revocation notice. To ensure exempt electricity was not

claimed incorrectly, suppliers would be required to remove the relevant meters from A.BMUs by the day on which the notice came into effect.

Consultation Responses

- 1.22 Fifteen responses were received to EII3 and thirteen to EII5. The majority agreed with the proposed revocation process but disagreed that six working days gave suppliers enough time to make the necessary metering amendments, with the concern that this could lead to a supplier being in breach of its licence conditions.
- 1.23 Some respondents also suggested that the CFD Counterparty should have a role in removing the exemption from revoked meters. One respondent suggested the use of HHDAs could remove the need for suppliers to act since the CFD Counterparty would be able to remove the exemption from the applicable meters rather than an A.BMU as a whole.

Decisions taken since consultation

- 1.24 The decision to use HHDAs to send metered data from EII's directly to EMRS means that the CFD Counterparty will be able to amend or remove an EII's exemption directly, with no requirement for suppliers to take any immediate action. We have therefore decided that revocation notices will continue to come into effect on the sixth working day after the notice is issued.

Question EII4

Do you agree that the change of supplier process is not impaired by the need for suppliers of EII's to register A.BMUs to receive the exemption (despite the A.BMU registration process taking up to 3 months)?

Consultation Position

- 1.25 A key consideration outlined in the consultation was how the process for switching supplier would align with the process for A.BMU registration, which could take up to three months. We proposed that this time could be factored into the contract negotiation timeframe which we understood would typically take longer than three months to complete. We set out that it should be clear during the negotiation timeline that the registration of A.BMUs would be required, minimising any delay between negotiations ending and the exemption being claimed.

Consultation Responses

- 1.26 Fifteen responses were received to this question. Seven respondents disagreed with the proposal, expressing concerns that the change of supplier process would be affected by the three month A.BMU registration period. Suppliers without A.BMUs felt that they would be disadvantaged by the three month registration process as EII's would only choose to switch to suppliers who already had A.BMUs registered.
- 1.27 Most respondents agreed with the proposal that provisions should be made for suppliers to register A.BMUs during contract negotiations, in preparation for the signing of a contract. This would ensure metering arrangements were in place more quickly, preventing potential delays for suppliers when claiming the exemption at the end of negotiations.
- 1.28 Four respondents indicated that the change of supplier process would work and that the risk of not having A.BMUs in place by contract commencement was minimal.

Decisions taken since consultation

- 1.29 As set out in Section 2, we have decided to implement an alternative approach for identifying exempt electricity that does not require A.BMUs to be registered. This approach should eliminate any impact of the EII exemption on the change of supplier process.

Section 2 – Questions from the *Electricity Intensive Industries exemption from CFD costs: Amendments to the Balancing and Settlement Code* consultation

- 1.30 The BSC consultation was separated into two sections, each corresponding to a metering option. Note that all respondents answered the questions within each section from the position that the option in question would be implemented – question 14 dealt with the question as to which option stakeholders preferred on balance. Given the unanimous preference for Option B and our decision to implement this option, we do not describe any decisions in response to the Option A questions.

Option A - Metering EII through A.BMUs

<i>Question 1</i>	<i>Do you agree that suppliers should be able to pre-register EII A.BMUs?</i>
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Consultation Position

- 1.31 Given that setting up a new A.BMU can take between 28 and 62 days, we proposed that suppliers should be able to pre-register EII A.BMUs in order to avoid delays in receiving an exemption and any adverse impact on the process for switching suppliers.

Consultation Responses

- 1.32 We received eight responses to this question. All eight agreed that suppliers should be able to pre-register A.BMUs.

<i>Question 2</i>	<i>Do you agree that suppliers should meet a cost-reflective set up fee for each EII A.BMU that they register?</i>
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Consultation Position

- 1.33 If suppliers are able to pre-register EII A.BMUs and these do not incur the standard A.BMU charge, then there is a free option for each supplier in registering the maximum number of A.BMUs (85) in each grid-supply point (GSP) group. Since the CFD Counterparty will meet the administration costs of Elexon registering these A.BMUs, this creates a risk over the potential liability.
- 1.34 In order to mitigate this risk, we proposed that suppliers meet a cost-reflective set-up fee (most likely £70-£100) for each EII A.BMU that they register. Given the relatively small fee, suppliers would retain the freedom to pre-register the number of EII A.BMUs that they saw as optimal, whilst protecting the CFD Counterparty from excessive cost.

Consultation Responses

- 1.35 We received eight responses to this question. Three respondents agreed with the proposal to charge for registering EII A.BMUs, though one of these requested that the charge be capped to prevent it escalating.
- 1.36 Five respondents disagreed. Two of these felt that the cost of registering EII A.BMUs should be recovered via the Operational Cost levy and paid by all suppliers. One respondent felt that it would be inefficient for several suppliers to pay to pre-register A.BMUs whilst competing to secure a contract with a single EII – there would be an unrecoverable cost for the suppliers that missed out on the contract award. Another

respondent suggested that it is not justifiable to charge suppliers when this is a Government requirement of securing the contract. Finally it was suggested that excessive registration could be constrained through an alternative to a charge, whereby suppliers have to submit a request to the CFD Counterparty when they wished to register an EII A.BMU and justify pre-registration.

Question 3	<i>Do you agree that suppliers should be required under the BSC to put the A.BMU metering solutions in place within a minimum amount of time?</i>
Question 4	<i>Do you agree with the proposed timescales for implementing the A.BMU metering solutions?</i>

Consultation Position

- 1.37 As set out in the accompanying Electricity Supplier Obligations (Amendment and Excluded Electricity) Regulations, the EII exemption comes into effect if the EII has a valid exemption certificate and once their supplier has the appropriate arrangements in place for the CFD Counterparty to apply the exemption. EIs therefore have an interest in their supplier putting those arrangements in place as quickly as possible.
- 1.38 We consider that there is a strong commercial incentive for suppliers to act quickly without deadlines in the BSC so that they can secure the lower SO payments as soon as possible. However, introducing an eminently achievable minimum period has value in the assurance it gives to EIs. We therefore proposed that:
- Where a supplier needs to register a new EII A.BMU, they put in place the appropriate metering within the later of 90 days of the EII certificate being issued or the effective date stated on an EII certificate;
 - Where a supplier already has an appropriate existing EII A.BMU, they put in place the appropriate metering within the later of 30 days of receiving the certificate or the effective date stated on the certificate.

Consultation Responses

- 1.39 We received eight responses to question 3 and nine responses to question 4. Five respondents agreed that suppliers should register and assign meters to EIs A.BMUs within a minimum amount of time, though one respondent questioned whether the A.BMU registration process would allow suppliers to comply with their Licence Condition on switching timeframes. Another respondent questioning the need for deadlines whilst noting the value it may provide to EIs, stressing the importance of allowing suppliers to pre-register A.BMUs in order to minimise the risk.
- 1.40 Six respondents agreed with the timescales proposed, though one of these queried whether the exemption would be applied retrospectively if the metering arrangements were implemented after the effective date on the EII certificate. A further respondent noted that suppliers could not be sure that they should put in place the metering arrangements until an EII is deemed eligible, and requested that BIS send a note to suppliers once an EII had applied for the exemption so that they could pre-register A.BMUs.
- 1.41 Two respondents disagreed with the need for a deadline, both considering that competition alone would ensure suppliers implement the metering solution quickly

without the need for a deadline. Two respondents also disagreed with the timelines proposed, one because they were too long and could mean an exemption not being applied for up to 90 days, and the other because they felt no maximum period was necessary. Another respondent questioned the need whilst noting the value it may provide to EIs, stressing the importance of allowing suppliers to pre-register A.BMUs in order to minimise the risk.

Question 5	<i>Should suppliers be required to remove the applicable MSIDs from EII A.BMUs when an exemption certificate is either revoked or expires?</i>
Question 6	<i>Do you agree with the proposed timescales for suppliers removing MSIDs from their EII A.BMUs?</i>

Consultation Position

- 1.42 The Secretary of State can revoke a business' EII certificate by issuing a notice if of the opinion that:
- The certificate has been granted based on false or misleading information; or
 - The business ceases to carry out the specified activity in respect of which the certificate was issued.
- 1.43 In such an event, as well as when an EII certificate expires, we proposed that suppliers be required to remove the applicable Metering System Identifiers (MSIDs) from the EII A.BMUs.
- 1.44 In the event that a revocation notice is issued, or an EII certificate expires (and a subsequent certificate has not been issued), we proposed that suppliers be required to remove the MSIDs from the EII A.BMUs by the date on which the revocation notice takes effect (six working days after issue), or the expiry date on the certificate. Whilst we felt the timescales were reasonable, we noted that the BSC includes grace periods in the event that unexpected circumstances prevented suppliers from meeting the deadline on occasion.

Consultation Responses

- 1.45 We received eight responses to question 5 and seven responses to question 6. Seven respondents agreed that the requirement to remove the applicable MSIDs from EII A.BMUs when an exemption certificate is either revoked or expires was appropriate. One respondent disagreed, feeling that the additional administrative burden should not be placed on suppliers, but instead the revocation should be administered centrally.
- 1.46 Five respondents agreed that the timescales to remove the MSIDs were appropriate. Two disagreed: one for the reason outlined above, whilst the other felt the timescales were too tight and that it was inappropriate to rely on BSC grace periods.

Question 7	<i>Do you agree that an EII's new supplier should be required to put in place the A.BMU metering solutions by the deadlines proposed?</i>
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Consultation Position

- 1.47 We set out our proposal that, in the event an EII changes supplier, the new supplier should be required to put in place the A.BMU metering solutions within 30 working days

if they have an existing EII A.BMU or within 90 working days if they need to register a new EII A.BMU.

Consultation Responses

- 1.48 We received eight responses to this question. Five respondents agreed that the timescales were appropriate. Two respondents disagreed: both considered that commercial pressures would ensure the metering solutions were put in place without the need for deadlines. Another respondent felt insufficiently experienced to comment on the A.BMU processes.

Question 8	<i>Are there any other amendments to the A.BMU proposal that would make the process more effective?</i>
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Consultation Responses

- 1.49 We received one response to this question. This was a request to clarify in the BSC the fact that the obligations on HHDA to send data to EMRS were enduring for all settlement runs.

Option B – Instructing HHDA to send metered data

Question 9	<i>Do you agree that suppliers should be required to instruct their HHDA to 'flag' EII meters to enable EII metered volumes to be received by EMRS?</i>
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Consultation Position

- 1.50 We set out our proposal that suppliers should instruct their HHDA to send metered data from EII to EMRS, using the same data flows as were introduced for the capacity market.

Consultation Responses

- 1.51 We received nine responses to this question. All respondents agreed with this proposal.

Decisions taken since consultation

- 1.52 We can confirm that we are proceeding with this option.

Question 10	<i>Do you agree that suppliers should do this by the later of 30 days of receiving the EII certificate or the effective date stated on the EII certificate?</i>
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Consultation Position

- 1.53 In the same way as for the A.BMU approach, we proposed that suppliers should instruct their HHDA to send metered data for EII with a valid exemption certificate to the EMRS, by the later of within 30 days of receiving the EII certificate or the effective date stated on the EII certificate.

Consultation Responses

- 1.54 We received nine responses to this question. Seven respondents agreed with the proposal. One of these queried whether the exemption would be backdated to the

certificate commencement date if the metering arrangements are not in place until after the certificate has come into effect.

- 1.55 One respondent felt that deadlines were unnecessary given the commercial incentive to implement the metering arrangements as soon as possible. Another respondent highlighted that historically suppliers have backdated the notification to their HHDA where they require the commencement of a service.

Decisions taken since consultation

- 1.56 Suppliers will not be able to 'backdate' the exemption: the Regulations set out that electricity supplied to EILs can only be deemed as 'exempt' where 'relevant arrangements' are in place with respect to that meter⁷. This means that supply to EILs holding an exemption certificate will only be exempt from the date on which the supplier has instructed its HHDA to send the data to EMRS and the HHDA has implemented the instruction. We have made a change to the BSC drafting to require the supplier to notify EMRS of the date on which their HHDA accepted the instruction to send the metered data to EMRS. The exemption will apply from this date or the certificate commencement date, whichever is the later.
- 1.57 Suppliers will no longer receive the exemption certificate directly from BIS. This is because an EIL may change its supplier between applying for and receiving an exemption certificate and there will be no way for BIS to know who the new supplier is. It will be for the EIL to approach their supplier with the certificate and request that they put in place the metering requirements such that they can receive the exemption. Suppliers will be required under the BSC to instruct their HHDA to 'flag' EIL meters by the later of 30 days after being notified by their EIL, or by the effective date stated on the EIL certificate.

Question 11	<i>Do you agree that suppliers should be required to instruct their HHDA to 'unflag' EIL meters within 30 days of receiving a revocation notice or the exemption certificate expiring?</i>
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Consultation Position

- 1.58 Unlike the A.BMU approach, EMRS will be applying the exemption to volumes supplied to individual meters and so it is not crucial that suppliers instruct their HHDA to 'unflag' MSIDs before a revocation notice comes into effect - we would expect that the CFD Counterparty and EMRS will remove or amend the exemption automatically on receipt of a notice from BIS.
- 1.59 However in order that EMRS are not receiving flagged MSID data unnecessarily, we proposed that suppliers be required to instruct their HHDA to 'unflag' EIL meters within 30 days of receiving a revocation notice and inform EMRS when this has occurred.

Consultation Responses

- 1.60 We received eight responses to this question, with six in agreement and two unsure. Those two respondents felt that it was unnecessary to remove the 'flags' since EMRS could direct adjust the exemption percentage.

⁷ The Regulations require the CFD Counterparty to approve 'relevant arrangements' that will enable it to identify the amount of electricity supplied to eligible EILs.

Decisions taken since consultation

- 1.61 As outlined in Chapter 2, we no longer propose that suppliers receive the exemption certificate, revocation or variation notices directly from BIS. Instead the CFD Counterparty will be required to notify an EII's supplier once an exemption is removed (or amended).
- 1.62 We continue to consider that it is appropriate for suppliers to 'unflag' meters no longer receiving an exemption in order to tidy the data being sent to EMRS. Suppliers will therefore be required to instruct their HHDA to 'unflag' EII meters within 30 days of being notified that an exemption certificate is being revoked or expiring.

Question 12

Do you agree that upon a change of supplier, the new supplier should be required to instruct their HHDA to flag the appropriate MSIDs within 30 days of the supply commencement date or by the effective date on the certificate, whichever is later?

Consultation Position

- 1.63 We proposed that, if an EII changes supplier whilst in possession of an EII certificate, the new supplier would be required to instruct their HHDA to flag the appropriate MSIDs within 30 days of the supply commencement date.

Consultation Responses

- 1.64 We received seven responses to this question, with five in agreement and two disagreeing. Those two respondents felt that there would be sufficient commercial incentive to implement the metering arrangements as quickly as possible without requiring specific deadlines.

Decisions taken since consultation

- 1.65 We agree that there is a strong commercial incentive for suppliers to implement the metering requirements quickly so that they can secure the exemption as soon as possible. However, introducing an eminently achievable minimum period has value in the assurance it gives to EIs.
- 1.66 We can therefore confirm that upon a change of supplier, the new supplier will be required to instruct their HHDA to flag the appropriate MSIDs within 30 days of the supply commencement date or by the effective date on the certificate, whichever is later.

Question 13

Are there any amendments to the proposal that would make the process of flagging MSIDs more effective? Please provide evidence to support any suggestions made.

Consultation Responses

- 1.67 We received a response that noted that by using the same data flow for the Capacity Market and EIs, HHDA's will not know, for any given MPAN, whether the intended recipient is the CFD Settlement Services Provider (CFDSSP) or the Capacity Market Settlement Services Provider (CMSSP). While these roles sit with one party, no issue exists, though that could change in future.

- 1.68 We received another response that raised concerns over how the approach would work for CMRS-registered EILs where they had meters with different exemption percentages. As previously proposed, the CFD Counterparty would apply the exemption to the volume supplied to a CMRS-registered EIL's full BMU. However, if such a BMU included meters at different exemption percentages (including some non-exempt meters) then the correct exemption couldn't be applied.
- 1.69 Finally there was a request to clarify in the BSC the fact that the obligations on HHDA's to send data to EMRS were enduring for all settlement runs.

Decisions taken since consultation

- 1.70 We consider that it is appropriate for HHDA's to use the same data flow for Capacity Market and EIL meters. There are no plans to separate the roles of the CFDSPP and CMSSP. Should that change in future, we would consult on the most appropriate way of ensuring each party received the information required.
- 1.71 We agree that a single CMRS-registered BMU could contain EIL meters at different exemption percentages and that the proposed solution would not allow the CFD Counterparty to apply the correct exemption. As a result, we have amended the BSC such that, where an EIL has multiple meters with different exemption percentages, their supplier will need to register an extra BM Unit for each meter with a different exemption percentage. We consider that the existing procedures governing the registration of BMUs are sufficient to ensure that this is done in a timely manner.
- 1.72 We can confirm that the obligations on HHDA's to send data to EMRS are enduring for all subsequent settlement runs. The BSC has been amended to clarify this.

Question 14

Do you agree with our recommendation that Option B would be the preferred method of metering EILs?

Consultation Position

- 1.73 Our consultation set out the reasons why, on balance, we considered that Option B represented a better solution for identifying exempt EIL volumes, notably:
- The arrangements can be put in place and removed much more quickly, improving the ability for EILs to switch supplier and reducing pressure on suppliers to change the arrangements rapidly if a certificate is revoked or the exemption percentage adjusted
 - The CFD Counterparty have direct oversight of the metered volumes for each EIL and can apply the correct exemption percentage to the EIL metered data rather than to an A.BMU that (potentially) contains a collection of meters. The exemption can be removed or adjusted centrally and at short notice, with suppliers only required to instruct their HHDA to stop sending the metered data in order to tidy the data flows.
 - The approach utilises existing data flows and BSC processes introduced for the Capacity Market. It is therefore much simpler to implement.
- 1.74 We sought views from respondents on which approach they thought was the most appropriate to pursue.

Consultation Responses

1.75 We received eleven responses to this question. All respondents were in favour of Option B.

Decisions taken since consultation

- 1.76 Following the unanimous preference for our recommended option, we confirm that we have decided to implement Option B, and are laying in Parliament amendments to the BSC that will enable this option.
- 1.77 An EII's supplier can claim the exemption on electricity supplied to an EII if, at the time of supply, a valid certificate is in force and 'relevant arrangements' are in place enabling the CFD Counterparty to identify the volume of electricity supplied to the EII. Regulations will require the CFD Counterparty to publish a document by 30th September 2015 setting out approved arrangements for identifying exempt electricity. The modifications to the BSC that we are directing provide for arrangements that the CFD counterparty may wish to adopt to enable it to identify exempt electricity supplied to eligible EIIs.
- 1.78 Suppliers will have requirements under the modifications to the BSC to put in place certain arrangements:
- For Supplier Meter Registration Service (SMRS) registered EIIs:
 - 'Flag' EII meters: after being notified by an EII that they hold a valid exemption certification, suppliers will be required to instruct their HHDA to send data from the relevant meters directly to EMR Settlement (EMRS) within the later of 30 days of that notification or by the effective date stated on the EII certificate. The exemption will be applied to electricity supplied to the EII from the date that the HHDA accepts the supplier's instruction to provide the data to EMRS.
 - 'Unflag' EII meters within 30 days of the certificate expiring or receiving a notice from the CFD Counterparty that the exemption has been revoked. The exemption will be removed from electricity supplied to the EII from the date that the certificate expires or the revocation notice takes effect, irrespective of when the supplier instructs its HHDA to unflag the meter.
 - For Central Meter Registration Service (CMRS) registered EIIs, the exemption will be applied to the metered data from the EII's BM Unit. If the EII has multiple meters with different exemption percentages allocated to the same BM Unit, their supplier will need to register an extra BM Unit for each meter with a different exemption percentage. We consider that the existing procedures governing the registration of BMUs are sufficient to ensure that this is done in a timely manner. The process by which suppliers confirm that the arrangements are in place so that the exemption can be applied will be set out in the document to be published by the CFD Counterparty.

Other issues raised in response to the consultations

- 1.79 Some respondents to the consultations also raised concerns or made suggestions on issues about which no direct questions were asked. These concerns and our response to them are summarised below.

Location of BSC amendments

- 1.80 One respondent, while supporting Option B as the option that would minimise the impact on their business, raised wider concerns about the way in which EMR obligations are being implemented through the BSC. Specifically, their concerns were that EMR obligations fall outside the scope of the existing BSC documents. They suggested that these requirements should instead be pulled together into a separate EMR BSCP.
- 1.81 We consider that, given the consistency of the changes, it is right that we introduced the modifications to the BSC for the EII exemption within the same parts of the BSC as the modifications that have been approved for the Capacity Market. We consider that BSC parties and Elexon are best placed to establish where the combined changes should sit in order to minimise complexity and costs to those parties and their agents.

Next Steps

- 1.82 The draft Electricity Supplier Obligations (Amendment and Excluded Electricity) Regulations 2015 have been laid alongside the publication of this Government response. An updated Impact Assessment has also been published.
- 1.83 Amendments to the BSC have also been laid alongside the Regulations. These will be subject to a separate Parliamentary process.
- 1.84 Alongside the 24th November consultation, ELEXON issued a circular⁸ that sought views on:
- Modifications to the A.BMU naming convention where the A.BMUs are registered for EII Assets (to give effect to consultation Option A), and
 - Changes to the Data Transfer Catalogue (DTC) to account for the Capacity Market data flows extending to cover EIIs (to give effect to consultation Option B).

Elexon intend to issue a further circular providing an update on the outcome of their informal consultation and the next steps to progress the changes for Option B shortly.

- 1.85 The earliest that an EII certificate may be issued is 1 October 2015, subject to State Aid approval and Parliamentary process. BIS will issue guidance in advance of the scheme's commencement.

⁸ *EMR Circular 22* <https://www.elexon.co.uk/news/decc-publishes-energy-intensive-industry-amendments-balancing-settlement-code-consultation/>

Chapter 2: Exemption for eligible imported renewable electricity

- 2.1 As a condition of State Aid approval, the European Commission required eligible renewable electricity imported from other EU Member States and supplied to consumers in Great Britain (GB) to be exempt from contributing to the cost of CFD payments. We agreed with the Commission to:
- Implement the exemption from the 1st April 2015
 - Restrict the exemption to imports of renewable electricity generated in other EU Members States by stations that first became operational from 1st April 2015
 - Cap the level of imports that can be exempt each year;
- 2.2 In September 2014⁹ we consulted on the process for implementing the exemption and the way in which a supplier's market share would be adjusted once evidence of eligible imports had been provided.

Questions and Responses

<i>Question RIE1</i>	<i>Do you agree with the process for applying for an exemption for imported renewable electricity?</i>
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Consultation Position

- 2.3 The consultation set out our proposal for how suppliers should apply for a 'green import' exemption: that they should make an application, including evidence of the source and nature of the imported electricity, to the CFD Counterparty within six months of the end of quarterly obligation period in which the electricity was supplied.
- 2.4 The imported electricity will be determined to be exempt if it is supplied to GB consumers, constitutes electricity from a renewable source, and was generated in an EU Member State from a generating station that first became operational on or after 1st April 2015. The CFD Counterparty will make the determination, though they can ask for advice from Ofgem in coming to a decision. It is for the CFD Counterparty determine what comprises acceptable evidence in order to claim the exemption.

Consultation Responses

- 2.5 We received 11 responses to the question, with six respondents agreeing with the position, two raising concerns, and three not indicating a stance.
- 2.6 In particular, five respondents requested greater clarity concerning the evidence suppliers would need to provide to demonstrate that the electricity had been generated in an EU Member State and supplied in the UK. Three respondents observed that the CFD Counterparty would require more evidence than listed in the consultation document. One respondent requested that the submission of evidence align with the approaches taken under other support schemes. Several requested that the CFD

⁹ <https://www.gov.uk/government/consultations/emr-changes-to-the-cfd-supplier-obligation>

Counterparty provide clarity on the evidence required as soon as possible, and that they provide stakeholders with an indicative date for when this would be available.

- 2.7 Most respondents agreed with the timescale for providing evidence to the CFD Counterparty after the completion of a quarter. However, one supplier requested that the six month period we proposed be reduced to three months in order to reduce the uncertainty for suppliers over their eventual liabilities. Another supplier requested that the period be increased to 12 months to account for Ofgem's processes (and possible delays) in providing suppliers with the evidence that they might need to then provide to the CFD Counterparty. In a similar vein, one respondent, whilst supporting the six-month window, questioned whether it was of an appropriate length if the evidence supplied would only be verified annually.

Decisions taken since consultation

- 2.8 We appreciate that suppliers are keen to know the details of what evidence that they will need to provide to the CFD Counterparty in order to claim the exemption. We understand that the CFD Counterparty intends to engage with stakeholders shortly, with a view to publishing guidance before 1st April.
- 2.9 We have decided to retain the proposed timescale giving suppliers six months after the end of a quarterly obligation period to provide evidence to the CFD Counterparty of imported renewable electricity. The majority of respondents agreed with this position, and we do not consider that the two respondents who disagreed provided sufficient evidence to justify a change to the period.
- 2.10 We do not consider that a six-month evidence submission window would prevent the use of evidence that is verified only annually. The Regulations make provision for adjustments to exempt volumes if the CFD Counterparty subsequently determines that electricity it had previously judged exempt no longer meets the criteria. Additionally, the Regulations do not specify how soon after the close of the six-month window the CFD Counterparty must make a determination or apply the adjustments to suppliers' market shares in reconciliation.
- 2.11 We recognise that it is important that suppliers are given visibility over the total amount of likely eligible renewable imports as soon as possible. To assist with this, the Regulations now require the CFD Counterparty to publish a notice of the total volume of electricity for which claims have been received in respect of a quarter as soon as reasonably practicable after the six-month period following the end of the quarter.

<p><i>Question RIE2</i> <i>Do you agree with the process for adjusting supplier's market shares to take into account eligible imported renewable electricity?</i></p>
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Consultation Position

- 2.12 The consultation described how suppliers' underlying liabilities for both daily and quarterly CFD payments will be adjusted through the quarterly reconciliation process to account for exempt imported electricity in that quarter.
- For CFD daily contributions, the total amount of eligible imported electricity supplied by a supplier during a quarter will be divided by the number of days in the quarter, and this daily figure for eligible exempt electricity will be deducted from the supplier's market share when calculating each CFD daily contribution.

- For CFD quarterly contributions, the total amount of eligible imported electricity supplied by a supplier during the quarter will be deducted from the supplier's market share for that quarter when calculating the CFD quarterly contribution.

Consultation Responses

- 2.13 We received nine responses to this question, with six of the respondents agreeing with the process as outlined. The remaining three responses made comments without indicating their stance on the proposals.
- 2.14 Two respondents thought the exemption should apply to daily settlement rather than be reconciled after the quarter has completed. One respondent suggested holding 'allocation rounds' ahead of the quarter in order to provide more certainty to suppliers over the amount of exemption that will be claimed and their eventual liabilities.
- 2.15 One respondent agreed with the exemption being applied through reconciliation but suggested that a supplier's daily contribution be amended by applying a weighted average of net electricity imports into GB to the evidence provided. Suppliers that submitted claims for exemptions would therefore see a greater exemption on days of higher net imports.

Decisions taken since consultation

- 2.16 In line with the majority of consultation responses, we have decided to retain the mechanism for adjusting suppliers' market share as set out in the consultation. We do not consider that the three alternative proposals are appropriate because:
- It will not be possible to incorporate exempt renewable imports into the daily settlement process because (a) the evidence required is only likely to be available some time in arrears, and (b) it is unlikely to specify how much electricity was imported on a daily basis (it typically covers electricity generated over a longer period, such as a month).
 - It is not clear how an allocation round for exempt renewable imports could be held before the relevant quarter, or on what basis the amounts could be determined.
 - We did not receive evidence to suggest that applying a weighted average of net electricity imports into GB to the evidence provided would have significant benefits, and consider that such a proposal would increase the administrative complexity of the exemption.
- 2.17 We therefore confirm that supplier's market shares will be adjusted through the quarterly reconciliation process to account for exempt imported electricity in that quarter.

Other issues raised in response to the consultation

- 2.18 Some respondents to the consultation also raised concerns or made suggestions on issues about which no direct questions were asked. These concerns and our response to them are summarised below.

Capping the total amount of eligible renewable imports

- 2.19 The consultation set out our proposal to cap the total amount of imported electricity that could claim an exemption. We proposed setting an annual cap for the 2015-16 financial year by reference to the number of 'Guarantee of Origin' (GoO) certificates recognised by Ofgem relating to generation in the financial year 2013-14 increased by 10%, and

that the annual cap would increase by 10% on the 1st April 2016 and each year thereafter. We further proposed that the total amount of imported renewable electricity that would be able to claim an exemption in any one quarter would be a maximum of 25 per cent of the annual cap for that year.

- 2.20 One respondent was concerned that the cap would prevent suppliers entering into long-term contracts with EU generators as they would not have certainty over whether they would always be able to realise the value of the exemption. One respondent considered that the cap should be linked to GB interconnector capacity rather than to the level of 2013-14 renewable imports. Another respondent felt that having a quarterly cap set at 25% of the annual cap would mean that the annual cap could never be reached. Finally, one respondent asked for greater clarity on how the process would operate, and how suppliers would be informed when the cap was breached.
- 2.21 We have considered these points, but remain of the view that the approach proposed to capping the maximum amount of imported renewable electricity that can claim an exemption is appropriate. The cap is designed to limit any potential for competitive distortion being caused by the exemption and we do not consider that it should be removed or amended to a different measure. We do not agree that the quarterly cap would prevent the annual cap from being reached: there is nothing to stop suppliers from claiming the maximum amount in each quarter. Finally, we recognise that suppliers cannot be certain when submitting a claim whether the cap for that quarter will be breached, but since evidence will only be available in arrears we do not believe there is a way of mitigating this issue. We have, however, placed a requirement on the CFD Counterparty to notify suppliers of the total amount of renewable imported electricity for which an exemption has been claimed as soon as possible after the 6 month window for submitting evidence has closed.
- 2.22 We can therefore **confirm that we will implement our original proposals for capping the amount of imported renewable electricity** for which an exemption from CFD costs can be claimed. **For the financial year beginning on 1 April 2015, the annual cap will be 7,379,321 MWh.** This is calculated as a 10% increase on the number of GoO certificates relating to electricity supplied to GB consumers that was generated from renewable sources in other EU Member States, as recognised by Ofgem for the financial year 2013/14¹⁰. The annual cap will increase by 10% on the 1st April 2016 and each year thereafter. In each quarterly obligation period the maximum amount of exempt imported electricity will be 25% of the annual cap.

Claiming exemptions for other schemes

- 2.23 Three respondents asked whether suppliers would be able to submit the same evidence to claim an exemption from the costs of the small-scale feed-in tariff (FIT). Two argued this should not be possible as it would represent 'double-counting', whereas one was in favour.
- 2.24 We can confirm that there will be **no barrier to suppliers using the same evidence to claim an exemption from FIT costs.** This is necessary in order to properly comply with the requirement from the European Commission.

¹⁰ See <https://www.ofgem.gov.uk/publications-and-updates/recognised-guarantees-origin-2014>

'Grandfathering' the exemption

- 2.25 One respondent argued that once electricity from one overseas generating station had been accepted as being eligible for exemption in one quarter, its eligibility should be 'grandfathered' so that electricity generated by that station should always be eligible for exemption, even if the general exemption for imported renewable electricity is removed (for example, once CFDs are available for non-UK generators).
- 2.26 We can confirm that we will **not be grandfathering** the exemption. This exemption is intended as a transitional measure until CFDs are available to non-UK generators, at which point it is our intention to remove the exemption entirely.

Next Steps

- 2.27 The Green Import Exemption will apply from 1st April 2015. The CFD Counterparty intends to engage with stakeholders shortly with a view to publishing guidance outlining the evidence that suppliers will need to provide in order to claim the exemption before 1st April 2015.

Chapter 3: Minor and technical amendments to the Supplier Obligation Regulations

- 3.1 The Regulations published alongside this Government Response make a number of minor and technical amendments to the **Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 (the “ESO Regulations”)**.

<i>Question MT1</i>	<i>Do you agree with the proposal to increase to 30 days the notice period for mutualising defaults on payments other than interim rate payments?</i>
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Consultation Position

- 3.2 Our consultation outlined a proposal to give suppliers an increased notice period for the mutualisation of non-interim rate payment amounts. As previously drafted, mutualisation payments for non-interim rate payments could be required five working days after a mutualisation notice was issued.
- 3.3 Since reserve and reconciliation payments have the potential to be much larger than interim rate payments, our view is that suppliers should be given more time to make these mutualisation payments: we proposed a period of 30 calendar days which aligns with the notice the CFD Counterparty provides suppliers for additional reserve amounts.

Consultation Responses

- 3.4 We received seven responses to this question. All respondents agreed with the position outlined.

Decisions taken since consultation

- 3.5 We will implement this amendment as proposed.

<i>Question MT2</i>	<i>Do you agree with the proposal to clarify the definition of metered data to the most recent 21 days for the purpose of sizing suppliers' collateral requirements?</i>
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Consultation Position

- 3.6 Our consultation outlined a proposal to amend the current regulations such that suppliers' collateral is sized according to the most recent 21 calendar days for which metered supply data is available on the working day before the day of supply, in order to match our original policy intent.
- 3.7 The regulations currently specify that collateral is determined by the period beginning 26 days and ending five days before the relevant day (i.e. a period of 21 calendar days). However, because the metered supply data from the initial volume allocation run is not available until five *working* days after the relevant day of supply, the regulations as currently in force mean that a supplier's collateral will be sized at less than 21 calendar days.

Consultation Responses

- 3.8 We received seven responses to this question. All respondents agreed with the position outlined.

Decisions taken since consultation

- 3.9 We will implement this amendment as proposed.

<i>Question MT3</i>	<i>Do you agree with the proposal not to levy interest on default on collateral amounts?</i>
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Consultation Position

- 3.10 Currently, the ESO regulations state that default interest will be payable on any amounts that a supplier fails to pay under the regulations, including shortfalls in collateral posted with the CFD Counterparty.
- 3.11 Our policy intent is that default interest should be payable on late interim rate, reserve, and mutualisation payments to provide suppliers with an incentive to make payments when they are due. The policy rationale for this is that the failure by one supplier to make a payment under the regulations could lead to the CFD Counterparty having to mutualise amounts across other suppliers, at a cost to those suppliers. Default interest paid by a defaulting supplier would be shared amongst suppliers that contributed to mutualisation, and therefore help compensate them for any costs they faced in mutualising the late payments.
- 3.12 In contrast, we consider that interest should not be levied on collateral defaults, as the failure by a supplier to post sufficient collateral will not immediately trigger mutualisation, and will not lead to any additional costs to other suppliers, generators, or the CFD Counterparty (unless that supplier also defaults on its other obligations under the regulations). We therefore proposed to amend the ESO regulations to remove the requirement on suppliers to pay interest on collateral default amounts.

Consultation Responses

- 3.13 We received seven responses to this question. Six respondents agreed with the position outlined, with one disagreeing.
- 3.14 The respondent that disagreed felt that it was important to retain this interest requirement in order to incentivise suppliers to post collateral as required.

Decisions taken since consultation

- 3.15 We intend to implement this amendment as proposed.
- 3.16 We agree that suppliers should be incentivised to post the required collateral, but feel that they will be suitably incentivised without an interest payment: if failure to post collateral resulted in a supplier being issued a notice for collateral default, then this default may be investigated by Ofgem as if it was a relevant requirement of a supplier's licence, subject to its [Enforcement Guidelines](#). The change also aligns with the approach taken under the BSC.

Question MT4	<i>Do you agree with the proposal to enable CFD-related negligence claims against the CFD Counterparty to be recovered through the supplier obligation levy?</i>
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Consultation Position

- 3.17 Under the ESO regulations as currently drafted, the CFD Counterparty can collect payments from electricity suppliers under the supplier obligation levy in order to make any payment "to a CFD party for the purpose of compensating that person for any costs incurred by that person in respect of a breach of a CFD or a connected agreement".
- 3.18 Our consultation proposed amending the definition of a "CFD counterparty payment" to cover "any payment which the CFD counterparty must make [...] to a CFD party for the purpose of compensating that person in respect of any breach of any duty or obligation owed to that person by the CFD counterparty which is connected to a CFD or a connected agreement".
- 3.19 We proposed this because in some circumstances CFD-holding generators may choose to take a negligence claim against the CFD Counterparty, in addition to (or instead of) a breach of contract claim, but reflecting the same loss. Payment of damages under a negligence claim would not fall within the current definition of a "CFD Counterparty payment" as it would not count as a breach of a CFD. The CFD Counterparty would therefore be unable to recover the costs through CFD supplier obligation.

Consultation Responses

- 3.20 We received six responses to this question. Two respondents agreed with the proposal, three disagreed, and one respondent was unsure.
- 3.21 Where respondents disagreed, the concern was based on the view that suppliers should not ultimately bear the costs resulting from the negligence of a body that they have no control over or responsibility for. One respondent suggested that Government should meet the costs in the event of a negligence claim.

Government Response

- 3.22 Though we appreciate supplier's concerns over having to meet the costs of negligence claims, we do not consider that this change increases the costs that would be met by suppliers. This change is designed to protect against the risk that a claim that should properly amount to a contract claim under a CFD is treated as a tort claim.
- 3.23 The current drafting of the regulations means that there is uncertainty over whether the costs of a successful claim are attributed to the operational cost levy or the supplier obligation, since it would depend on the type of claim a generator takes to recover these losses, or which claim a court awards under.
- 3.24 We intend to implement the amendment as proposed, since it removes uncertainty for all parties over which levy such costs would be met through. It only applies to costs related to CFDs (as opposed to other claims against the company, for instance by third party suppliers). The operational costs of the CFD Counterparty, such as the costs of its legal team, will continue to be met through the operational cost levy.

Next Steps

- 3.25 We will be considering further minor changes to the Supplier Obligation over the coming months, and will review its wider impact as part of the evaluation of the EMR programme.

Annex A: List of consultation respondents

EMR: Changes to the CFD supplier obligation consultation

Celsa Manufacturing (UK) Limited
Centrica
Chemical Industries Association
Co-Operative Energy
E.ON
Ecotricity
EDF Energy
Gazprom
GDF Suez
Haven Power
Mineral Products Association
Opus Energy
RWE
SABIC UK Petrochemicals Ltd
Scottish Power
Smartest Energy
SSE
TGP
UK Steel

Electricity Intensive Industries exemption from CFD costs: Amendments to the Balancing and Settlement Code consultation

British Glass
Chemical Industries Association
E.ON
Forth Ports
Gazprom
GDF Suez
Haven Power
IMServ
Scottish Power
Smartest Energy
SSE

Annex B: Glossary

A.BMU	Additional Balancing Mechanism Unit
BIS	Department for Business Innovation and Skills
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
CFD	Contract for Difference
CFDSSP	CFD Settlement Services Provider
CMRS	Central Meter Registration Service
CMSSP	Capacity Market Settlement Services Provider
DECC	Department of Energy and Climate Change
EII	Electricity Intensive Industry
EMR	Electricity Market Reform
EMRS	EMR Settlement Ltd
FIT	Feed-in Tariff
GoO	Guarantee of Origin
GSP	Grid Supply Point
HHDA	Half Hourly Data Aggregator
MSID	Metering System Identifier
RO	Renewables Obligation
SMRS	Supplier Meter Registration Service
SO	Supplier Obligation

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