



Department
of Energy &
Climate Change

EMR: Changes to the CFD supplier obligation

Consultation on the implementation of exemptions from CFD costs for electricity intensive industries and imported renewable electricity; and minor and technical amendments to the CFD supplier obligation regulations

URN: 14D/358
September 2014



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The consultation can be found on the DECC and BIS websites:

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

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General information

Purpose of this consultation:

The Department of Energy and Climate Change (and the Department for Business, Innovation and Skills in respect of chapter 1) are seeking views on a number of changes to the CFD supplier obligation. These are:

- the introduction of an exemption from the cost of CFD payments for the most electricity intensive businesses;
- the introduction of an exemption from the cost of CFD payments for eligible imported renewable electricity; and
- a number of minor and technical amendments to the supplier obligation regulations to ensure they better reflect the policy intent.

The changes will be introduced via new regulations (*The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations*), which also amend *The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014*. This consultation is published alongside separate EMR consultations on changes to the Capacity Market and the introduction of non-delivery disincentives for the CFD. A separate consultation on eligibility for the exemption from CFD costs for electricity intensive businesses is currently open for comments until 23 October.

After this consultation has closed we will consider responses. Final decisions will be set out in the Government responses to these consultations, which will be published to coincide with the laying of any secondary legislation. We intend to lay the full package of implementing secondary legislation before Parliament in early 2015. Subject to Parliamentary approval, the secondary legislation will come into force by April 2015, before the first supplier obligation payments are due. The earliest that electricity intensive businesses will be able to claim an exemption from CFD costs will be October 2015, subject to State aid approval.

This consultation is particularly relevant to: licensed electricity suppliers in Great Britain and Northern Ireland; electricity consumers and their representatives; electricity intensive businesses; devolved administrations; the Gas and Electricity Markets Authority; the operator of the National Electricity Transmission System for Great Britain; and other stakeholders with an interest in the energy sector. DECC invites interested parties to submit comments and evidence.

Issued: 25 September 2014

Respond by: 5 November 2014

Enquiries to:

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Email: secondarylegislationemr@decc.gsi.gov.uk

Consultation reference: URN 14D/358 – EMR: Changes to the CFD supplier obligation

Territorial extent:

Whilst this consultation applies to the UK, it should be noted that that the supplier obligation will not be extended to electricity suppliers in Northern Ireland before 2017 at the earliest.

How to respond:

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Electronic responses should be sent to the email address above.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at <https://www.gov.uk/government/consultations/emr-changes-to-the-cfd-supplier-obligation>.

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

Confidentiality and data protection:

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

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

We will summarise all responses and include this in the Government Response. This will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

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

DECC Consultation Co-ordinator

3 Whitehall Place

London SW1A 2AW

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

Executive Summary

1. This consultation sets out proposals for a number of changes to the CFD supplier obligation and operational costs levies.
2. The CFD supplier obligation levy is a compulsory levy on all licensed electricity suppliers in Great Britain which will enable the Low Carbon Contracts Company (the CFD Counterparty) to meet the cost of Contracts for Difference (CFDs). It is implemented through *The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014*, which came into force on 1 August 2014. Also set out in these regulations is a separate levy on licensed electricity suppliers to enable the CFD Counterparty to meet its operational costs (the operational costs levy). Electricity suppliers will be liable to make payments under both levies from 1 April 2015.
3. Views are sought on three separate sets of changes to the CFD supplier obligation and operational cost levies, as described below.

Exemption for electricity intensive industries

4. In his Autumn Statement 2011 the Chancellor announced that the Government intends to reduce the impact of Government policy on the costs of electricity for the most electricity intensive industries (EIs). This includes an exemption from the cost of CFDs (the supplier obligation and operational cost levies), confirmed with the commencement of the Energy Act in December 2013. Implementation of this exemption is subject to State Aid approval.
5. The Government published a consultation on eligibility for the exemption¹ from CFD costs on 31 July 2014, which is open for comment until 23 October 2014. The current consultation document sets out details of how we propose that the exemption will be administered and implemented, together with accompanying draft regulations and an impact assessment.
6. This consultation does not pre-empt the outcomes of the eligibility consultation, and responses to both will feed into the final formulation of how the exemption will work. For reasons relating to timing and implementation of the exemption, we need to progress this consultation before the consultation on eligibility has come to a close.
7. This consultation and draft regulations sets out specific proposals for:
 - a. The process for applying for and issuing EI certificates;
 - b. How exempt electricity will be identified;
 - c. How the exemption will be applied to an electricity supplier's market share;

¹ See <https://www.gov.uk/government/consultations/electricity-intensive-industries-relief-from-the-indirect-costs-of-renewables>.

- d. Validity and revocation of EII certificates;
8. Detailed information on these proposals is set out in Chapter 1, and the draft regulations that will implement the changes are attached at Annex A. An impact assessment for the policy is attached at Annex B.

Exemption for imported renewable electricity

9. The European Commission granted State Aid approval for the CFD for renewables on 23 July 2014. As a condition of approval, the Government agreed to exempt eligible imported renewable electricity from contributing to the costs of CFDs.
10. This exemption will only apply where the electricity has been generated from stations that became operational on or after 1 April 2015, and there will be a cap on the total amount of imported electricity that will be eligible for the exemption. The exemption will be implemented by adjusting electricity suppliers' market shares in the quarterly reconciliation process for any eligible imported renewable electricity supplied during that quarter. The exemption will not apply to the operational cost levy.
11. This consultation seeks views on the details of how the exemption is implemented. Specifically, it sets out proposals for:
- a. the process for applying for an exemption for imported electricity;
 - b. the identification of imported renewable electricity;
 - c. capping the total volume of imported renewable electricity that may be eligible for exemption;
 - d. adjustments to the calculation of suppliers' market share for the purposes of determining their underlying supplier obligation liabilities.
12. Detailed information on these proposals is set out in Chapter 2, and the draft regulations that will implement the changes are attached at Annex A.

Minor and technical changes

13. A number of minor and technical changes to the supplier obligation regulations are proposed to ensure that they better reflect the policy intent. This consultation seeks views on these changes.
14. The specific changes proposed are:
- a. increasing to 30 days the notice period that the CFD Counterparty must give to electricity suppliers before mutualisation of defaults on payments other than interim levy rate payments;
 - b. clarifying that suppliers' collateral requirements are determined by the most recent 21 calendar days for which metered supply data is available;
 - c. removing the requirement on suppliers to pay interest on collateral default;
 - d. enabling CFD-related claims against the CFD Counterparty to be recovered through the supplier obligation levy (note that this would simply clarify which levy

such costs would fall to, and would not widen the costs that could fall to suppliers).

15. Detailed information on these proposals is set out in Chapter 3, and the draft regulations that will implement the changes are attached at Annex A.

Catalogue of consultation questions

Chapter 1: Exemption from the supplier obligation for electricity supplied to eligible electricity intensive businesses

Consultation Questions	
EII1	Are you content with the proposed process by which EII certificates are issued and with what they contain?
EII2	Do you agree with the proposed mechanism for identifying exempt electricity?
EII3	Do you agree with the proposed process for revoking certificates?
EII4	Do you agree that the change of supplier process is not impaired by the need for suppliers of EIIs to register A.BMUs to receive the exemption (despite the A.BMU registration process taking up to 3 months)?
EII5	Do you agree that suppliers will be able to adjust metering arrangements accordingly within six working days of a certificate being revoked?

Chapter 2: Exemption from the supplier obligation for eligible imported renewable electricity

Consultation Questions	
RIE1	Do you agree with the process for applying for an exemption for imported renewable electricity?
RIE2	Do you agree with the process for adjusting supplier's market shares to take into account eligible imported renewable electricity?

Chapter 3: Minor and technical amendments to the supplier obligation

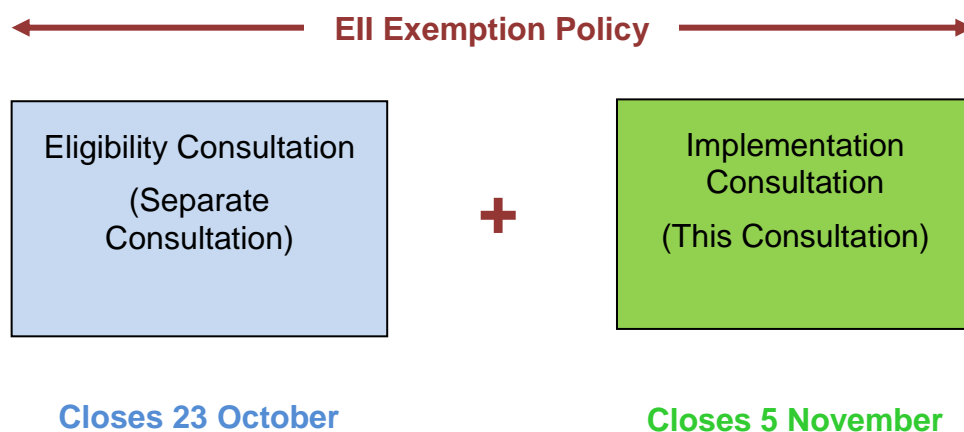
Consultation Question	
MT1	Do you agree with the proposal to increase to 30 days the notice period for mutualising defaults on payments other than interim levy rate payments?
MT2	Do you agree with the proposal to clarify the definition of metered data to the most recent 21 days for which metered data is available for the purpose of sizing suppliers' collateral requirements?
MT3	Do you agree with the proposal not to levy interest on default on collateral amounts?
MT4	Do you agree with the proposal to enable CFD-related negligence claims against the CFD Counterparty to be recovered through the supplier obligation levy?

Chapter 1: Exemption from CFD costs for electricity supplied to eligible electricity intensive businesses

This chapter outlines the proposed exemption from the CFD supplier obligation for electricity supplied to eligible electricity intensive businesses. This chapter is a joint BIS and DECC consultation.

Overview of the consultations

16. The proposed EII exemption policy is outlined in two separate consultation documents: The eligibility consultation which outlines the proposed eligibility criteria and which is open for comment until 23 October; and this consultation on implementation which is open for public comment until 5 November.



17. The eligibility consultation outlines in detail the proposed eligibility for the EII exemption and is available here: <https://www.gov.uk/government/consultations/electricity-intensive-industries-relief-from-the-indirect-costs-of-renewables>.
18. The implementation consultation outlines how we consider the EII exemption should be implemented. This consultation does not discuss the eligibility criteria in detail, as this is outlined in the eligibility consultation. We have, however, where appropriate, provided high-level descriptions of the eligibility criteria where we consider it helps to explain how we propose to implement the exemption.
19. The EII exemption policy should be considered in its entirety taking into account the information outlined in the two separate consultation documents.

Overview of the exemption

20. Electricity intensive businesses that wish to apply for the exemption will apply to the Department for Business, Innovation and Skills (BIS) who will assess their application based on the final eligibility criteria. If a business is assessed as eligible, BIS will issue that business with an exemption certificate. This certificate will specify the percentage of electricity supplied to the business which will be exempt from all supplier obligation (i.e. interim levy rate, reserve, reconciliation and mutualisation payments) and operational cost levy payments, and the time period the exemption will cover. BIS will also provide information on eligibility to the CFD Counterparty² (the Low Carbon Contracts Company) to ensure the exemption is correctly administered.
21. To ensure that eligible businesses receive the exemption, they will need to provide a copy of their eligibility certificate to their electricity supplier. The supplier will need to ensure that they have the appropriate metering arrangements in place so that exempt electricity supplied to the eligible businesses can be identified.
22. The CFD Counterparty will exclude any exempt electricity when calculating suppliers' market shares for the purpose of determining their liabilities under the supplier obligation and operation cost levies. The effect of this calculation is that the supplier will only be liable for amounts on that proportion of electricity which is not considered exempt supply.
23. We expect that competitive market conditions will ensure that suppliers pass on the value of the exemption to eligible businesses through their electricity bills.
24. An eligible business's exemption level will be reviewed annually by BIS to ensure that the exemption percentage allocated to that business reflects the business's circumstances which apply at the time of reassessment.
25. The Secretary of State will be able to revoke exemption certificates if they consider that the information which has been provided to support a business's application is false or misleading, or where a business ceases to carry out the eligible activity.
26. Exemptions from the supplier obligation levy will be available no earlier than 1 October 2015. We are currently considering whether the exemption from the operational cost levy should also take effect from 1 October 2015, or if it should only apply to eligible exempt electricity supplied from 1 April 2016 to reduce the risk to the CFD Counterparty's budget arising from the difficulty in predicting the volume of exempt electricity part-way through the year. This timetable is subject to State Aid approval.

² Where we refer to the CFD Counterparty, this includes other organisations such as the Settlement Services Provider where they are carrying out tasks on behalf of the CFD Counterparty.

Policy details

Eligibility

27. The European Commission's Environmental and Energy State Aid Guidelines (EEAG) 2014-2020³ set out the rules under which Member States may grant aid for environmental protection or energy objectives. The guidelines allow aid targeted at dealing with the competitive disadvantage faced by certain electricity intensive industries due to the financing costs of renewable energy support. The guidelines limit eligibility for such aid to sectors that are exposed to a risk to their competitive position as a function of the amount of electricity they use compared to their output (electricity-intensity) and their exposure to international trade (trade intensity).
28. The separate eligibility consultation outlines our proposal for a two-stage test for assessing eligibility:
 - a. A sector-level test based on a combination of sector-level trade intensity and electricity-intensity, closely aligned with the EEAG⁴.
 - b. A business-level test based on a company's electricity-intensity, also based on the definition of electricity-intensity set out in the EEAG.
29. Eligibility for an exemption will be determined once for an established business (i.e. one that has electricity consumption and Gross Value Added (GVA)⁵ data for the period 2010-2012) and data will be reviewed annually to ensure the level of exemption remains correct.
30. Businesses that do not have data that covers the whole reference period 2010-2012 will be treated as "new entrants". These businesses will be assessed for eligibility using the reference period available with a minimum of two quarters of data. Once a business has four years of historic production on record, eligibility will be recalculated using the average of the last three years on record.
31. In line with the EEAG, we intend to exempt 85 per cent of the eligible electricity consumed by the eligible business in carrying out the eligible activity (that is, an activity in a sector that passes the sector-level test set out above). Where the business carries out several activities at the same site, the exemption will only apply to electricity used in the course of an eligible activity.
32. A more detailed explanation of the proposed eligibility criteria is outlined in the consultation on eligibility: <https://www.gov.uk/government/consultations/electricity-intensive-industries-relief-from-the-indirect-costs-of-renewables>. These proposals are currently the subject of a public consultation. Dependent on the results of that consultation, these criteria may be subject to change.

³ [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0628\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0628(01)&from=EN)

⁴ The EEAG advise the following formula is used to calculate electro-intensity: Electro-intensity = Electricity price (£/MWh) x Electricity consumption (MWh) / GVA (£).

⁵ GVA measures the contribution to the economy of each individual producer, industry or sector in the UK.

Applying for an exemption

33. Eligibility for the EII exemption will be assessed by BIS according to the final eligibility criteria. Businesses that wish to apply for the EII exemption will make an application, in writing, to BIS providing evidence to support their claim. To allow BIS to assess the applicant business's eligibility, the business will be required to provide information on, amongst other matters, the following:
 - a. their earnings, staff costs, and electricity consumption over the relevant period for assessing eligibility ;
 - b. the metering system identifier(s) for meters used in the course of the eligible activities⁶;
 - c. the amount and proportion of electricity used in the course of carrying out the eligible activities in the preceding financial year (or alternatively, evidence of the activities carried out using electricity measured by that meter sufficient to enable the Secretary of State to estimate the proportion); and
 - d. the name of their electricity supplier.
34. If a business is assessed as being eligible, BIS will issue them with an exemption certificate which will set out the percentage of electricity consumed by the specified meter(s) to which the exemption will apply. This percentage will be 0.85 times the proportion of the electricity consumed by that meter in the course of the eligible activity, subject to the outcome of the eligibility consultation.
35. The certificate will state the date on which the exemption will take effect which will be no earlier than 1 October 2015. The exemption cannot be received until the appropriate metering arrangements to identify exempt electricity to be put in place. This usually takes three months under the BSC processes. Certificates will be valid until 31 December each year.
36. BIS will issue guidance for applicant businesses prior to the scheduled commencement of the exemption.

Identifying the exempt electricity

37. This is a technical section and is aimed principally at suppliers.
38. To allow the exemption to be accurately and effectively administered, exempt electricity used by eligible businesses needs to be identified. This will ensure that the supplier obligation and operational cost levies are only applied to non-exempt electricity supply.
39. When an eligible business is assessed as eligible for the exemption, they will be issued with an exemption certificate by BIS. To receive the exemption, the eligible business will need to notify their supplier of their eligibility by presenting them with a

⁶ For Supplier Meter Registration Service (SMRS) registered meters this will be the relevant Metering System Identifier (MSID), and for Central Meter Registration Service (CMRS) registered meters the relevant Balancing Mechanism Unit Identifier (BMU ID).

valid EII exemption certificate. The supplier will need to put the required metering arrangements (see paragraphs 47-51) in place to identify exempt electricity.

40. At the same time that BIS provides an exemption certificate to the eligible business, they will also provide a copy of the certificate to the Balancing and Settlement Code Company (BSCCo), the CFD Counterparty and Ofgem. This will assist these organisations in undertaking compliance activities (see paragraphs 68-71). A copy of the certificate will also be provided the eligible business' supplier.
41. We are mindful of the impact that the exemption will have on suppliers and this is why, where possible, we propose using existing processes and procedures that suppliers will already be used to through the BSC. In order to identify exempt electricity supplied to eligible businesses, we propose to use additional Balancing Mechanism Units (A.BMUs). Balancing Mechanism Units (BMUs) are an existing, and widely understood industry mechanisms which are used under the BSC to identify metered volumes and allocate them to the correct supply.
42. There are 14 grid supply point (GSP) Groups in Great Britain, with each GSP Group referring to a particular distribution system and representing a geographical area in Great Britain. By default, Elexon (as the BSCCo) allocates each licensed supplier 14 base BMUs – one for each GSP Group – even if that supplier does not supply customers in that GSP Group. We propose that suppliers of eligible exempt electricity intensive businesses should register A.BMUs and allocate the exempt meters to them. This allows suppliers to separate out supply to exempt electricity intensive businesses from its base BMUs into A.BMUs. In turn the A.BMUs will identify the eligible businesses' metered volumes, which will allow the appropriate exemption percentages to be applied to the calculation of the supplier obligation and operational cost levies with respect to electricity supplied to these businesses.
43. Using A.BMUs for this purpose presents a low-risk delivery option as it relies on existing processes and procedures which are known and trusted by the electricity industry.
44. To reduce the setup and ongoing operational costs associated with the exemption, we propose that only suppliers of eligible businesses will need to register A.BMUs. This will ensure that suppliers who do not supply eligible businesses are not impacted by this policy.
45. To further limit the number of A.BMUs which suppliers would need to register (and so reduce administration for the supplier), we propose that the supplier will be able to allocate more than one exempt business site to the same A.BMU, provided that the eligible sites are:
 - a. located in the same GSP Group; and
 - b. eligible for the identical exemption percentage.
46. If the conditions outlined above are not satisfied, then the sites cannot be allocated to the same A.BMU and the supplier would need to register separate A.BMUs for them.

Process for registering A.BMUs and measuring exempt electricity:

47. On receiving notification of eligibility from an eligible business, the electricity supplier should determine whether there is an existing A.BMU which can accommodate the eligible business. As outlined above, a supplier can allocate eligible business sites to the same A.BMU if they are located in the same GSP and have an identical exemption percentage.
48. If the supplier determines that they are unable to allocate the eligible business within an existing A.BMU, they will need to initiate the process for registering a new A.BMU. This will involve notifying the CFD Counterparty that they will be supplying an eligible business and require a new A.BMU, and informing them which MSIDs it is intended for. This will allow the CFD Counterparty to check that the MSID(s) proposed for the new A.BMU are included on the list provided by BIS of MSIDs eligible for the exemption. If the MSIDs are eligible for the exemption, the CFD Counterparty will agree that the A.BMU can be set up and the supplier will need to register an A.BMU according to the guidance which will be published by the CFD Counterparty in due course.
49. Additional BMUs need to be registered in the BSCCo's Market Domain Data (MDD) database. Registration in MDD is subject to a timetable based on monthly updates. The current registration timeframe is between 40 and 75 working days.
50. The exemption will only commence when the A.BMU is correctly set-up and the MSIDs of eligible businesses have been allocated to it. As the exemption will be settled daily through the settlement process, there will be no opportunity for back-dating the exemption should a supplier later discover that the A.BMU was not correctly registered before commencing supply.
51. The CFD Counterparty will ensure that the appropriate exemption discount is applied to relevant A.BMUs that are allocated to that supplier. This means that during the settlement process, the CFD Counterparty will be able to determine which balancing mechanism units (or proportion of balancing mechanism units) should be added together to determine the supplier's chargeable supply. On a practical level, this means that the supplier will only be invoiced for supplier obligation and operational cost levy amounts based on their non-exempt supply.

Example:

Supplier X has the following supply profile in respect of a relevant day:

Exemption	MWh (prior to exemption)	MWh (following exemption)
<i>Non-exempt</i>	100,000 MWh	100,000 MWh
<i>50 per cent exemption</i>	10,000 MWh	5,000 MWh
<i>85 per cent exemption</i>	20,000 MWh	3,000 MWh
<i>Total supplied</i>	130,000 MWh	108,000 MWh

Supplier X's chargeable supply in respect of the relevant day is 108,000 MWh of electricity.

Allocation of MSIDs to A.BMUs

52. To ensure that exempt electricity is correctly identified, suppliers will need to ensure that the MSIDs for eligible businesses are allocated to the correct A.BMU. Depending on the installation, it is possible for a site to have more than one MSID.
53. Under the BSC suppliers are responsible for instructing its Half-Hourly Data Aggregators (HHDA) on which MSIDs should be allocated to a particular A.BMU/BMU. In the case of the EII exemption, suppliers will need to instruct their HHDA so that the exempt MSIDs are allocated to the correct A.BMU so that exempt supply to eligible businesses is correctly identified.
54. When a supplier instructs a HHDA to allocate a particular MSID to an A.BMU, the supplier will be required to notify the CFD Counterparty. When an HHDA carries out this allocation, they will also inform the CFD Counterparty that they have done so, listing the MSIDs they are allocating to the particular A.BMU. This will also occur if an eligible business changes exemption percentage at a later date and is reallocated from one A.BMU to another or if a business loses its eligibility and is reallocated from an A.BMU to a base BMU. This will ensure that the CFD Counterparty is able to verify that the MSID is allocated to the correct A.BMU.
55. When the CFD Counterparty receives the A.BMU metered data, the CFD Counterparty will determine the amount of chargeable electricity which is attributable to a particular supplier taking into account the exemption allocated to a particular A.BMU. The effect of this is that the excluded electricity will not be included in the chargeable electricity attributable to an electricity supplier in respect of a relevant period.

Transmission connected businesses:

56. For eligible businesses which are connected to the transmission network, suppliers will not need to register A.BMUs. This is because a supplier of a transmission connected eligible business will already have a site-specific BMU registered to identify all electricity supplied to that particular site.
57. If a transmission connected business is assessed as eligible for the exemption, the eligible business will notify their supplier, and the supplier will make an application to the CFD Counterparty for an exemption for that particular BMU.
58. The CFD Counterparty will verify the application, and if valid will apply the appropriate exemption percentage to that particular BMU from the date specified on the exemption certificate.

Providing the exemption

59. The CFD Counterparty will issue invoices daily to all electricity suppliers, as is the case under *The Contracts for Difference (Electricity Supplier Obligations) Regulations*

2014⁷. These invoices will be adjusted to exclude any exempt electricity once the appropriate metering arrangements have been put in place, as set out above.

60. We have not regulated to require that the supplier pass through the exemption to the eligible businesses. We expect that competitive market forces will ensure that electricity suppliers pass through the exemption to eligible businesses.

Revocation of certificates

61. If an eligible business ceases to carry out the specified activity they must notify BIS of this fact and must inform BIS of the name of their electricity supplier. An exemption certificate may be revoked if BIS considers that:
- a. the evidence contained in an application was false or misleading in a material respect (see paragraphs 68-71); or
 - b. the eligible business ceases to carry out the specified activity.
62. If an exemption certificate is revoked, this will take effect from the sixth working day after the certificate is revoked.
63. Where an EII certificate is revoked, in addition to notifying the holder of the certificate, BIS will notify the business's electricity supplier; the BSCCo; the CFD Counterparty; and Ofgem. This notification will include the date on which the revocation takes effect.
64. When a business's exemption certificate is revoked, the business must inform its supplier of the fact. Its supplier will be responsible for ensuring that the necessary changes are made to metering arrangements for that business, including (instructing its HHDA to reallocate the relevant MSIDs to the base BMU (where certificates have been revoked), and informing the CFD Counterparty of any changes.

Change of supplier

65. We are mindful that the change of supplier process is an important mechanism to encourage market competition. We consider that our proposal will not adversely affect the change of supplier process.
66. The registration of A.BMUs takes around three months to complete. We understand, however, that because of the nature of EII businesses, supply contracts for EII's are bespoke offers which are negotiated over an extended period of time. As these contracts have a definitive commencement and conclusion, it is clear when a possible change of supplier could take place. This means the suppliers could enter negotiations with the three month A.BMU registration timeframe in mind. We would welcome views from stakeholders on the effect that the exemption would have on the change of supplier process.
67. If an eligible business changes supplier, the exemption certificate which was provided to the supplier as evidence of eligibility would be forwarded to the new supplier as evidence of the businesses' eligibility. The new supplier would need to ensure that

⁷ <http://www.legislation.gov.uk/ukxi/2014/2014/contents/made>

they have the correct metering arrangements in place to identify exempt electricity from the date they commence supplying the eligible business if they wish to receive the exemption from this date. Suppliers are not precluded from supplying an eligible business before the meter is registered to the appropriate A.BMU; however, they will not receive an exemption in respect of that electricity until the required metering arrangements are in place.

Assurance framework

68. We are mindful of the importance of ensuring that the exemption has a fraud and assurance framework so that costs of the exemption are not unnecessarily shifted to domestic and non-exempt businesses.
69. We propose that BIS may revoke an eligible business's exemption certificate if they are of the opinion that the certificate has been granted based on false or misleading information.
70. If BIS determines that the exemption certificate should be revoked, they will notify the CFD Counterparty so that the CFD Counterparty is aware that the MSIDs for the business should be reallocated to the supplier's base BMU and the supplier. The supplier is responsible for instructing the HHDA to reallocate the MSIDs. The effect of reallocating to the supplier's base balancing mechanism unit is that the supplier will no longer receive the EII exemption. The CFD Counterparty will be able to monitor whether the MSIDs have been reallocated.
71. We intend to put in place consequential amendments to the Balancing and Settlement Code to support the operation of this exemption. These modifications will include a requirement on suppliers to instruct HHDA's to reallocate MSIDs when a certificate is revoked. The modifications will require the supplier to ensure that this has occurred within the timescales set out in the regulations. In the situation that the CFD Counterparty recognises that the MSIDs have not been reallocated within the required timescale, they will be able to inform Elexon (as the BSCCo) who will be able to take action for breach of BSC in line with their existing BSC role. In most cases this action will be through the BSC's Performance Assurance Framework but if necessary it could be dealt with by the BSC Panel or at their discretion by Ofgem, as compliance with the BSC is a requirement of a supplier's licence. This compliance regime is already familiar to suppliers.

Costs

72. Registration and ongoing costs for A.BMUs used for the purpose of this exemption will be met by the CFD Counterparty. This means that suppliers of eligible businesses will not be required to meet the cost associated in registering and maintaining A.BMUs which are registered for this exemption.
73. The CFD Counterparty will recover registration and ongoing costs through the operational cost levy which is collected from suppliers based on the non-exempt electricity they supply.

74. Elexon currently charges suppliers £100 per month per additional balancing mechanism unit. We propose to amend the Balancing and Settlement Code so that suppliers who register additional balancing mechanism units for the purpose of this exemption are not subject to this fee. Further information is outlined below.

Industry codes and licences

75. The Balancing and Settlement Code will require consequential amendments, dependent on the final policy design for the exemption. We propose to amend the Balancing and Settlement Code to:
- a. remove the current charge of £100 per month per A.BMU where the A.BMU is registered for the purpose of EII exemption;
 - b. set out the requirements on suppliers (described above) in the event that an exemption certificate is revoked or the exemption percentage is changed;
 - c. make other changes required to implement the exemption.
76. A future consultation on the Balancing and Settlement Code amendments will outline the proposed amendments in further detail. We invite stakeholders to respond to that consultation separately.

Timing

77. In the eligibility consultation, we outlined that the exemption would commence no earlier than autumn 2015, subject to State Aid approval. At this time, it is difficult to determine how long the State Aid approval process will take which makes it difficult to give a precise commencement date. However, to give certainty to suppliers we propose that the regulations will state that exemption certificates cannot take effect before 1 October 2015.
78. This consultation on implementation of the exemption will run for a period of six weeks. This will allow time for responses to be analysed and the policy finalised before the regulations are laid in Parliament. We anticipate that the regulations will be laid in the Parliament in early 2015, with the intention that they come into force (subject to the will of Parliament) by 1 April 2015. Subject to State Aid clearance we will then liaise with stakeholders on the application and implementation process.

Consultation questions

79. The draft secondary legislation can be found in full at Annex A. Below is a list of questions related to the detail set out above and contained in the regulations.

Box 1 : Consultation questions on the EII exemption

Question EII1	<ul style="list-style-type: none"> Are you content with the proposed process by which EII certificates are issued and with what they contain?
Question EII2	<ul style="list-style-type: none"> Do you agree with the proposed mechanism for identifying exempt electricity?
Question EII3	<ul style="list-style-type: none"> Do you agree with the proposed process for revoking certificates?
Question EII4	<ul style="list-style-type: none"> Do you agree that the change of supplier process is not impaired by the need for suppliers of EIIs to register A.BMUs to receive the exemption (despite the A.BMU registration process taking up to 3 months)?
Question EII5	<ul style="list-style-type: none"> Do you agree that suppliers will be able to adjust metering arrangements accordingly within six working days of a certificate being revoked?

80. At Annex B is an updated impact assessment. We would welcome any comments you have on this document, specifically: views on unintended consequences or other implications of the proposals; and comments on the analysis of costs and benefits.

Chapter 2: Exemption from CFD costs for eligible imported renewable electricity

This chapter outlines the proposed exemption from the costs of CFDs for eligible imported renewable electricity. This chapter is a DECC led consultation.

Chapter overview

81. This chapter outlines proposed changes to the CFD supplier obligation in order to implement an exemption from the costs of CFDs for renewable electricity imported from other European Union (EU) Member States. It is intended that this exemption will take effect from 1 April 2015. The exemption would be implemented through new regulations, *The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations*, which also amend *The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014* (the 'ESO regulations', which came into force on 1 August 2014).

Background

82. The CFD for renewables received State Aid approval from the European Commission on 23 July 2014. As a condition of approval, we agreed with the European Commission that we would exempt eligible renewable electricity imported from other EU Member States and supplied to consumers in Great Britain from contributing to the cost of CFD payments.
83. The effect of our agreement with the European Commission is that eligible imported electricity would not be considered chargeable supply for the purpose of calculating each supplier's underlying liability for CFD payments. This exemption will not apply to the operational cost levy, nor to the market share used to calculate suppliers' interim levy rate and reserve payments.
84. We also agreed with the European Commission that the scope of the exemption will be restricted to electricity generated by plant that would have been eligible to apply for CFDs had they been located in Great Britain. In practice, this means that imported renewable electricity will only be exempt from CFD costs if it is generated by plant that becomes operational on or after 1 April 2015. Electricity generated from plant which were operational before 1 April 2015 (the earliest date that CFD generators are able to receive CFD top-up payments) would not be eligible for this exemption.
85. We further agreed with the European Commission that we will cap the total level of imported electricity which would be eligible for the exemption. For the 2015-16 year,

this cap will be equal to the amount of imported renewable electricity in the 2013-14 financial year plus 10 per cent, and the cap will increase by 10 per cent on 1 April each year. We propose to determine the level of imported renewable electricity in the 2013-14 financial year by reference to the number of Guarantee of Origin certificates recognised by Ofgem in respect of that year.

86. We intend to remove the exemption when non-UK generators are eligible to apply for a CFD. Our current expectation, however, is that this will not occur for several years⁸.
87. This purpose of this consultation is to seek the views of stakeholders on the details of how we propose to implement this policy.

Policy overview

88. We propose to implement the exemption for renewable electricity imported from other EU Member States with effect from 1 April 2015.
89. We intend to implement the exemption by adjusting the way in which electricity suppliers' liabilities for CFD payments are calculated to exclude any eligible renewable electricity generated in EU Member States other than the United Kingdom and supplied to customers in Great Britain.
90. To claim an exemption in respect of imported renewable electricity, electricity suppliers will need to submit the appropriate evidence to the CFD Counterparty, who will verify this information and determine the appropriate adjustment to the relevant market share calculations. The CFD Counterparty may ask Ofgem to provide advice or assistance in making this determination.
91. The CFD Counterparty will determine the amount of eligible exempt imported renewable electricity on a quarterly basis, and will adjust suppliers' market shares accordingly through the quarterly reconciliation process. Suppliers must submit evidence for imported electricity within six months of the end of the quarter in which that electricity was supplied. We intend that the exemption will only apply to the supplier obligation levy, not the operational cost levy.
92. The ESO regulations specify that suppliers' underlying liabilities are calculated on a daily basis for CFD generation payments (the 'CFD daily contribution'), and quarterly basis for other payments under CFDs (e.g. lump sum compensation payments – the 'CFD quarterly contribution'). To avoid administratively complexity, we propose that eligible exempt imported electricity supplied during a quarter will be divided equally between each day in the quarter for the purpose of calculating the CFD daily contribution.
93. We propose that the total amount of imported renewable electricity that may be exempted from CFD costs in any one quarter will be a maximum of 25 per cent of the annual cap for that year. If the electricity supplied in any one of the supplier obligation

⁸ See <https://www.gov.uk/government/publications/CFDs-for-non-uk-renewable-electricity-projects> for more details.

quarters exceeds 25 per cent of the annual cap, the exemption provided to each supplier would be prorated according to each supplier's share of total eligible imported renewable electricity for that quarter.

Implementation

94. This section sets out how we propose to implement the exemption from CFD costs for imported renewable electricity.

Determining exempt imported electricity

95. A supplier who supplies renewable electricity imported from another EU Member State to customers in Great Britain may apply to the CFD Counterparty for an exemption in respect of the eligible electricity supplied in that quarter.
96. Suppliers wishing to claim such an exemption will need to make an application to the CFD Counterparty within six months of the end of the quarterly obligation period in which the electricity was supplied, and provide evidence to support their claim in a form that is acceptable to the CFD Counterparty. This must include evidence of:
- i. the country of generation;
 - ii. the name of the generating station;
 - iii. the date the generation station became operational;
 - iv. the quarterly obligation period in which the electricity was supplied;
 - v. the energy source from which the electricity was produced; and
 - vi. the proportion of that electricity which was generated from renewable sources.
97. The CFD Counterparty may publish guidance from time to time on what comprises acceptable evidence for the purpose of claiming the exemption.
98. Using this evidence, the CFD Counterparty will determine the amount of electricity that is eligible for the exemption. It may ask Ofgem for advice or assistance in making this determination, including in verifying the evidence submitted.
99. Imported electricity will be determined to be exempt if it is produced from a renewable source, generated in an EU Member State other than the United Kingdom, and from a generating station which became operational on or after 1 April 2015. If, after making a determination, the CFD Counterparty subsequently determines that these criteria are not met, it will adjust suppliers' market shares accordingly in subsequent reconciliation calculations for the relevant quarter.

Calculation of market shares

100. Exempt imported electricity will be deducted from the amount of electricity a supplier was determined to have supplied for the relevant quarterly obligation period through the quarterly reconciliation process.
101. A supplier's underlying liability for CFD payments in a quarter, as set out in *The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014* (regulation 3(2)), has two components:

- a. 'CFD daily contributions', which consist of the supplier's share of each day's net CFD payments made by the CFD Counterparty within a quarterly obligation period where those payments relate to generation; and
 - b. a 'CFD quarterly contribution', which consists of the supplier's share of the net payments made by the CFD Counterparty to CFD generators during a quarter that do not relate to electricity generation (for example, compensation payments made following a qualifying change in law).
102. Eligible imported electricity will be excluded from the calculation of a supplier's market share for both of these payments. For CFD daily contributions, the total amount of eligible imported electricity supplied by a supplier during a quarter will be divided across all the days in the quarter, and this daily amount of eligible exempt electricity will be deducted from the supplier's market share for each CFD daily contribution (see example). For CFD quarterly contributions, the total amount of eligible exempt electricity supplied during the quarter will be deducted from the supplier's market share.

Example: If over a whole quarter a supplier imported 91MWh of eligible electricity, the volume of electricity supplied each day for the purpose of calculating their CFD daily contribution would be reduced by 1MWh (assuming a 91 day quarter). The volume of electricity supplied over the whole quarter for the purpose of calculating their CFD quarterly contribution would be reduced by 91MWh.

Consultation questions

Box 2 : Consultation questions on renewable imports exemption

<p>Question RIE1</p>	<ul style="list-style-type: none"> • Do you agree with the process for applying for an exemption for imported renewable electricity?
<p>Question RIE2</p>	<ul style="list-style-type: none"> • Do you agree with the process for adjusting supplier's market shares to take into account eligible imported renewable electricity?

Chapter 3: Minor and technical amendments to the supplier obligation regulations

This chapter outlines the proposed minor and technical amendments to *The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014*⁹ ('the ESO regulations') to better reflect the final policy intent. This chapter is a DECC led consultation.

Background

103. The final policy design for the supplier obligation payment model was published in the *Implementing Electricity Market Reform* policy handbook on 23 June 2014. The document is available at the following web address:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324176/Implementing_Electricity_Market_Reform.pdf.
104. The amendments proposed below are intended to come into effect by 1 April 2015, subject to Parliamentary approval. This will mean that the amendments will be in place for the start of the supplier obligation regime.

Specific proposals

Notice period for mutualisation

105. We propose to amend the ESO regulations to require the CFD Counterparty to give suppliers an increased notice period for the mutualisation of defaults on payments that are not interim levy rate payments.
106. The ESO regulations currently specify that in the event of non-payment by a supplier, the CFD Counterparty may issue a mutualisation notice to all other non-defaulting suppliers. The effect of this notice is that all non-defaulting suppliers will pay a proportion of the defaulting supplier's liabilities, according to their market share at the time of the payment default.
107. The regulations also specify that when the CFD Counterparty issues a mutualisation notice it must specify the mutualisation date, on which mutualisation payments must

⁹ <http://www.legislation.gov.uk/ukxi/2014/2014/contents/made>

be made by non-defaulting suppliers, and that this date should be no earlier than five working days after the date on which the mutualisation notice was issued.

108. As reserve and reconciliation payments have the potential to be much larger than interim levy rate payments, our policy intention is that suppliers should be given more time to make mutualisation payments when the amount which is being mutualised is not an interim levy rate payment. We consider that a period of 30 calendar days — which aligns with the notice the CFD Counterparty must provide suppliers for additional reserve amounts — is an appropriate notice period.
109. We do not anticipate that this change will have any material impact on the CFD Counterparty's ability to make payments to CFD generators, or that it will lead to an increase in the reserve amount collected from electricity suppliers. This is because even in a situation where CfD payments are significantly higher than anticipated, at the start of a quarter the CFD Counterparty will have received reserve payments from non-defaulting suppliers, so the chance of it having insufficient funds to pay generators within the 30 days that it would take to receive mutualisation payments is extremely low.
110. We propose to implement this by amending regulation 17 to state that where the amount being mutualised is not an interim levy rate payment under regulations 8, 9 or 13, the mutualisation date may be no earlier than 30 calendar days after the date on which the mutualisation notice is issued.
111. This amendment does not modify the mutualisation date for interim levy rate amounts, which will remain no earlier than five working days after the date on which the mutualisation notice was issued.

Collateral amount determined by the most recent metered data

112. We propose to amend the ESO regulations to reflect the policy intent that a supplier's minimum credit cover is sized, on a rolling basis, to 21 calendar days of supply.
113. The ESO regulations require suppliers to post collateral with the CFD Counterparty as security against non-payment of amounts which fall due under the regulations.
114. Our intent, as outlined in the *Implementing Electricity Market Reform* publication¹⁰, is that supplier's minimum credit cover will be sized on a rolling basis, according to the supplier's interim levy rate payments for the previous 21 calendar days for which the initial volume allocation run has been completed.
115. The regulations currently specify that a supplier's minimum collateral cover in respect of a relevant day is determined by reference to the period beginning 26 days, and ending 5 days before the relevant day (i.e. a period of 21 calendar days). However, as 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 less than 21 calendar days.

¹⁰ See <https://www.gov.uk/government/publications/implementing-electricity-market-reform-emr>

116. We propose to amend regulation 19 so that a supplier's collateral is sized according to the most recent 21 consecutive days for which metered supply data is available, reflecting our intent.

Not levying interest on collateral default amounts

117. 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.
118. Suppliers will be considered in default on their collateral requirement if they post less than the required amount of collateral for more than two consecutive working days. This situation will trigger the CFD Counterparty to issue a notice to the supplier stating that it is in collateral default, and the amount that it must pay the CFD Counterparty in cash, on which default interest will be levied.
119. Our policy intent is that default interest should be payable on late interim levy rate, reserve, and mutualisation payments to provide suppliers with an incentive to make payments when they fall 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, which will be 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.
120. 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).
121. We therefore propose to amend regulation 25 of the ESO regulations to remove paragraph (5) which requires suppliers to pay interest on collateral default amounts. The proposed amendment also clarifies the wording of paragraph (3) of regulation 25, to make it clearer what amount of collateral the supplier is required to pay to the CFD Counterparty in cash following any default on its collateral requirement. All other collateral default provisions remain unchanged.
122. The enforcement provisions are also unaffected by this amendment. This means that if a supplier was issued a notice for collateral default, the default could be enforced by Ofgem as if it was a relevant requirement of a supplier's licence.
123. We are currently considering whether this change will be implemented with effect from 1 April 2015 (as proposed for the other changes), or if implementation should be delayed to enable the CFD Counterparty to make the necessary adjustments to its systems.

Enabling CFD-related claims against the CFD Counterparty to be recovered through the supplier obligation levy

124. 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” (regulation 2(1)).
125. We propose amending the definition of a “CFD Counterparty payment” in regulation 2(1) of the ESO regulations 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”.
126. This is 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.
127. However, to the best of our knowledge, there are no situations where a generator could successfully sue the CFD Counterparty for negligence under a CFD in circumstances where there would not also be a breach of the contract terms by the CFD Counterparty. The current drafting of the ESO regulations therefore means that although it is the policy intention that costs related to the CFD are claimed through the supplier obligation, there is a risk that such costs are attributed to the operational cost levy depending on which type of claim a generator takes to recover these losses, or which claim a court awards under. This amendment removes uncertainty about which levy such costs would be met through.
128. This amendment is drafted so as not to widen the costs that could fall to the supplier obligation beyond the original policy intent. 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.

Consultation questions

Box 3: Consultation questions on minor and technical amendments

Question MT1	<ul style="list-style-type: none"> Do you agree with the proposal to increase to 30 days the notice period for mutualising defaults on payments other than interim levy rate payments?
Question MT2	<ul style="list-style-type: none"> 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?
Question MT3	<ul style="list-style-type: none"> Do you agree with the proposal not to levy interest on default on collateral amounts?
Question MT4	<ul style="list-style-type: none"> Do you agree with the proposal to enable CFD-related negligence claims against the CFD Counterparty to be recovered through the supplier obligation levy?

