



Department
of Energy &
Climate Change

Call for Evidence on the implementation of the Contract for Difference (CFD) scheme in Northern Ireland

URN: 15D/108
23 March 2015

Department of Energy and Climate Change
3 Whitehall Place
London
SW1A 2AW
Telephone: 0300 068 4000

© Crown copyright 2015

Copyright in the typographical arrangement and design rests with the Crown.

This publication (excluding logos) may be re-used free of charge in any format or medium provided that it is re-used accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the publication specified.

For further information on this consultation, contact:

EMR
3 Whitehall Place
SW1A 2AW

E-mail: emrnicfd@decc.gsi.gov.uk

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

Published by the Department of Energy and Climate Change

Contents

Contents.....	3
General information.....	4
List of acronyms	6
1. Introduction	8
2. CFD institutional framework in NI.....	11
3. CFD Allocation	16
4. CFD contract for NI generators	26
5. Supplier obligation	77

General information

Purpose of this Call for Evidence:

The purpose of this Call for Evidence is to gather evidence on the issues for implementing the Electricity Market Reform (EMR) Contract for Difference (CFD) scheme in Northern Ireland (NI) and the implications for how the CFD scheme could operate across the United Kingdom (UK).

The publication of this Call for Evidence is the first consultation on the implementation of the CFD scheme in NI and the intention is to issue a response to this document when DECC issues a consultation on draft Regulations to implement the scheme..

Issued: 23 March 2015

Respond by: 18 May 2015

Enquiries to:

EMR

Department of Energy & Climate Change,
3 Whitehall Place,
London, SW1A 2AW

Email: emrnicfd@decc.gsi.gov.uk

Consultation reference: URN 15D/108 – Call for Evidence on the implementation of the Contract for Difference (CFD) scheme in Northern Ireland

Territorial extent:

This consultation concerns the implementation of the CFD scheme across the United Kingdom with a specific focus on arrangements for Northern Ireland.

This consultation document does not cover the Northern Ireland Renewable Obligation closure arrangements and associated secondary legislation for Northern Ireland, which are the subject of a separate consultation by the Northern Ireland Executive.

How to respond:

The call for evidence is open for responses between 23 March and 18 May 2015, but early responses would be welcomed. Any responses received after the closing date may not be considered.

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. Reasoning and evidence to support your answers will be particularly helpful. If you wish to include any long reports as part of your evidence, please identify the relevant sections.

Please send responses by email to the following address: emrnicfd@decc.gsi.gov.uk

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>

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

Confidentiality and data protection:

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

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

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

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

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

DECC Consultation Co-ordinator
3 Whitehall Place
London SW1A 2AW
Email: consultation.coordinator@decc.gsi.gov.uk

List of acronyms

BMRP	Baseload Market Reference Price
BSC	Balancing and Settlement Code
BSCCo	Balancing and Settlement Code Company
BSUoS	Balancing Service Use of System Charges
CFD	Contract for Difference
CiAL	Change in Applicable Law
CiL	Change in Law
CLAF	Combined Loss Adjustment Factor
DAM	Day-Ahead Market
DETI	Department for Enterprise, Trade and Investment in Northern Ireland
DLAF	Distribution Loss Adjustment Factors
DSF	Dual Scheme Facilities
EMR	Electricity Market Reform
EMRS	EMR Settlement Ltd (the EMR Settlement Services Provider)
FCP	Further Conditions Precedent
GB	Great Britain
IMRP	Intermittent Market Reference Price
I-SEM	Integrated Single Electricity Market
LCCC	Low Carbon Contracts Company (the CFD Counterparty)
LCF	Levy Control Framework
MRP	Market Reference Price
NI	Northern Ireland
NIE	Northern Ireland Electricity
Ofgem	Office of Gas and Electricity Markets
PPA	Power Purchase Agreement
QCiL	Qualifying Change in Law
QSE	Qualifying Shutdown Event
RCRC	Residual Cashflow Reallocation Cashflow
SCiL	Sustainability Change in Law
SEM	Single Electricity Market
SEMO	Single Electricity Market Operator
SoLR	Supplier of Last Resort
SONI	System Operator for Northern Ireland
TLAF	Transmission Loss Adjustment Factors

TLM	Transmission Loss Multiplier
TSO	Transmission System Operator
UK	United Kingdom
UREGNI	Utility Regulator in Northern Ireland

1. Introduction

Background

1.1.1. Energy policy is devolved to Northern Ireland (NI), with the exception of nuclear power. In 2012 the Northern Ireland Executive consented to the contract for difference (CFD) element of the electricity market reform (EMR) programme being implemented in NI while taking account of both devolved competences and NI's participation in the Single Electricity Market (SEM) in the island of Ireland, so that the CFD scheme can operate across the United Kingdom (UK).

1.1.2. EMR introduces two new mechanisms to provide incentives for the investment in energy infrastructure: the CFD and the Capacity Market. The EMR Capacity Market will not be implemented in NI because there is already a capacity market in NI through the SEM. The scope of this Call for Evidence is therefore limited to the implementation of the CFD scheme in NI.

1.1.3. In December 2013, the Minister of Enterprise, Trade & Investment gave her consent for the strike prices in the EMR Delivery Plan¹ to apply in Northern Ireland, enabling a coherent UK-wide system of supporting low-carbon generation.

1.1.4. The UK-wide CFD scheme is to be made up of a UK-wide allocation mechanism, socialisation of the costs across all UK consumers (through the supplier obligation), a CFD contract with variations for the GB and the NI markets, and institutional arrangements with some variations where NI organisations would have a role..

1.1.5. Plans to implement the CFD scheme consistently across the UK continue to be taken forward in line with previous announcements. However, the Minister of Enterprise, Trade & Investment may reconsider NI's strategic position in the context of the scheme in light of evidence provided during the Call for Evidence period. The purpose of this Call for Evidence is to test with the stakeholders our understanding of the issues for implementing the CFD scheme in NI, and to gather evidence on these issues and their implications for the CFD scheme across the UK.

1.1.6. The European Commission confirmed State Aid approval of the CFD for Renewables on 23 July 2014.² The scope of the CFD notification covers the UK and it contains information about the intention to extend the CFD scheme to NI with a delay compared to GB. However any modification to CFD that would change the level of support received by the generators or the means of funding that support as part of the implementation in NI could result in the need to re-notify.

Strategic Policy issues for Northern Ireland

1.1.7. As energy policy is devolved to NI, the extension of the CFD scheme to NI raises key strategic issues for the NI Executive. In particular, joining a UK-wide support scheme would mean that the NI Executive will no longer have policy levers to deliver particular levels of renewable or low carbon deployment in NI, as CFDs will be allocated through competition

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268221/181213_2013_EMR_Delivery_Plan_FINAL.pdf

² The full text of the European Commission's decisions on the State Aid case is now available on: http://ec.europa.eu/competition/index_en.html

across all UK regions without geographic discrimination. The principle of the socialisation of the costs of the CFD scheme across the UK through the supplier obligation also means that NI consumers will contribute at the same level as the other UK consumers, with total costs depending on the level of renewable and low carbon deployment across the UK.

1.1.8. DETI will engage with the NI stakeholders on these strategic issues in parallel with this Call for Evidence, and the Minister for Enterprise, Trade and Investment, in conjunction with her NI Executive colleagues, will review the earlier decision on whether the CFD scheme should be implemented in NI in light of the responses to this call for evidence and further stakeholder engagement. The decision will also be informed by consideration of NI's contribution towards UK-wide renewable and decarbonisation targets, and requirements under EU law.

1.1.9. The CFD would be introduced in NI with a delay compared to GB as a result of the on-going reform of the SEM in NI and the Republic of Ireland. The ambition remains to implement the CFD in NI in time to allow NI generators to access an allocation round in October 2016 (subject to the Secretary of State decision to issue an allocation round notice). Difference payments for successful NI CFD generators would be able to commence from April 2017, and NI suppliers would be liable for supplier obligation and operational cost levy payments from the same date. The implementation timeline will be subject to the final decision of the Minister for Enterprise, Trade and Investment to implement the CFD scheme in NI and further developments in the I-SEM programme.

Overview of the CFD scheme

1.1.10. CFDs are designed to provide long-term price stabilisation to low carbon electricity generators, allowing investment to come forward at a lower cost of capital and therefore at a lower cost to UK consumers than the existing Renewables Obligation mechanism. In developing the CFD scheme affordability for consumers and bankability of the CFD for developers have been key considerations.

1.1.11. A CFD is a private law contract between a low carbon electricity generator and the Low Carbon Contracts Company (LCCC) a Government-owned company designated as the CFD Counterparty. A generator that is party to a CFD is paid the difference between the 'strike price' – a price for electricity reflecting the cost of investing in a particular low carbon technology – and the 'reference price' – a measure of the average market price for electricity in the GB market. It gives greater certainty and stability of revenues to electricity generators by reducing their exposure to volatile wholesale prices, whilst protecting consumers from paying for higher support costs when electricity prices are high.

1.1.12. The cost of CFDs (including the operational costs for the LCCC) is currently met only by GB consumers via the supplier obligation, a levy on electricity suppliers, but the intention is that they will be met by all UK consumers from 2017 once the CFD is implemented in NI. Similarly, NI consumers will be expected to contribute to the administrative costs incurred by the Delivery Body, Ofgem, and the relevant NI institutions, to enable implementation to become UK wide.

1.1.13. The process for the allocation of CFDs is overseen by the Delivery Body, National Grid, who notifies the LCCC of the projects that have been successful in an allocation round. The LCCC then offers a CFD based on a set of standard terms, with some limited scope to make minor and technical modifications to these terms. Government retains a power to direct the LCCC to enter into CFDs outside of these procedures. The DETI Minister must consent to all CFDs issued in NI.

1.1.14. The intention is that the implementation of the scheme remains as consistent as possible across the UK while considering the amendments that will be necessary to reflect the different market and regulatory arrangements in NI.

1.1.15. For each of the four main areas of the scheme (i.e. institutional arrangements, CFD allocation, CFD contract, and supplier obligation) this Call for Evidence presents an overview of the CFD scheme as it is currently implemented in GB; it identifies a number of issues for the scheme to take effect in NI; and it outlines propositions and questions for implementation in NI.

2. CFD institutional framework in NI

2.1.1. In this Chapter, section 2.1 sets out the functions and roles of the bodies that make up the institutional framework within GB. Section 2.2 describes how this institutional framework may need to change in order for the CFD and supplier obligation to be implemented in NI. Table 1 summarises the proposed EMR institutions within both GB and NI. Table 2 lists the questions which we are seeking your evidence.

2.1. Introduction to the CFD institutional framework

Summary of CFD Institutions

Table 1 Overview of CFD institutions

Institutional Role	Institution in GB	Proposed Institution in NI
Delivery Body	National Grid	National Grid
CFD Counterparty	Low Carbon Contracts Company (LCCC)	LCCC
Settlement Services Provider	EMR Settlement Ltd (EMRS) – a subsidiary of Elexon, the Balancing and Settlement Code Company (BSCCo) in GB	EMRS
Regulator of Delivery Body	Ofgem	Ofgem
Second tier appeals body	Ofgem	Ofgem
Third tier appeals body	High Court in England and Wales, Court of Session in Scotland	High Court of Justice NI
Enforcement of the supplier obligation	Ofgem	Utility Regulator Northern Ireland (UREGNI)
Provision of metered data	Elexon (the BSCCo)	System Operator for Northern Ireland (SONI) and Northern Ireland Electricity (NIE)

2.1.1. The nature of these EMR institutional roles is described in more detail below.

List of Institutional Functions

2.1.2. **Delivery Body:** The EMR Delivery Body function is carried out by part of the GB System Operator, National Grid. Its role is to provide analysis to Ministers, to assess potential CFD applicants' eligibility, and to run the allocation process. Following the outcome of the allocation process, the Delivery Body notifies the LCCC of eligible applicants to whom CFDs should be issued. In this role the Delivery Body:

- Determines whether applicants for a CFD are eligible, according to the criteria set out in regulations and the Allocation Framework.
- Assesses Tier 1 appeals for applications rejected as not meeting the eligibility criteria.
- Allocates CFDs in line with the allocation process set out in Chapter 3.

2.1.3. **CFD Counterparty:** The LCCC is a Government-owned company designated³ to act as counterparty to CFDs and manage the supplier obligation. The LCCC's roles are to:

- a) Consider any requests by generators for modifications to the CFD contract in accordance with Regulation 5 of the Contracts for Difference (Standard Terms) Regulations 2014.
- b) Offer to sign CFDs with successful applicants once provided with the necessary information by the Delivery Body or if directed to do so by the Secretary of State.
- c) Monitor and manage CFDs, and investment contracts which are transferred from the Secretary of State.
- d) Forecast CFD payments, determine the interim levy rate and total reserve amount for the supplier obligation on a quarterly basis, and calculate quarterly reconciliation payments in accordance with the supplier obligation regulations.
- e) Collect payments from suppliers and make payments to generators and vice versa (the Settlement Services Provider will carry out the settlement part of this role on their behalf).
- f) Collect and hold collateral from suppliers.
- g) Take action to recover debts owned by electricity suppliers and mutualise any unpaid debts.

2.1.4. **Settlement Services Provider:** The Settlement Services Provider manages the settlement of payments to and from CFD generators and electricity suppliers on behalf of the LCCC. It is a role designated⁴ to EMR Settlement Ltd (EMRS), a subsidiary of Elexon (the BSCCo). The Settlement Services Provider will carry out the administrative functions of settlement. This includes receipt of metered data, calculating payments, issuing of invoices and billing statements and collection, monitoring and payment of funds.

2.1.5. **Ofgem:** Ofgem regulates the Delivery Body to ensure it carries out its duties efficiently, cost-effectively, to a high standard and in a timely fashion. Ofgem has the power to enforce obligations or requirements under EMR rules and regulations as if they were relevant requirements of National Grid's licence as the transmission system operator.

³ By virtue of an order made under Clause 7 of the Energy Act 2013.

⁴ Changes to the codes and licences in GB have been made using powers granted to the Secretary of State in Clause 20 of the Energy Act 2013.

2.1.6. **Second tier appeals body:** Ofgem also determines disputes/appeals regarding CFD eligibility following an unsuccessful tier 1 appeal to the Delivery Body. If an application is rejected as not meeting the eligibility criteria, the applicant can in the first instance appeal to the Delivery Body for a review of their decision (a tier 1 appeal). If the Delivery Body maintains its original determination, the applicant has the right to make a second appeal (a tier 2 appeal), which is considered by Ofgem.

2.1.7. **Third Tier Appeals:** The third and final appeal (tier 3), if the applicant does not agree with the decision taken by Ofgem, is made to the High Court in England and Wales, or the Court of Session in Scotland. These appeals may only be made on a point of law. The High Court/Court of Session may require Ofgem to reconsider its decision, require the Delivery Body to award a CFD to the applicant or grant any other remedy it thinks fit. Further details on the EMR appeals process as applied to the GB scheme can be found in section 3.6.

2.1.8. **Enforcement of the supplier obligation:** Within GB the supplier obligation will be enforced by Ofgem. The supplier obligation regulations state that requirements under the regulations will be enforceable as if they were relevant requirements under the Electricity Act 1989 in GB. This means that Ofgem may investigate and enforce any possible breaches of these obligations in the same way as it enforces breaches of the conditions of electricity supply licences, subject to Ofgem's Enforcement Guidelines.

2.1.9. **Provision of metered data:** Within GB settlement of CFDs and the supplier obligation is based on metered data provided in line with the BSC. This data is provided from the BSC processes and both the CFD and supplier obligation delegate to the BSC processes the determination of metered volumes. This means that metered volumes for the purposes of both are taken to be what the BSCCo determines them to be, and if the BSCCo alters that determination (i.e. following a metering dispute or a timetabled reconciliation), CFD and supplier obligation settlement is recalculated to include the BSCCo's more recent determination. CFD generators on private networks are the exception to this and separate arrangements are in place for the provision of their metered data.

2.2. Implementing the CFD institutional framework in NI

Issues, propositions and questions for implementation in NI

2.2.1. In extending CFD arrangements to Northern Ireland, the intention is to extend the roles of existing delivery partners to include NI wherever possible, rather than duplicate the GB institutional arrangements for NI. Minimising the number of new delivery partners will be more efficient, cost-effective and best ensure equivalent treatment for GB and NI applicants.

2.2.2. There are some areas where it is not possible for the same body to perform the same role in GB and NI. This is due to a different regulatory framework for metered data and licensing of suppliers and the different legal framework within NI. For each of the EMR institutions consideration has been given as to whether the bodies that are carrying out the roles within GB are appropriate to do so UK-wide given the different frameworks within NI. The impact of the different regulatory and legal frameworks on the EMR institutions is examined below.

2.2.3. **Delivery Body:** The Energy Act 2013 anticipates a single body performing the function of the Delivery Body, and it is not possible for its individual roles to be split between organisations. For example a single UK-wide auction cannot be run by two separate bodies. The intention is for National Grid to perform its Delivery Body role UK-wide.

2.2.4. **CFD Counterparty:** This role is UK wide. The LCCC will be managing CFDs with generators across the UK in an equal fashion and is not impacted by the different NI market or regulatory framework.

2.2.5. **Settlement Services Provider:** This role is UK-wide. EMRS carries out the calculations and settlement using metered data provided by others and so it is not necessary for this role to be carried out separately for NI simply because the metered data will have a different source. CFD costs will be charged to suppliers through the supplier obligation based on suppliers' market share with calculations and reconciliations carried out each working day. Splitting this role between two separate organisations would not be practical as data reconciliation for one supplier will result in a recalculation of the supplier obligation for all other UK suppliers.

2.2.6. **Regulator of Delivery Body** (including regulation of their costs): We expect that Ofgem will carry out this role UK-wide. Further discussions with Ofgem will take place on the practicalities of carrying out this role, including how Ofgem's independence can be ensured. This will ensure continuity across the UK and ensure a more effective protection of consumer interests through the oversight function being performed by a single body. Given that the Delivery Body role will be performed by a single body across the UK, it is appropriate that the oversight of the Delivery Body is not split between organisations. In addition if National Grid is the Delivery Body, Ofgem already has the powers to undertake this task once EMR regulations have been amended to extend the regime to NI.

2.2.7. **Second tier appeals body:** It is proposed that Ofgem will carry out this role UK-wide subject to further discussion with Ofgem. The tier 2 appeals body will effectively re-take the Delivery Body's decision using the same evidence as the original determination plus a statement from the applicant stating why they are appealing. This means that the location of the application (whether from GB or NI) will not impact how the appeals process is carried out and so it is not necessary for an NI specific organisation to carry out appeals for generators from NI. The use of a single tier 2 appeals body will ensure continuity with the scheme as a whole and take advantage of economies of scale to provide greater value for money, and to avoid the risk of differential treatment of GB and NI applicants.

2.2.8. **Third Tier Appeals:** In the GB framework, it is the High Court/Court of Session that undertakes this role. The court may, in its discretion, remit the pending application to Ofgem to re-consider the non-qualification determination, hold that the pending application is a qualifying application CFD, or grant any other remedy it thinks fit⁵. It is likely that the NI High Court of Justice, the NI equivalent of the English and Welsh/Scottish bodies, would take on this role for NI generators.

2.2.9. **Enforcement of the supplier obligation:** The intention is that when the supplier obligation regulations are extended to NI, requirements under these regulations will similarly be enforceable as if they were relevant requirements of NI supplier licences, as is the case for GB suppliers. This would mean that UREGNI will perform the role carried out by Ofgem in GB in the enforcement of the supplier obligation requirements on licensed suppliers in NI following their existing processes and framework. No changes will be required to NI supplier licences to make this happen. This approach ensures that the EMR arrangements do not interrupt the existing licence enforcement processes within NI.

⁵ Further detail on the appeals process can be found on p48 of 'Implementing Electricity Market Reform (EMR)', published in June 2014 and available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324176/Implementing_Electricity_Market_Reform.pdf.

2.2.10. **Provision of metered data:** The Energy Act 2013 allows regulations to require the provision of information by either the System Operator in NI or NI licenced suppliers. Within NI, SONI and NIE have access to the metered data for suppliers and generators in the same way as BSCCo has access to the metered data for suppliers and non-private wire generators within GB. It is proposed that metered data should be provided by SONI and NIE to the Settlement Services Provider. This will reduce the administrative impact on suppliers and generators compared to requiring a separate provision of metered data from suppliers and generators direct to the Settlement Services Provider. This means that the administrative costs of providing metered data to the Settlement Services Provider will be limited to just two organisations within NI. More information on the metering requirements for generators (not on private networks) can be found in section 4 and the metered data required for suppliers in section 5.

2.2.11. Furthermore, there is a role for DETI within the NI CFD. The Energy Act 2013 requires DETI consent before a direction to offer a CFD or a notification that a generator is eligible for a CFD may be given to an electricity generating station in NI. For more information on the direction to offer a CFD see section 3 on Allocation⁶.

2.2.12. The relevant regulations will be amended to include details of the point at which DETI would consent in the allocation process (e.g. prior to application stage or pre-notification to LCCC stage). DECC and DETI will produce further guidance on the application process for consent and the form that such consent is to take.

2.2.13. In conclusion, the minded to position is for the EMR institutions to carry out their roles UK-wide with separate arrangements for CFDs in NI only introduced where essential. The areas where separate NI arrangements are proposed are: the enforcement of the supplier obligation, the provision of metered data and the role for DETI in consenting to CFD awards to projects located in NI.

Table 2 Questions on institutional framework

Consultation Questions	
1.	Do you have any comments on the proposal for Ofgem to carry out the role as tier 2 appeals body for CFDs on a UK-wide basis?
2.	Do you have any other comments on the proposed institutional framework for CFDs and supplier obligation?

⁶ <http://www.legislation.gov.uk/ukpga/2013/32/part/2/chapter/2/enacted>

3. CFD Allocation

3.1.1. This chapter covers three areas: the CFD allocation process, the eligibility criteria, and the eligibility dispute resolution process. On the first area, sections 3.1 and 3.2 set out an overview of the CFD allocation process as it currently applies in GB and identifies issues relating to the implementation of the CFD allocation process in NI. On the second area, sections 3.3 and 3.4 set out more detail around the CFD eligibility criteria and then explore issues around implementing the eligibility criteria in NI. On the third area, sections 3.5 and 3.6 deal with the dispute resolution process for the eligibility determination in GB and sets out how this may be applied in NI.

3.1.2. Specific questions are set out after each section and further evidence sought from stakeholders in order to understand how the allocation process and eligibility criteria can be applied in NI.

3.1. Introduction to the CFD allocation process

3.1.1. The process for allocating CFDs is undertaken by the EMR Delivery Body, National Grid, who will notify the LCCC of the projects that have been successful in an allocation round. The LCCC will then offer a CFD based on a set of standard terms. The Government retains a power to direct the LCCC to enter into CFDs outside of these procedures.

3.1.2. Further detail on the allocation process is provided in the Implementing EMR publication⁷.

Eligibility to apply for a CFD

3.1.3. The CFD eligibility criteria were developed following extensive consultation with industry. They are designed to ensure that only credible projects with a high likelihood of delivery are eligible for a CFD.

3.1.4. The Contracts for Difference (Definition of Eligible Generator) Regulations 2014 lists the renewable technologies and any associated fuels that are eligible to apply for a CFD. The Contract for Difference (Allocation) Regulations 2014⁸ (the 'Allocation Regulations') set out the process for establishing allocation rounds and announcing budgets. The Allocation Regulations also set out the key eligibility criteria that an applicant must satisfy in order to qualify to enter the CFD allocation process, the process by which eligibility is determined by the Delivery Body and how that decision can be appealed. The Allocation Framework contains rules for valuation and auctions and further sets out the evidential requirements an applicant must satisfy to prove eligibility.

3.1.5. The Delivery Body will determine whether or not an application made by an eligible generator meets the various eligibility criteria so that eligible applicants may take part in the CFD allocation process.

3.1.6. The eligibility criteria are summarised below:

- a) All relevant consents and licences in respect of the proposed generating station and relevant works must be in place, including Planning Consent;

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324176/Implementing_Electricity_Market_Reform.pdf

⁸ <http://www.legislation.gov.uk/ukdsi/2014/9780111116777/contents>

- b) A Grid Connection Agreement is in place. Neither, an unaccepted offer nor a connection application is sufficient evidence of eligibility;
- c) The generating station must not be an excluded application as defined by Regulation 14 in the Allocation Regulations (e.g. the station is not already in receipt of funds from other Government support schemes, except in the case of Dual Scheme Facility, as defined in chapter 3, and a station must not have a generating capacity of less than 5MW etc.);
- d) Projects generating above 300MW must submit an approved Supply Chain Plan;
- e) All relevant supporting information must be included with the application. For example, name and contact details of applicant (or GB based agent if applicant is not based in GB), company registration and VAT numbers, project information (i.e. name, technology type, location, proposed capacity, phases and target dates), and description of the generating station – including the postcode, the geographic coordinates, and/or the Ordnance Survey Grid Reference for the location of the station.

3.1.7. Applicants for CFDs will be required to provide the Delivery Body with evidence that the proposed project meets the eligibility criteria. Applicants will also be required to certify that all evidence provided with the application is true, complete and accurate.

3.1.8. Failure to meet any of these eligibility criteria and any additional information required with the application (as set out in the Allocation Regulations and Allocation Framework) will result in the Delivery Body rejecting the application.

Allocation of a CFD by the Delivery Body

3.1.9. Once eligibility has been determined, the Delivery Body will value applications in accordance with the valuation formula set out in the allocation framework and compare the value of the applications with the available budgets (technology pots, minima and maxima). If all of the applications can be satisfied within the budget under the constraints of any minima and maxima (i.e. the allocation round is ‘unconstrained’) then all of the applicants will be allocated a CFD.

3.1.10. If there is insufficient budget to satisfy all applications, or maximum constraints are exceeded, then an auction (constrained allocation) will apply to the applications. In the first allocation round the Delivery Body will invite sealed bids in respect of those applications. The valuation formula and rules for running the auction where budget constraints apply are set out in the Allocation Framework.

3.1.11. An applicant may withdraw its application during the application window: the ten day period in which applications are first submitted. In a scenario where constrained allocation is triggered (and only in that scenario), a second opportunity for withdrawal arises during the period for submitting sealed bids to the Delivery Body and no later than the sealed bid submission date. A valid withdrawal is via notification to the Delivery Body. No withdrawal after this point is permitted because of the potential to distort the effective functioning of the CFD allocation process.

3.1.12. The proportion of the Levy Control Framework (LCF) budget⁹ available for a particular CFD allocation round is set out in a Budget Notice, which must be published at least 10 working days before an allocation round opens for application. For the first allocation round, a draft Budget Notice setting out details of an indicative budget was published in July 2014 and a final Budget Notice was published on 2 October 2014. It is currently anticipated that budget publications will be made in similar ways for future allocation rounds.

3.1.13. The Budget Notice sets out the overall budget available for each delivery year. It also sets out the administrative strike prices applicable to each technology, details of any maxima or minima which apply in that round and how the overall budget is subdivided between different parts (pots).

3.1.14. Once eligibility has been determined, the allocation round proceeds to valuation stage. For the first allocation round, technologies were grouped into 3 pots. The budget available for each pot was set out in the Budget Notice. The Delivery Body then compared the value of each application (valued in accordance with the Valuation Formula set out in the Allocation Framework) with the available budget for each technology pot.

3.1.15. Where there is insufficient budget to fund all projects which have applied within a given pot, allocation will be constrained and an auction is triggered. Different pots within an allocation round are entirely independent – one pot may be constrained while another is not and budget cannot be transferred between pots within a round.

3.1.16. Further detail on budget availability for future allocation rounds within the LCF cap is set out in the Explanatory Note available at the attached link¹⁰.

3.2. Implementing the CFD allocation process in NI

3.2.1. There are certain features of the existing CFD allocation mechanism as implemented in GB that can be made applicable to generators in Northern Ireland with minimal changes. These are set out in paragraph 3.2.2 below. Other eligibility criteria in respect of which any adaptation will require further evidence, are set out in further detail at section 3.3 below.

3.2.2. Only minor changes will be necessary to the following:

a) Excluded applications

The Allocation Regulations set out a list of applicants who are excluded from being eligible to apply for a CFD. Currently applications for generating units in NI are excluded, and this exclusion would be removed. Also, applicants in GB have been strongly discouraged from participating in the Capacity Market auction at the same time as for applying for a CFD. An amendment to the regulatory structure will be made in time for the second allocation round to prohibit this. A similar approach is proposed in NI in order to prevent a project being in receipt of a double subsidy.

⁹ The Levy Control Framework is a UK wide scheme which sets annual limits on the overall cost of all DECC's low carbon electricity levy funded policies, covering the Renewables Obligations, the Small Scale Feed in Tariff and CFDs, including Investment Contracts. The LCF for low carbon electricity has been set at £7.6 billion to 2021.

¹⁰ <https://www.gov.uk/government/publications/cfd-budget-notice>

A minor change to the legislation and the Allocation Framework will be necessary to adapt the checks around whether a project is already in receipt of funding through another government support scheme.

We currently expect Ofgem to undertake the relevant check relating to funding under the Northern Ireland Renewables Obligation as Ofgem administers this scheme in NI. This role is subject to further discussion with Ofgem.

GB applicants are excluded from being eligible for a CFD if they are in receipt of funding under the Non Fossil Fuel Obligation. Similarly, NI applicants in receipt of such funding will be excluded. The regulatory framework will need to be altered to refer to the body administering the scheme in NI.

b) CFD allocation process

The allocation process refers to the application of the rules set out in the Allocation Framework by the Delivery Body. It includes applying the valuation formula to all applications and considering whether the applicable budget means that competitive allocation process is necessary and running that process, if required.

We expect there to be no change to the allocation process when the CFD scheme is extended to NI. Eligible applicants will be entered into an auction with GB applicants, with no specific change to the auction rules.

Table 3: Questions on the Allocation Process

Consultation Questions	
1.	Are there any renewable electricity support schemes applicable in NI that the CFD scheme ought to take account of when checking excluded applications?
2.	The minded to position is that there will be no change to the allocation process when the CFD is extended to NI. Is there any evidence that changes should to be considered?

3.3. The CFD eligibility criteria

3.3.1. At present, the Allocation Regulations impose a number of criteria that an applicant must satisfy before it is able to participate in the allocation process and, potentially be offered a CFD.

3.3.2. The criteria form a critical function in ensuring only credible projects secure CFDs and provide a filter that:

- a) prevents speculative projects from disrupting the CFD allocation process;
- b) provides a consistent foundation for an auction – ensuring a minimum level of development for all applicants and credible bidding across the population of projects;
- c) reduces the risk of budget-blocking and strategic bidding to ensure the budget is used as efficiently as possible; and
- d) interacts with key contract design features – e.g. Initial Condition Precedents, Further Condition Precedents, and Milestone requirements.

3.3.3. Ultimately, the criteria mitigate against the risk that a project which is not sufficiently developed is allocated budget, ahead of projects with a greater likelihood of proceeding to commissioning. This is a real risk and a problem experienced in other government support schemes (notably the NFFO scheme) where projects that were incapable of delivering secured the budget and blocked more credible developments. It is therefore vital that the eligibility criteria are robust, credible and consistent for all applicants.

3.3.4. These criteria have been developed through extensive consultation with the CFD expert group, and following wider stakeholder engagement they were published as “final” for the GB CFD scheme in August 2013 and confirmed again, following further consultation, in October 2013.

3.3.5. There are currently four key areas of eligibility (set out below) that must be met and evidence in respect of them supplied, as part of the CFD application. In addition, a series of supporting information (e.g. project location and capacity details) must also be supplied with an application. A schedule to the Allocation Framework sets out the application checks to be carried out by the Delivery Body when it makes an eligibility determination. This lists the documentary evidence that will be accepted in respect of each criterion.

Criterion 1: Consents and Licences

3.3.6. The Allocation Regulations require an applicant to provide all ‘applicable consents’ for ‘relevant works’ (the construction, removal or alteration of plant) that are required for the development of the project, including:

- a) Development Consent Orders - Granted under s. 114 of the Planning Act 2008, these apply only to England, Wales and Scotland.
- b) Section 36 Consents - Electricity infrastructure consents granted under the Electricity Act 1989 and applying only to England, Wales and Scotland.
- c) Planning Permissions - Granted under the relevant Town and Country Planning Act for the region in question (distinct for England and Wales or Scotland).
- d) Marine Licences - Refers to either the Marine and Coastal Act 2009 in England and Wales, or the Marine (Scotland) Act 2010.

3.3.7. This criteria is key to ensuring that only those projects that have official permission to develop and are sufficiently committed to the project may enter into allocation, discouraging spurious or speculative bidding.

Criterion 2: Grid Connection Agreement

3.3.8. An applicant must either demonstrate that a Grid Connection is not necessary for their project, or that they hold an agreement (i.e. a countersigned offer) for a Grid Connection at their facility. Neither an unaccepted offer, nor a connection application, is sufficient as these would not provide evidence of a project’s commitment to develop and the commitment of the grid operator to connect the project to its network.

3.3.9. Again, this requirement ensures that only those projects sufficiently advanced in the preparatory phases of their development may come forward for CFD allocation and discourages speculative applications as generators are committed by the agreement to make all further payment for grid connection assets.

Criterion 3: Lack of Existing Support

3.3.10. An applicant cannot apply for a CFD in relation to a facility that is already (or is registered to be) receiving support under any other Government schemes, for example the Renewables Obligation (RO), Non-Fossil Fuel Obligation (NFFO) or Capacity Market (CM). This is confirmed through a check undertaken by the Delivery Body, with assistance from third parties where appropriate (e.g. Ofgem, as the administrator of the RO and Non-Fossil Purchasing Agency (NFPA) for the NFFO).

3.3.11. This requirement prevents a generator from benefitting twice from the same capacity.

3.3.12. There is a distinction between a single generating unit having existing support and a distinct portion of the facility separate from that applied for holding support under a scheme. The latter is acceptable, and forms the basis for a Dual Scheme Facility¹¹.

Criterion 4: Supply Chain Plans

3.3.13. Projects with capacity greater than 300MW must submit supply chain plans to DECC in order to demonstrate a robust procurement process that invests sufficiently in skills and innovation. A certificate confirming approval of these supply chain plans will then form part of the eligibility requirement for these projects greater than 300MW¹².

3.3.14. Unlike the other criteria, which focus on the deliverability of a project per se, the requirement for a supply chain plan seeks to ensure the viability of the wider commercial environment surrounding it.

3.4. Implementing the CFD eligibility criteria in NI

Issues, propositions and questions for implementation in NI

3.4.1. There appear to be several aspects of the market and regulatory environment in NI that differ from arrangements in GB. Similarly, there were differences in Scotland and Wales when the CFD scheme for GB was being developed. For example, planning consent requirements in Scotland for offshore wind projects differed from the planning approach adopted in England. The Scottish authority adapted its approach to planning consent in order to align with English system and consequently satisfy the CFD eligibility requirement.

3.4.2. Our objective is to maintain fair and robust eligibility criteria, which ensure that only projects able to deliver are entered into the allocation process. We are keen to identify any relevant proxy in the NI planning/grid connection system for implementing these principles.

3.4.3. The particular regulatory and market differences in NI as understood are set out below:

a) Grid Connection Agreement

Northern Ireland Electricity (NIE), in respect of distribution system connection, and the System Operator for Northern Ireland (SONI), in respect of transmission system connection, do not accept grid connection applications until the relevant project has

¹¹ As defined in the CFD Standard Terms and Conditions

¹² <https://www.gov.uk/government/publications/supply-chain-guidance>

planning consent. The timeline for a project based in NI may therefore be longer than a similar GB project.

It is understood that realistic target delivery dates for grid connections are normally not confirmed by NIE/SONI until planning permission has been received and pre-construction regulatory approval is given. The grid connection application and offer process is thought to take approximately 6 months. It is also recognised that NIE is obliged to provide indicative grid connection dates in any grid connection offers which are made¹³.

DECC understands that UREGNI is currently in the process of reviewing the time and costs involved obtaining grid connections at transmission and distribution level and a consultation on the contestability in grid connections is currently under way¹⁴. This should result in a clearer understanding of the precise risks and issues involved in providing new connections. It is clear that the NI regulator is seeking to address many of the concerns set out above. The particular issues identified here could therefore be resolved by the time CFDs are implemented in NI. The minded to position is therefore to retain the requirement for a Grid Connection Agreement as a key eligibility criteria for applicants in NI and to identify the relevant proxy in NI based on UREGNI's on-going reviews.

Work with SONI, NIE and DETI will continue in order to highlight the importance of grid connection agreements in the CFD allocation process. Also, the response to the Call for Evidence produced by UREGNI which concluded in October 2014 is being reviewed. Responses to the current consultation on contestability will also be carefully considered. Finally, where eligibility criteria for NI are finalised and announced as soon as practicable, NI projects will be able to consider CFD application requirements earlier in their development process to ensure project development timelines can be managed in time for CFD implementation in NI.

b) Clustered approach to Grid Connection for onshore wind developers

The 'clustered' approach to grid connection for onshore wind developers in NI means that the ability to secure regulatory approval is dependent on other projects within the connection cluster.

It is understood that a number of proposed clusters have received pre-construction approval by the NI Regulator and it is anticipated that these clusters will be built by 2017.

Whilst the potential for delays and uncertainty caused by the clustered connection methodology for some onshore wind projects is recognised, it is thought that grid connection agreements provide a direct link to a specific project's ability to develop

¹³ http://www.uregni.gov.uk/uploads/publications/NIE_Distribution_Licence_-_IME3_Modifications_-_effective_28_March_2014.pdf

¹⁴ http://www.uregni.gov.uk/publications/consultation_paper_on_the_introduction_of_contestability_in_electricity_con

and deliver. Lowering the upfront requirements at the eligibility stage introduces a significant risk that a project will not be able to meet milestone requirements set out in the CFD or commission to stated capacity estimates. The minded to position is therefore to make no change to the existing eligibility criteria for NI developers, but to identify the relevant proxy for these criteria in NI.

It would be beneficial if respondents could supply evidence to assist the existing understanding of the clustering methodology further and in particular supply evidence in relation to the level of payment security a developer is required to commit (as a proportion of project costs) and how the timetable for connection progresses.

c) Cost differences for offshore developers

The absence of an ‘OFTO’ type arrangement in NI – where offshore transmission assets can be constructed by an Offshore Transmission Owner or a generator – will result in higher costs being incurred by an NI generator. It is understood that generators in NI also face increased maintenance costs for offshore assets due to the different approach in charging for offshore connection assets. However, it is also understood that the NI regulator is considering options whereby third parties may be able to construct transmission and distribution assets in the future. The minded to position is therefore to make no changes to the CFD to account for these cost differences. It would be beneficial if respondents could supply evidence to assist the existing understanding of the impact of these differences on the ability to offshore projects in NI to meet the eligibility criteria or compete with GB offshore projects.

Table 4: Questions on Eligibility Criteria

Consultation Questions	
1.	The minded to position is that the approach to eligibility criteria for NI projects would be broadly equivalent to that for GB projects. Do you consider that any variation to the eligibility tests are needed and if so, what variations do you think are appropriate?
2.	What is the cost commitment (percentage of project cost committed) at grid connection application stage and at grid connection offer stage? How is this different when a clustered approach to grid connection is used?
3.	Do you have a project that you anticipate will be connected to a grid connection cluster which has been granted pre-construction approval? If so do you have an indicative timetable for connection?
4.	What is the cost impact of the current absence of an OFTO type arrangement in NI and how do you think this may impact a generator’s ability to compete with GB projects?

3.5. Introduction to the dispute resolution process for eligibility determination

3.5.1. The Allocation Regulations set out a three tier dispute resolution mechanism for disputes arising out of the eligibility determination. Where an applicant considers that the Delivery Body has made an incorrect eligibility determination, an applicant is able to request that the Delivery Body review its decision (first tier appeal). Such an appeal must be made within 5 working days of the eligibility decision being notified to the applicant.

3.5.2. Following a first tier appeal, if the applicant still believes that there is an error with the review decision, an applicant has five working days from the revised decision notification, to appeal to Ofgem who perform the role of checking the Delivery Body's decision (second tier appeal).

3.5.3. Finally, if an applicant is unsatisfied by the second tier appeal decision, an appeal to the High Court or Court of Session can then be made within 28 days of the second tier appeal decision being notified to the applicant (third tier appeal). The High Court or Court of Session may require Ofgem to reconsider its decision, it may require the Delivery Body to award a CFD to the appellant or grant any other remedy it considers appropriate.

3.5.4. The allocation process pauses while the first and second tier appeal processes run, thus allowing any successful appellants to participate in the allocation process. A 'post appeals indicative start date' is set out in the Allocation Framework. This is an indicative date on which the Secretary of State is minded to require the allocation process for the allocation round to commence.

3.5.5. The Secretary of State has the ability to request that the allocation process commences whilst complex appeals are being determined in order to avoid excessive delay to the process.

3.6. Implementing the dispute resolution process for eligibility determination in NI

3.6.1. National Grid performs the role of the Delivery Body for the GB CFD scheme. This 'Delivery Body' function is further explained at paragraph 2.1.2 of this document. We propose that National Grid continue to perform the Delivery Body role should the CFD scheme be extended to NI.

3.6.2. Our preference is for Ofgem to perform the second tier appeals role for NI in order to ensure consistency in the process for all applicants. This is further discussed in paragraph 2.1.6 of this document. Ofgem's role in resolving disputes is explained in guidance to applicants¹⁵. This role is subject to further discussion with Ofgem.

3.6.3. We currently propose that the third tier appeal tribunal is to be the High Court of Justice (High Court) in NI. This will require minor amendments to implementing legislation.

3.6.4. We do not think there are any further issues implementation issues relating to resolution of disputes in NI.

¹⁵ <https://www.ofgem.gov.uk/electricity/wholesale-market/market-efficiency-review-and-reform/electricity-market-reform/electricity-market-reform-emr-%E2%80%93-dispute-resolution>

3.6.5. Please also see further questions in Table 2 of this document.

Table 5: Questions on the Dispute Resolution process for the Eligibility Determination

Consultation Question	
1.	Is there any reason why the existing dispute resolution process in respect of the eligibility determination needs to be adapted for NI?

4. CFD contract for NI generators

4.1. Introduction to the structure of the CFD contract

4.1.1. A Contract for Difference (CFD) is a private law contract between a low carbon electricity generator and the LCCC, a Government-owned company. A generator party to a CFD is paid the difference between the 'strike price' – a price for electricity reflecting the cost of investing in a particular low carbon technology – and the 'reference price' – a measure of the average market price for electricity in the GB market.

4.1.2. If a generator is successful within the allocation process, whether an auction was required or not, the LCCC will provide them with a copy of the CFD contract to sign. The contract is divided into two discrete elements that together form the 'standard terms' envisaged by the Energy Act.¹⁶ The first of these, the CFD Agreement, contains project-specific details, including:

- The generator's identity;
- Strike price;
- Facility Generation Technology;
- Installed capacity;
- The Longstop period; and
- The dates of the Target Commissioning Window.

4.1.3. The remainder of the CFD contract is made up of the CFD Standard Terms and Conditions. These terms may be categorised into:

- Terms impacting on revenue flows and payments, for instance: market reference price, billing and payment, capacity adjustment, balancing system charges, curtailment, change in law.
- Terms that prescribe obligations to the way the generator operates or interacts with the LCCC, for instance: milestone requirements, conditions precedent, representations and warranties, fuel measurement and sampling, credit support, termination, dispute resolution.

4.1.4. For specific category of generators, namely offshore wind projects commissioning in phases and private network generators, an altered form of the CFD Agreement has been designed, so there are specific 'Phasing Agreements' for phased offshore wind projects and a specific 'Private Network Agreement'. These CFD Agreements introduce a number of additional or replacement provisions specific to the requirements for these generators and ensure that the Standard Terms and Conditions remain as widely applicable as possible.

4.2. Implementing the structure of the CFD contract in NI

4.2.1. The division between CFD Agreement and CFD Standard Terms and Conditions serves only to provide a clear distinction between the detailed, generic contract terms and those that provide the detail for the individual CFD generator; it does not impact upon the functioning of the contract as a whole. As a result, the minded-to position is to retain this structure for the NI CFD.

¹⁶ <https://www.gov.uk/government/publications/contracts-for-difference-standard-terms-and-conditions>

4.2.2. The CFD Standard Terms and Conditions present a distinct challenge. Legal analysis of these terms has determined that some of the Standard Terms and Conditions are not readily transposable for use in NI. While it is clear that those terms tailored to a GB context (in particular, metering and the market reference prices) are not transposable, there are others that are transposable but which may serve to provide an unintended consequence for the NI generators, suppliers, the LCCC or UK consumers.

4.2.3. The sections that follow describe those terms that may require or warrant changes in order to be transposed within NI.

4.2.4. All GB CFD contracts operate under English Law, regardless of whether the generator is in England, Wales or Scotland. This approach provides consistency and simplifies administration by the LCCC significantly. The minded-to position is to retain this approach for the NI CFD contracts.

Table 6 – Questions on CFD contract structure

Consultation Questions	
1.	It is the minded to position to retain the existing contract structure of an Agreement and Standard Terms. Do you agree with this position?
2.	It is the minded to position to continue to utilise English Law as the relevant Law for matters relating to the NI CFD contract. Do you agree with this position?

4.3. Introduction to the milestone requirements and capacity adjustment provisions

4.3.1. This section describes key elements of the pre-commissioning contract management process, including:

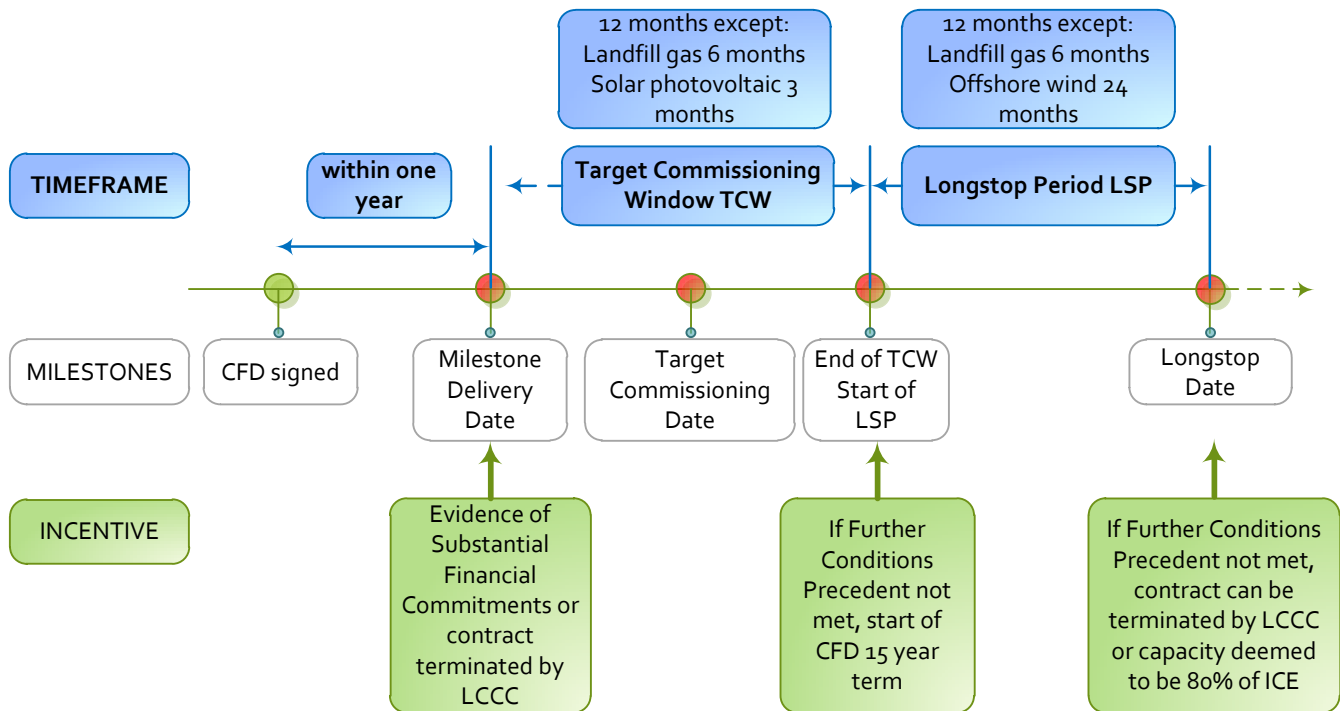
- a) The milestone requirements, which projects that have secured a GB CFD will be monitored against (see also Figure 1);
- b) The adjustments to their estimated installed capacity that generators are allowed to make under the GB CFD (see also Figure 3).

4.3.2. Section 4.4 describes NI-specific issues relevant to these elements and the potential changes needed for implementation of the CFD in NI. It further states the minded-to position as follows:

- a) To retain the milestone requirements with minor additional conditions specific to the NI context;
- b) To retain the thresholds and timeline for adjusting the installed capacity estimate.

4.3.3. Finally Table 7 summarises the questions that stakeholders are encouraged to consider. We are specifically seeking views on whether there is any evidence that the above minded-to position might not be appropriate. See also Table 4 for relevant Eligibility Criteria questions.

Figure 1: Milestone requirements of the GB CFD



Milestone Delivery Date

4.3.4. The purpose of the milestone requirement is to provide evidence to the LCCC that developers have made a substantive financial commitment to the project. This provides protection against the CFD budget being tied up by developers who are failing to progress with the development of the project.

4.3.5. The milestone provisions, contained within Condition 4 in the CFD Standard Terms and Conditions, include an obligation for the generator to provide the LCCC with evidence that it has complied with and fulfilled one of the milestone requirements by the Milestone Delivery Date (MDD); that is within one year of the agreement date.

4.3.6. The CFD provides two routes for a generator to satisfy the milestone requirement by the MDD. These are:

- a) that the generator has spent 10 per cent or more of the estimated Total Project Pre-Commissioning Costs on the Project; or
- b) that the generator can satisfy the Project Commitments by providing documentation (such as key contracts) defined in the CFD Agreement and set for each technology type.

4.3.7. Failure to demonstrate that the substantial financial commitment has been met in one of the two ways may result in the termination of the CFD by the LCCC.

4.3.8. In the CFD that applies to GB, provisions allow for extension of the MDD as a result of force majeure or delays by the Transmission System Operator or the Distribution Network Operator.

4.3.9. The LCCC may agree by notice to the generator to waive any of the milestone requirements.

Target Commissioning Window and Longstop Date

4.3.10. The second incentive is the use of a Target Commissioning Window (TCW). This window is the period of time within which a generator plans to commission the facility (including achieving the Further Conditions Precedent) so as to provide the capacity required to trigger CFD payments in the contract. The length of the TCW reflects the technical challenges faced by generators of each generation type.

4.3.11. The TCW recognises that it is not always possible for projects to be absolutely confident that they can deliver on a specified date. The TCW is intended to provide an appropriate, technology-specific window which the developer will be able to nominate the start of, provided that the Target Commissioning Date (TCD) falls within the TCW.

4.3.12. Failure to meet the Further Conditions Precedent (FCP) by the last day of the TCW results in the 15 year term of the CFD commencing (Clause 3 of the CFD agreement)¹⁷. Therefore if the generator has not fulfilled the FCP by the last day of the TCW, this has the effect of gradually reducing the effective period of support offered to a project.

4.3.13. The Longstop Date is a point beyond the end of the TCW. If the project has not met the FCP by the Longstop Date it will face having its CFD terminated. This risk ensures that the CFD budget is not permanently tied up by projects which are significantly under-performing and which may fail to commission in line with the obligations set out in the contract. The duration between the end of the TCW and the Longstop Date, i.e. the Longstop Period is technology specific. TCW and Longstop Period are specified in the CFD (Standard Terms) Regulations 2014¹⁸.

4.3.14. In the CFD that applies to GB, provisions allow for extension of the TCW or Longstop Date as a result of force majeure or delays by the Transmission System Operator or the Distribution Network Operator.

Milestone requirements for offshore wind phased projects

4.3.15. Offshore wind projects wishing to deliver in phases (up to three) will be held to account against appropriately tailored MDD, Target Commissioning Dates, Longstop Dates and Termination Provisions. At the agreement date each phase will be subject to its own separate CFD Agreement. The standard CFD Terms and Conditions will also apply with any necessary phasing-specific amendments achieved through the relevant CFD Agreement. Once a start date for phase 1 has been triggered, all phases will then, for the most part, operate as separate CFD Projects.

4.3.16. Phase 1 must represent at least 25% of the total capacity of the CFD unit after all phases are completed. The milestone requirements will thus only have to be met once, at the Milestone Delivery Date attached to phase 1. However, these will be applied to the aggregated Installed Capacity Estimate of the Phased Project, and evidence of actual spends or Project Commitments across all phases can be used to satisfy the milestone requirements. If the milestone requirements fail to be met, then the Phased CFD (for all phases) can be terminated.

¹⁷ Excluding biomass conversions

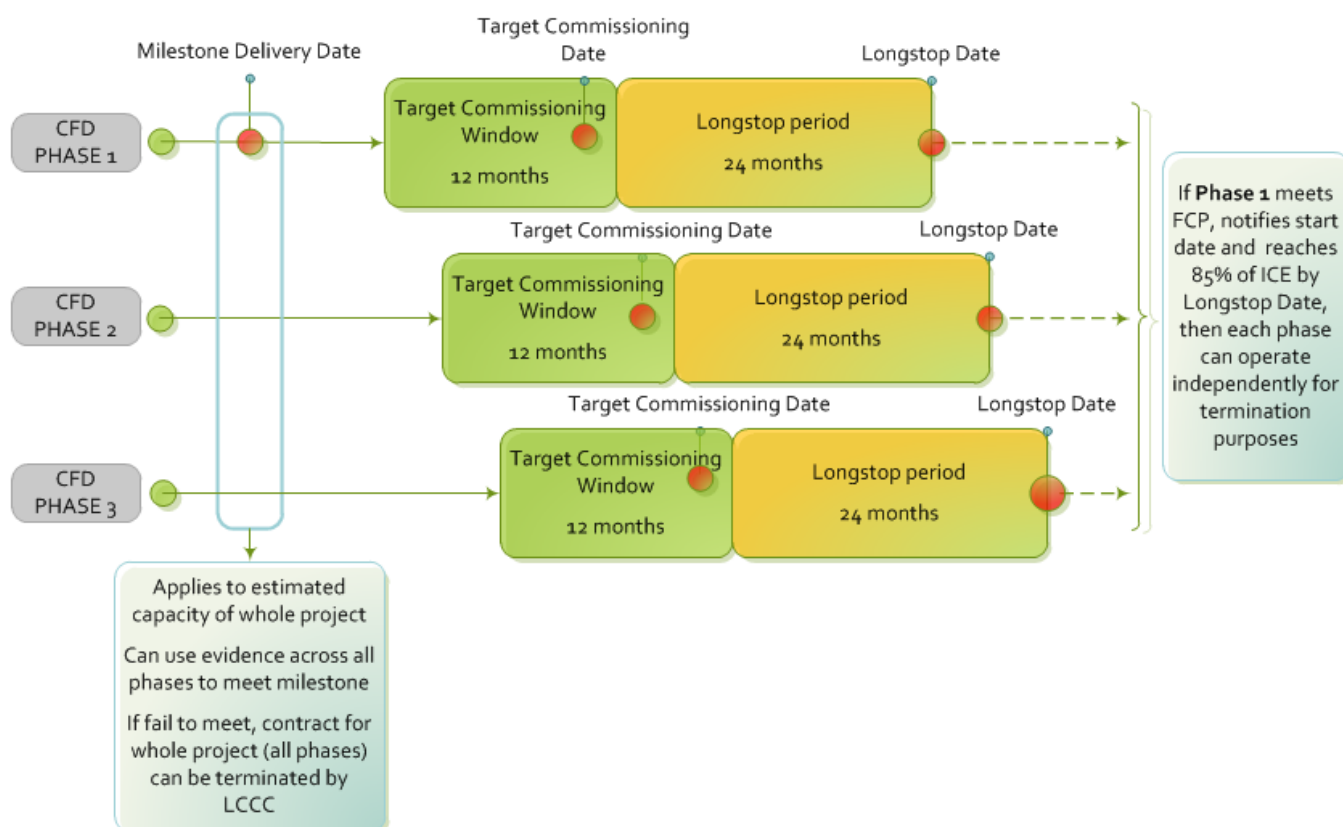
¹⁸ Tables G and H

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/348202/The_Contracts_for_Difference_Standard_Terms_Regulations_2014_-_CFD_Standard_Terms_Notice_29_August_2014_.pdf

4.3.17. Once phase 1 has met its Further Conditions Precedent, notified a start date and reached the 85% Installed Capacity threshold at the Longstop Date, each of the phases will operate independently for termination purposes. Should phase 2 fail to meet its Further Conditions Precedent, for example, phase 3 would be unaffected by any termination of phase 2.

4.3.18. Requirements are for (i) the first phase to satisfy the above by a date no later than, at present, 31st March 2019; and (ii) the Target Commissioning Date of the last phase to be no later than 2 years after the date referred in (i)¹⁹.

Figure 2 Overview of milestone requirements for offshore wind phased projects



4.3.19. Projects under the CFD are subject to a minimum Installed Capacity requirement. The generator must meet this capacity threshold²⁰ (subject to the specified permitted reduction detailed below). If the generator fails to issue a Final Installed Capacity Notice by the Longstop Date, the LCCC has the right to deem the Final Installed Capacity, with effect from the Longstop Date, to be 80% of the Installed Capacity Estimate. This failure is also a Termination Event, though as with all such events the LCCC is not obligated to exercise it.

4.3.20. The CFD allows generators to adjust their estimated capacity (the 'Installed Capacity Estimate' or ICE) to reflect the challenges associated with committing to deliver a precise level of capacity at the point at which they apply for the Standard Terms and Conditions.

¹⁹ Supplemental requirements from 2014 Allocation Framework

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360269/Updated_Final_AF.pdf

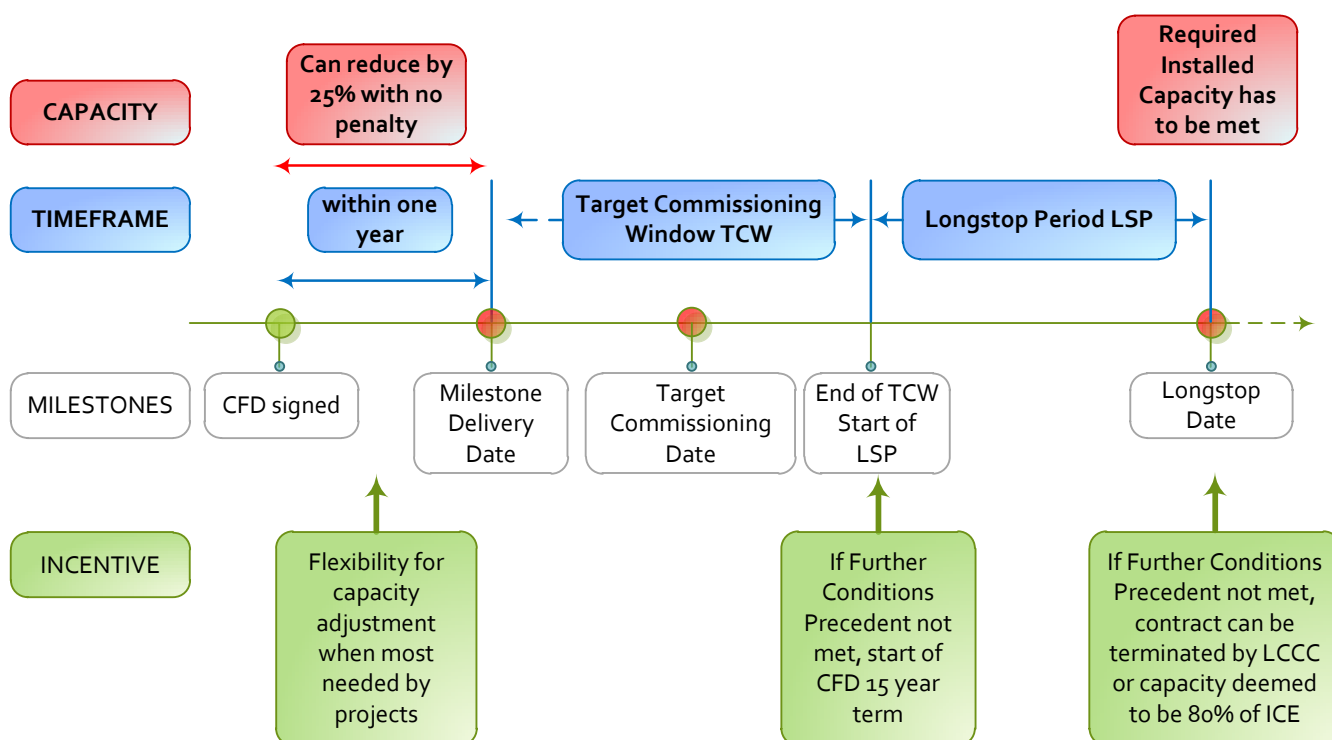
²⁰ The Required Installed Capacity being at least 95% (85% for Offshore Wind) of the Installed Capacity Estimate; or the Installed Capacity Estimate minus the size of one of the facility's turbines/generation engines.

4.3.21. This requirement for flexibility has to be balanced against the need for Government to encourage timely delivery of renewable generation in a way that meets its decarbonisation targets. It is also important that the Government is able to deal with budget uncertainty in a way that manages the available budget for CFDs (and the LCF) effectively and mitigates the risk that projects over-apply for capacity and prevent the allocated financial resource being released in a timely way to alternative projects.

4.3.22. In order to adjust their estimated capacity, generators can submit one Installed Capacity Estimate (ICE) adjustment notice to the LCCC no later than the Milestone Delivery Date to decrease project capacity by up to a maximum of 25% (i.e. the revised ICE cannot be less than 75% of the Initial ICE). The generator cannot subsequently increase the ICE.

4.3.23. This flexibility is in addition to other forms of flexibility, such as (i) force majeure provisions in the contract and (ii) the ability to adjust capacity in response to Relevant Construction Events (RCE), which could prevent the generator from meeting the capacity threshold. In the latter case, notice must be given no later than 3 months prior to the Longstop Date, and changes to the Installed Capacity Estimate are, as per the permitted reduction above, irreversible.

Figure 3 Possible adjustments to installed capacity estimate by generators in the GB CFD



Installed capacity flexibility for offshore wind phased projects

4.3.24. For offshore-wind projects, the termination threshold at the Longstop Date is set at 85% of the Installed Capacity Estimate (CFD agreement for phased projects). Phase 1 must represent at least 25% of the total capacity of the CFD unit after all phases are completed²¹.

4.3.25. In addition to the RCE and Permitted Reduction provisions, a project may give a Turbine Reallocation Notice to the LCCC to reallocate capacity from one phase to another, at

²¹ Supplemental requirements from 2014 Allocation Framework
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/360269/Updated_Final_AF.pdf

any time prior to the first day of phase 1's TCW (CFD agreement for phased projects). This is designed to recognise the geographical and technical difficulties presented by offshore wind projects.

4.4. Implementing the milestone requirements and capacity adjustment provisions in NI

Issues and propositions for implementation in NI – milestone requirements

4.4.1. The issues relevant to the milestone requirements are those which impact the allocation process in the first instance and specifically the eligibility criteria. Changes to the criteria may necessitate changes to the milestone requirements, to ensure levels of incentives and safeguards remain equivalent to the GB process. The issues are related to (i) grid connection agreement; and (ii) the clustering policy for grid connection, as detailed in section 3.4.

4.4.2. The minded-to position is to retain the requirement for a Grid Connection Agreement as a key eligibility criterion for applicants in NI (see section 3.4). Assuming that this entails the same level of financial commitment as in GB, key issues are with ensuring that:

- The CFD milestones can accommodate the estimated 'go-live' dates of the planned clusters²². This would mean extending the TCD window (currently April 2015 to March 2019);
- The contract can be terminated in the event of a failure to connect due to cluster delays;
- The option to extend milestones includes *reasonable* cluster delays, i.e. specified and not open-ended where there is high uncertainty.

4.4.3. The minded-to position is therefore to retain the milestone requirements, i.e. MDD, TCW, TCD and Longstop Date, with some additional conditions specific to the NI context, such as:

- a) To extend the TCD window to include the estimated 'go-live' dates of some of the planned clusters, within the current LCF period.
- b) With regard to termination: if the FCP are not met by the end of the Target Commissioning Window, the LCCC can initiate the start of the 15-yr term; if not met by the Longstop Date, the LCCC has the right to terminate the contract. Failure to meet the FCP could include failure to connect due to delays in or cancellation of cluster build. Subject to necessary amendments to the drafting of the Additional FCP to take account of the different compliance testing process in NI, the LCCC would have a termination right under the Additional FCP as currently drafted if cluster

²² According to NIE plans, there are currently seven planned clusters, including: (i) one commissioned; (ii) three with NIAUR construction approval and due to go live at end of 2016; (iii) two with NIAUR pre-construction approval and, subject to construction approval and planning permission, planned for completion in Q1 of 2019; and (iv) one due to submit pre-construction approval request, and subject to approvals and planning permission is due to go live in Q3 of 2019. Source: [http://www.nie.co.uk/documents/Generation/large-scale-generation-clusters/01-Mapping-Tool-User-Guide-Main-Areas-\(1\)](http://www.nie.co.uk/documents/Generation/large-scale-generation-clusters/01-Mapping-Tool-User-Guide-Main-Areas-(1))

delays had the effect that the compliance testing stage for the facility was not reached prior to the Longstop Date.

- c) To clarify the provisions allow for extension of the MDD, TCW or Longstop Date as a result of force majeure or delays by the Transmission System Operator or the Distribution Network Operator. DECC understands that although the NI connection agreement does not initially include a target connection date, generators receive a detailed delivery plan which includes an indicative timeline for their individual connection as well as for the cluster build within two months of accepting the connection agreement. It is envisaged that the flexibility conditions within the CFD could therefore apply in the event of a delay in cluster build. However, significant uncertainty remains with regards to the timeline of clusters which do not have full approval to proceed, and with this, a risk that these clauses could be used to extend the CFD indefinitely. The minded-to position is to clarify provisions to encompass these eventualities, so that the option to extend remains within reasonable bounds.

Issues and propositions for implementation in NI – capacity adjustment

4.4.4. Other than to adjust to new milestone requirements, should any be made for NI, there is currently no rationale for changing the thresholds and timeline for adjusting the Installed Capacity Estimate for NI CFD generators.

4.4.5. Please see also Table 4 for relevant Eligibility Criteria questions.

Table 7 Questions on milestone requirements and capacity adjustment

Consultation Questions	
1.	The minded-to position is to retain the milestone requirements, with some additional conditions specific to the NI context. Is there any evidence that this might not be appropriate?
2.	The minded-to position is to retain the thresholds and timeline for adjusting the installed capacity estimate. Is there any evidence that it might not be appropriate?

4.5. Introduction to the Market Reference Price (MRP) in the CFD

4.5.1. The Market Reference Price ('MRP') within the CFD establishes a reference price against which difference payments are made. The existing MRP provisions distinguish between the Intermittent Market Reference Price ('IMRP') and the Baseload Market Reference Price ('BMRP'). Beyond this distinction, there are certain processes shared between both Reference Prices, with similarities including the existence of the potential for 'Principles Reviews', albeit with triggers distinct to each reference price.

4.5.2. In each case, the reference prices are calculated through the averaging of data drawn from set publically-accessible price sources (none of whom presently provide price data for Northern Ireland) ensuring that generators may seek to match this price and optimise their benefit under the CFD.

4.5.3. The principle design criteria of the MRP (both intermittent and baseload) are that any reference price should:

- a) **represent** an acceptable proxy for the price of electricity in the wholesale market in which that generator operates;
- b) **incentivise** beneficial market and generating behaviour, including properly scheduled outages and selling output forward;
- c) remain **robust** throughout its period of use; and
- d) be knowable and achievable (**'accessible'**) by generators, whether directly, through trade into the market or indirectly, via an offtaker.

Baseload Generation (BMRP)

4.5.4. Within the CFD the following technologies are considered as baseload:

- a) Advanced Conversion Technology (with and without CHP)
- b) Anaerobic Digestion (with and without CHP)
- c) Dedicated Biomass with CHP
- d) Biomass Conversion
- e) Energy from Waste (with and without CHP)
- f) Geothermal (with and without CHP)
- g) Sewage Gas
- h) Landfill Gas

4.5.5. For the GB CFD, the BMRP is calculated in advance of each generating season by the LCCC. This is calculated as the volume-weighted arithmetic mean of the prices quoted by each of the BMRP price sources on each day of the prior season (the 'calculation season') for delivery of power over the generating season. Thus, the primary dependency for the BMRP is a season price quoted season-ahead. For example, the BMRP for the summer season will be the average of the prices quoted on each day throughout the winter season by the price sources.

4.5.6. In order to optimise their potential return under a baseload CFD it is in the interest of the generator to mirror the trading that contributes to the calculation of the eventual BMRP. In acting in a self-interested but otherwise economically efficient manner such as this, the generator is driven toward sound generating activity, such as scheduling maintenance outages in a way that does not endanger their liabilities. This in turn benefits the system, ensuring that balancing can occur as normal.

4.5.7. The BMRP has a number of specific design objectives:

- a) To avoid removing normal commercial incentives for active market participation while ensuring the generator is able to hedge the reference price;
- b) To avoid dampening, diluting or otherwise distorting price signals for reliability and availability aimed at operating across the entire industry/market (e.g. such as the balancing mechanism (BM)); and
- c) To mitigate risk of distorting or damaging liquidity in the GB power market and, where possible, support positive development of liquidity; baseload projects currently take advantage of their reliability to sell into forward segments of the market (season and month-ahead being common tenors) and benefit accordingly. Within the GB baseload context we wish to avoid distorting this behaviour by incentivising a different route to market (i.e. via the IMRP) without cause.

4.5.8. Even where a generator accesses the market via a PPA, as in the case of many smaller generators in GB, the provider will in turn trade in line with the BMRP and will require that any planned maintenance is agreed with them in advance, again ensuring that the direct market participant, albeit in this instance a PPA provider, is able to meet liabilities resulting from selling as far forward as the BMRP requires.

4.5.9. The price sources employed in the production of the BMRP are reviewed annually, beginning in October each year, though not before 2015. This process allows the LCCC to add and remove price sources on the basis of their compliance, or failure to comply, with set standards within the contract, while also ensuring that the BMRP, as a static price set throughout a season, has the best chance possible of being reflective of the market at its establishment. The standards required by the contract ensure the inclusion of all sources that provide a fair reflection of the market at a commercially reasonable price, subject to their adherence to certain defined regulatory standards (audit, data retention, objectivity, etc.).

Intermittent Generation (IMRP)

4.5.10. Within the context of the GB CFD 'intermittent' generators are those operating the following technologies:

- a) Onshore Wind
- b) Offshore Wind
- c) Solar photovoltaic
- d) Tidal Range
- e) Tidal Stream; and
- f) Wave

4.5.11. The IMRP is dynamic, changing from hour to hour (each hour being a 'Settlement Unit' within the CFD), consisting of either the consensus GB Day Ahead Price quoted for that hour or a volume-weighted average of the GB Day Ahead Hourly Price quoted by each Intermittent Price Source, should the price quoted by each differ between them. Thus, the primary dependency for the IMRP is an hourly price quoted day-ahead.

4.5.12. Unlike the BMRP, the IMRP is not subject to an annual review of its price sources, with the only means of review being the Principles Review discussed below. The existence of a 'zonal' GB-wide day-ahead price is a result of the coupling of the GB market, and its continuing existence removes the need to regularly re-check the consistency of the sources that contribute to it and therefore to the IMRP.

4.5.13. However, should the market alter significantly in future this may still trigger a Principles Review which could potentially lead to a change in source or methodology. The form, potential triggers and approach to these reviews is discussed in greater detail below.

Principles Reviews

4.5.14. Although the principles themselves differ somewhat, both the IMRP and the BMRP may be subjected to a detailed Principles Review should any of a number of triggers be met. In general, these triggers either relate to the viability of the existing price sources or to a fundamental change to the underlying electricity market. Those triggers that do not relate to the viability of the available price data (i.e. those that concern reform of the market) are drafted in a way that reflects potential and anticipated changes to the GB market.

4.5.15. Beyond these, there are two further triggers that apply in each case:

- a. For the CFD Counterparty to trigger a review at its own option where it believes that the current reference price is not representative of the electricity market; and
- b. Where 30% of generators (by volume or number) holding the relevant reference price lodge a notice requesting such a review.

Dispute Processes

4.5.16. Both BMRP and IMRP include provision for generators to lodge disputes with various aspects of the processes employed within any Principles Review and, in the case of the BMRP, any Annual Review. This process is similar to that employed elsewhere within the CFD, allowing a process of escalation through to an eventual determination by an expert.

4.6. Implementing the Market Reference Price in NI

Issues for implementation in NI

4.6.1. The island of Ireland has a single electricity market (the SEM) and will continue to do so into the foreseeable future within the I-SEM. This presents a wholly separate and structurally different market from that operating in Great Britain (albeit one that is largely correlated) and means that any CFD drafted to function in NI could not adopt precisely the same MRP provisions while meeting the principles and requirements outlined above.

4.6.2. There are some MRP provisions in the GB CFD that are incompatible with the NI context and may need to change. In particular, the sources presently used for calculation of the MRP are inappropriate for transposition to NI because they relate only to the GB wholesale market and do not represent an acceptable proxy for the price of electricity in NI. Given its managed nature (both now and post-reform), it is unlikely that the same fluid commercial market for NI-specific sources of price assessment will develop, and the terms must be adjusted accordingly.

4.6.3. There are other MRP provisions within the GB CFD that are wholly compatible with the NI context, or which require only minor amendment. In particular, the MRP review and dispute process will function in Northern Ireland with only minimal changes.

4.6.4. To provide long-term visibility for NI generators the intention is that the MRP used for NI generators will be based on the I-SEM prices. Since the I-SEM is planned to go live in October 2017 only, it may be necessary to define a transitional MRP solution for NI projects that should allocation and potential CFD project commissioning occur before I-SEM enters into use. However, there may not be any projects falling into this category.

4.6.5. The next sections of this paper present:

- a. A note on the application of the European Commission's State aid requirement in relation to Negative Pricing
- b. Propositions and questions for the MRP in the transition period between April 2017 (i.e. start date for CFD payments) and October 2017 (I-SEM go live date)
- c. Propositions and questions for the enduring MRP provisions in NI
- d. Propositions and questions for the implementation of the common MRP provisions (review and dispute processes) in NI

Negative pricing

4.6.6. As part of its positive state aid decision by the European Commission²³ the UK has committed to ensuring that generation by GB CFD generators is not incentivised during periods of negative pricing from January 2016. This requirement is consistent with the Commission's most recent revision of its Energy and Environmental State Aid Guidelines, and will therefore need to be transposed in some form to the NI CFD once drafted. The approach taken to this will not impact upon the overall design of MRP in NI. Further details can be found within the Consultation published in relation to the GB CFD on 9 March 2015.²⁴

Propositions and questions for MRP transition arrangements in NI

4.6.7. This section describes propositions and question for what MRP to use in the transition period between any early start dates for CFD payments predating the anticipated October 2017 I-SEM go-live date. These transition options may be necessary to give NI investors' confidence about the bankability of the CFD from the start of the scheme in Northern Ireland. However we understand that no NI CFD project is likely to commission before the start of the I-SEM in October 2017 in the light of the proposed NIRO grace period.²⁵

4.6.8. A number of transition options could be envisaged for what MRP would apply to NI CFD projects commissioning before the start of the I-SEM, such as:

1. No MRP in the transition period. The NI CFD would be drafted such that CFD payment would not begin until the I-SEM goes live and MRP (both IMRP and BMRP) would be calculated from I-SEM sources (see paragraph 4.6.13 below).
2. Using the GB MRP for CFD generators in NI prior to the start of the I-SEM.
3. Using forecasted SEM (SMP) prices such as the Directed Contract strike price²⁶ or the Public Service Obligation levy benchmark price.²⁷
4. Devising a proxy for the SEM prices, including all three revenue streams that NI generators have access to (i.e. the SMP, CPM and constraint payments).

4.6.9. With the exception of the 1st option, these options would provide confidence to NI generators that the CFD is bankable even before the I-SEM starts. However none of these options would be ideal and all of them would challenge one or more of the MRP principles and requirements. They would also have an impact on NI CFD setup and require additional resources from the LCCC and the Settlement Service Provider.

4.6.10. It remains to be determined whether any transition would be effected through a one-off mechanism introduced into the initial contract drafting (similar to the existing optional year-ahead switch offered to baseload generators) or whether the flexibilities already drafted into the CFD would be relied upon to trigger a review.

²³ http://ec.europa.eu/competition/state_aid/cases/253263/253263_1583351_110_2.pdf

²⁴ <https://www.gov.uk/government/consultations/electricity-market-reform-contracts-for-difference-consultation-on-changes-to-the-cfd-contract-cfd-regulations>

²⁵ http://www.detini.gov.uk/deti-energy-index/deti-energy-sustainable/northern_ireland_renewables_obligation_.htm

²⁶ DCs are financial Contracts for Difference that NIE and Power NI, if determined to be dominant market actors, are obligated to offer to suppliers, and include within them a strike price that seeks to forecast the SMP component of the SEM.

²⁷ The PSO benchmark (given in Euros) provides the basis for a number of schemes operated by the Irish government, one of which is the REFIT2/3 scheme, the primary Irish renewable subsidy scheme.

4.6.11. Finally, any interim measure will need to remain present and robust throughout the period of transition. It remains to be seen whether there will be any formal period of transition between the SEM and I-SEM akin to that implemented when SEM went live.

4.6.12. In conclusion, there is presently no preferred approach to the transitional period between the introduction of the NI CFD and I-SEM, or indeed if one is required. The questions below are designed to test the options identified above, gather evidence on alternative options, and aid our understanding of the risks that may arise should no transitional measure be implemented.

Table 8 – Questions relating to MRP transition arrangements

Consultation Questions	
1.	Is there any evidence that there may be projects in NI that would apply for a CFD in 2016 and would be commissioning before the start of the I-SEM in October 2017?
3.	Four transition options are envisaged in this call for evidence. Do you agree that these are appropriate options? Are they necessary? Are there others available that would meet the criteria required?
4.	Is there evidence that any of the transition options may overcompensate NI CFD generators compared to GB CFD generators?

Propositions and questions for the enduring MRP provisions in NI under the I-SEM

4.6.13. To provide long-term visibility for the NI generators the intention is that the MRP used for NI generators will be based on the electricity prices under the I-SEM. The MRP will form a key aspect of the NI CFD, and any reference price (BMRP and IMRP) must continue to align with the principles laid out above: representativeness, incentive, robustness, and accessibility.

Intermittent Generation (IMRP) in NI

4.6.14. Under the GB CFD the IMRP presently makes use of liquid and commercially-available day-ahead sources.

4.6.15. Under the I-SEM the equivalent to this will most likely be the exclusive, non-mandatory day-ahead market (DAM) that serves as the primary means by which generators trade their electricity physically (as opposed to the purely financial and initially limited financial forward market).

4.6.16. Therefore under the I-SEM there should be a liquid source upon which to base a direct equivalent of the GB IMRP. The minded to position is therefore to use this source for the NI IMRP.

Baseload Generation (BMRP) in NI

4.6.17. The I-SEM design includes a purely financial forward market. This market is not yet established, though its essential design elements are already known and would allow, in theory, for trades comparable to those used in the construction of the GB BMRP to be sourced.

4.6.18. Alternatively, a reference price for baseload plant in NI in absence of forward market would need to relate in some way to the available price index within the I-SEM, the day-ahead market ('DAM').

4.6.19. On this basis three options can be envisaged for the NI BMRP, the benefits and risks associated with which are described within each option while their compliance with the MRP design principles is assessed beneath.

1. **Option 1: All generators receive IMRP.** Given the small scale of the Northern Irish baseload market, an option may be to apply the IMRP to all generators, including to baseload generators.

This has the benefit of simplicity. The small size of the baseload generating community in NI militates against introducing complex mechanisms that may be difficult for such generators to track.

However, this also introduces a risk in the form of marked deviation from the approach taken to baseload facilities under the GB CFD. This may be defensible on the same basis, with the small size of any baseload facility (when compared to GB equivalents) making the need to enforce incentives less pressing.

2. **Option 2 – Baseload generators receive a function of the IMRP.** Alternatively, another option would be to offer a reference price that continues to use the I-SEM DAM price as a source, but which seeks to artificially produce a longer-tenor figure (i.e. seasonal or monthly). This might take one of two forms:
 - a. Ex-ante rearward calculation: an average of each of the DAM hourly prices quoted by the I-SEM throughout the preceding trading month.
 - b. Ex-post calculation: an average taken at the close of a trading month, producing a retroactive and retrospective BMRP.

This option has the benefit of removing direct exposure to a very short term market, and encourages those affected to take a wider and longer view of the market when they choose to trade.

However, this option introduces a risk of increased complexity, being an entirely artificial construct that generators will need to approximate themselves, without access to a commercial benchmark, if they wish to track it as it develops.

3. **Option 3 – BMRP derived from I-SEM financial forward market.** As in GB, this option involves the sourcing of trading data in order to construct a reference price through the averaging of all relevant trades across a period. In GB this takes the form of the arithmetic mean of all season-ahead trades recorded across the BMRP sources in the previous season.

The second key design element of this approach is that this single value persists across the same length of time as the traded tenor (i.e. for a season-ahead price all season-ahead trades for the next made throughout the current season are averaged, with this value applying throughout the next season).

4.6.20. The above options, when compared against the MRP principles shows that none would perfectly meet the principles but all options may have their benefits. At present with all the uncertainties that remain about the details of the I-SEM, it is still too early to be able to assess definitively which option would be the most appropriate for the NI BMRP.

4.6.21. Option 1 and 2 are necessarily **representative**, as the I-SEM's DAM is both drawn from that market and also includes a large proportion of the total trading volume. It is unclear at present whether the financial forward market (option 3) under the I-SEM will be relevant for baseload generators or contain sufficient 'volume' (albeit financial) to be considered representative.

4.6.22. Under option 1, the exposure of a baseload generator to the day-ahead market removes the **incentives** created by the GB BMRP to sell forward and operate in line with this commitment, including with regard to outage scheduling. Option 2 detaches the generator from direct exposure to the DAM and therefore re-introduces a degree of forward incentive. Finally, the forward incentive under option 3 would depend entirely upon the trading environment within the financial forward market as it develops. It may be that longer tenor trades such as month and season-ahead begin to see significant volumes being traded and would therefore form suitable bases for a BMRP similar in form to that employed in GB.

4.6.23. All three options are appropriately **robust** due to their reliance on publically available and officially curated data. It may be that the quality criteria which form part of the GB MRP are not met on a line-by-line basis, but they are likely to comply with similar standards, as are SEMO and the SEM Committee themselves as the bodies responsible.

4.6.24. Finally, option 1 presents a fully **accessible** approach. What one trades in to the DAM will directly influence, in however small a way, the eventual MRP that is faced. As a purely functional derivative, option 2 represents a 'market' that a baseload generator cannot directly influence, although its trades will eventually see impact, albeit diluted over a longer timescale. Option 3 would not meet this principle given the bar on forward selling of output.

4.6.25. In conclusion, at present the minded to position to the enduring MRP within NI is to establish an equivalent to the GB MRP sourcing data from the I-SEM following its introduction. The questions below are designed to test this position and gather evidence on alternative options if appropriate.

Table 9 – Questions relating to enduring NI MRP options

Consultation questions	
1.	The minded-to position for the NI IMRP is to make use of the DAM price under the I-SEM. Is there any evidence that it might not be appropriate?
2.	Three options are envisaged for the NI BMRP in this call for evidence. Do you agree that these are the most appropriate options?
3.	Is there evidence that other, competing, day ahead platforms may develop besides the I-SEM? Or does the evidence show that the DAM under the I-SEM will be the sole relevant price source?
4.	Given the nature of the planned financial forward market under the I-SEM, is there evidence that a season-ahead index would develop over time?
5.	Given the size of the baseload generation mix and average installed capacity in Northern Ireland, is there evidence that that using either the DAM price or a derivative thereof as the NI BMRP would lead to perverse incentives or unacceptable system instability?

Propositions and questions for common MRP provisions in NI

4.6.26. There is no reason why provisions relating to the amendment of the reference price over time (whether annually or in certain special circumstances) cannot be implemented directly in NI, albeit with minor amendments to reflect the characteristics of the NI market.

Principles reviews

4.6.27. Both the IMRP and the BMRP are subject to reviews where certain (usually extreme) events occur which indicate a significant disturbance to the market. These events may need to be taken account of going forward in order to ensure the continued good functioning of the MRP. Although in any case these events will need to be amended to reflect those that are relevant to NI, there is no reason why the NI CFD should not continue to receive this protection.

4.6.28. There is one optional trigger that may lead to a Principles Review, and that is where 30% (by number or by volume) of relevant CFD holders (i.e. baseload or intermittent) request one. When the LCCC assesses whether this threshold has been met, an NI generator would be compared against all relevant CFD holders, including those in GB. Given the likely relative distribution of volume and numbers of CFD contracts between GB and NI, this is unlikely to be a fair comparison. Therefore our minded to position would be to amend the comparator group in the case of NI MRP principles review to include only the CFD holders in NI.

BMRP annual reviews

4.6.29. Unlike the GB IMRP, which is drawn from a relatively stable source that is unlikely to require amendment in circumstances falling short of a principles review, the GB BMRP is subject to an annual review of its price sources, due primarily to the shifting commercial environment in which those sources exist. It is entirely conceivable that over time new sources of forward contract trading data may become available within the GB context and may therefore legitimately see inclusion.

4.6.30. Both under the SEM and under the I-SEM, there is no such market for pricing information. Therefore our minded to position would be to remove annual reviews from the NI CFD, simplifying the contract terms substantially for those impacted and making administration by the LCCC less onerous.

4.6.31. Should the NI market alter over time to reflect a more commercial and fluid market for pricing and trading data, the principles review already contains the powers necessary to amend the NI MRP provisions to re-include such a mechanism in future.

Disputes

4.6.32. As in the case of principles reviews triggered by CFD generators, there are a number of provisions within the MRP contract terms that allow for a dispute to be raised regarding a conclusion reached by the LCCC by 30% of relevant generators (again, by volume or by number).

4.6.33. These provisions are unlikely to function in a fair manner for NI generators, being forced to compete in terms of both volume and number against a far larger cohort of GB CFD-holders. The sorts of decisions that the LCCC may be making that a CFD generator might choose to dispute will often relate directly to the relevant market, and in the case of NI this would leave impacted CFD generators unable to dispute the determination in question.

4.6.34. As a result, our minded to position is that NI CFD generators, as in the case of the principles review trigger, are compared only against other NI CFD generators and not against all CFD-holders throughout the UK.

Table 10 – Questions relating to MRP review processes

Consultations questions	
1.	The minded-to position is to retain the existing approach to principles reviews. Do you agree that this is appropriate for the NI MRP?
2.	Can you provide examples for appropriate events that would trigger a principle review of the NI MRP provisions in the NI context?

4.7. Introduction to the metering provisions in the CFD contract and implementation in NI

4.7.1. This metering section of this paper is split out into eight separate sections (set out below). Each section comprises two parts, the first will set out the policy position for the GB CFD, and the second will discuss how such provisions could be implemented in NI considering

the different market context, before presenting a set of policy options that have been developed.

4.7.2. The metering provisions in the CFD contract cover a number of different provisions:

- Metered output
- Loss adjustment factors
- Estimated data
- Licensed-exempt embedded generators
- Metering disputes
- Metering undertakings
- Phasing for offshore wind
- Dual scheme facilities

4.7.3. Metered Output is one of the key inputs used to calculate difference payments. Combined with the provisions for fuel measurement, the Metering and Metered Output provisions ensure that the CFD contract only pays for eligible, low-carbon electricity.

4.7.4. The GB CFD Terms and Conditions on Metering and Metering Output are different for Public-Trading and Private Network generators.²⁸ These changes have been made taking into account the latter's unique operating model and the applicable metering standards/rules in GB.

4.7.5. In accordance with the Electricity Act 1989, all licensed generators in GB are required to be party to the BSC, which defines the trading rules and standards for Settlement on the licensed Transmission System and the licensed Distribution Systems (i.e. together defined as the Total System).

Introduction to Metered Output in the CFD contract

4.7.6. As a requirement of the CFD, all Public-Trading generators must install a BSC registered and compliant metering system (unless a metering dispensation has been approved). Once registered with the BSC Company (BSC Co), their metering system will be assigned a Balancing Mechanism Unit/s (BM Units). These BM Units will capture and record net Metered Output for each Settlement Unit.

4.7.7. The net Metered Output volumes for all Public Trading generators is recorded and collected at the BSC Boundary Point (i.e. the point at which the generator's metering system connects to the Total System) and are the product of gross Metered Output less all gross metered inputs (i.e. input electricity). Once adjusted for electrical losses from the respective licensed Distribution System (i.e. the Line Loss Multiplier), the Metered Output volume is known as BM Unit Metered Volume.

4.7.8. Where applicable, BM Unit Metered Volume is further adjusted for transmission electricity losses (i.e. the Transmission Loss Multiplier) as appropriate in accordance with the BSC, to derive the final volume used in CFD Settlement. This final volume is known under the contract as Loss Adjusted Metered Output (LAMO).

²⁸ Public-Trading generators trade their electricity on the Total System. Private Network generators are exempt from holding a generation licence and generate electricity solely or partly for supply to a private network.

4.7.9. For CFD purposes 'input electricity' is defined as: Electricity produced by the generator, used in its operations, including essential services; Electricity imported by the generator from the Total System used in its operations; and Standby generation electricity used on site.

4.7.10. To calculate Metered Output the following base formula is applied:

Metered Output per Settlement Unit = LAMO

Where: LAMO = BM Unit Metered Volume x TLM

4.7.11. Two additional multipliers are added to the Metered Output calculation, where applicable:

- The Renewable Qualifying Multiplier (RQM) is applied to those technologies which may at some point be fuelled with fuels containing variable renewable/sustainability content or where there is a possibility that fossil fuels could contribute to electricity generation. The RQM can be applied with or without the CHPQM; however it is only applied to baseload technologies.

Metered Output per Settlement Unit = LAMO x RQM

- The Combined Heat and Power (CHP) Qualifying Multiplier (CHPQM) is applied to CHP generating stations in accordance with the CHPQM Calculation Methodology outlined in the CFD. The CHPQM is only applicable to baseload technologies.

Propositions and questions for implementation of metered output in NI

4.7.12. The Metered Output provisions will need to be modified in order to reflect the different market arrangements in NI. The CFD relies upon BSC functionality in order to ensure that accurate metered data is passed through for settlement, and this has resulted in a number of BSC-specific terms being utilised in conditions of the CFD contract. It will not be possible to transfer these to NI because the processes referenced would have no binding effect for NI generators. On this basis, it will be necessary to undertake a thorough review to ensure that all BSC-related content is either removed or modified to ensure that it accurately reflects conditions in the NI market.

4.7.13. One example where modifications will need to be made is the process for estimating data. In the GB CFD this process only commences in the event that the BSCCo fails to provide metered data to the CFD Settlement Services Provider. As drafted, the aforementioned wording would have no binding effect for an NI generator because the BSCCo is not a recognised entity in NI. Therefore all references to the BSCCo will need to be removed from the NI CFD and replacing with whichever NI body will be responsible for reporting metered output volumes to the CFD Settlement Services Provider.

4.7.14. There is no evidence that the CFD Metered Output provisions require substantive modification in order to function for NI.

4.7.15. The current metering provisions in the CFD obligate the generator to ensure that all input and output electricity associated with the Facility are measured separately because CFD Settlement takes place on net Metered Output. Existing SONI Grid Code arrangements, which apply to all NI generators, stipulate that all meters require separate channels for input and output electricity, therefore allowing the net Metered Output calculation to take place. On this basis, DECC does not envisage that the CFD Metered Output provisions need to change for NI because existing arrangements are sufficient to ensure that the concept of recording a generator's net Metered Output volumes is already implemented through the NI Metering Code

(contained within the SONI Grid Code). However, it should be noted that NI code documents refer to “Metered Data” rather than “Metered Output”, and it should be considered whether this change should be tracked through to the NI CFD in order to provide more familiarity for NI generators.

4.7.16. All language which refers to the BSC in the CFD contract will need to be modified in order to reflect the different regulatory arrangements in NI. It may also be necessary to make modifications to industry codes to guarantee that the relevant NI bodies are obligated to pass CFD metered data to the CFD Settlement Services Provider. A thorough review of all the BSC-dependent definitions will be required, and where necessary NI equivalent terms will be utilised, because at the present time it is difficult to determine the full scale of potential changes.

4.7.17. The minded to position is to make changes to the SONI Grid Code because it is the only industry document which solely applies to generators in the NI market, and therefore prevents any risk of implementing changes which would impact upon a separate jurisdiction. However, there is still an open question regarding which NI industry documents are the most appropriate to accommodate all of the necessary changes required to ensure parties continue to comply with their obligations CFD scheme. Other available options are to make changes to the Trading & Settlement Code, or alternatively both the aforementioned and the SONI Grid Code. Analysis is being undertaken to identify which NI code documents, if any, are the most appropriate for making amendments in order to allow the functioning of the CFD requirements.

4.7.18. The CFD in GB settles payments to/from generators on a daily basis. In NI, SEM settlement is carried out on a weekly basis compared to daily for large GB generators and monthly settlement for smaller generators. It will therefore need to be considered whether NI generators should be make and receive CFD payments on a weekly basis or to align with the GB CFD framework and settle on a daily basis. For more detail on settlement of CfD contracts, please refer to section 4.9.

Table 11 - Questions on metered output

Consultation Questions	
1.	Do you have evidence which opposes DECC’s minded to position to maintain the existing CFD Metered Output provisions for NI? Are you aware of arrangements where it will not be possible to net off input electricity from a generator’s output?
2.	Do you know if there are any regulatory barriers to using the NI Grid Code as a document which covers all generators?

Introduction to loss adjustment factors in the CFD contract

4.7.19. A key component of CFD and supplier obligation settlement is the application of the Transmission Loss Multiplier (TLM) and Line Loss Factors (LLFs), which are adjustments that are applied to reflect losses incurred between the point of production and the end user on both the Transmission and Distribution networks. There are only ever two TLM values which can be applied during a Settlement Period, the Offtaking TLM and the Delivering TLM. The Delivering TLM is applied to all units which have a metered volume of greater than zero, thus scaling

down the volumes, whereas the Offtaking TLM will be applied to all units with a metered volume of less than zero, subsequently increasing those units consumption.

4.7.20. Line Loss Factors are applied to account for losses incurred on the Distribution network. LLFs vary depending on what Grid Supply Point a generator is located, the time of year and the voltage of a generators connection. Both LLFs and TLM multipliers are updated annually by the BSCCo.

4.7.21. Within GB, the relevant Transmission Loss Multipliers and Line Loss Factors are applied to generators metered volumes for the CFD and suppliers' gross demand for the SO, in BSC systems before the data is submitted to the Settlement Services Provider.

Propositions and questions for implementation of loss adjustment factors in NI

4.7.22. Whilst NI has its own set of transmission and distribution loss adjustment factors, DECC is minded that these do not require substantive change in order to function for CFD purposes. The principle of applying loss factors is to adjust generator's output for losses incurred on the transmission and distribution networks is identical to GB, and similarly to GB the NI System Operator is responsible for applying Transmission Loss Adjustment Factors (TLAFs) and the Distribution System Operator the Distribution Loss Adjustment Factors (DLAF). If a generating site has both a TLAF and DLAF applied the System Operator takes the two figures and applies a Combined Loss Adjustment Factor (CLAF).

4.7.23. From discussions with stakeholders it is the understanding that the calculation of DLAFs in NI is very similar to LLFs in GB. Both factors are set on a locational basis and vary between different times of day and year. Furthermore, both LLFs and DLAFs are set for different voltage levels (low voltage, high voltage & extra high voltage). The DLAFs are calculated annually by the Distribution System Operator in NI and the methodologies for developing new loss factors both involve modelling. Finally both sets of loss factors account for all technical losses in generation.

4.7.24. Regarding TLAFs, there are significant differences between those applied in NI and the TLM figure in GB. NI TLAFs are set on a site-by-site basis based upon the principle that a MW generated closer to demand is worth more than one produced further away. TLAFs are also adjusted for any marginal losses incurred during a settlement period, for example when a generator delivers an extra MW of generation. Further, a generator in NI is allocated 100% of all losses. In GB, the BSCCo calculates all losses incurred on the transmission system in a settlement period and averages them across all generators' trading units. Depending on whether the generator is delivering to, or offtaking from the total system a different TLM figure will be applied. A fixed percentage of losses are allocated to delivering trading units (45%) and offtaking ones (55%).

4.7.25. On this basis there is a clear difference in the application of transmission losses in NI compared to GB. The NI figure is based upon actual values, whereas the GB figure is an averaged figure, and in NI generators 100% of losses are applied to output, whereas in GB it is only 45%. There remains a question as to whether the CFD in NI could apply a loss adjustment figure which is based on locational factors, because its calculation and application are fundamentally different to the GB method for applying the TLM.

4.7.26. If the decision is taken to not implement the TLAF approach in the NI CFD, work will need to be undertaken to determine whether the TLM figures which are applied to GB generators' could be used to loss adjust the Metered Output of NI CFD-holders. Questions remain over the implementation potential of this option because it would require data to be

provided regarding which TLM, delivering or offtaking, should be applied to NI generators' output in a settlement period.

4.7.27. The minded to position for DLAFs is that it will be possible to apply these factors to NI generators' output because the principles of their application and the methodology for doing so are broadly similar to those used to calculate LLFs in GB. Regarding TLAFs, it is unclear whether they can be utilised for the NI CFD process or not because there are so many differences between their calculation and that of the TLM in GB. More work will be undertaken to develop a minded to position on this point.

Table 12 – Questions on loss adjustment factors

Consultation Questions	
1.	In your experience, are the locational variances in TLAFs significant?
2.	Do you have evidence to suggest that DECC should be considering using alternative loss adjustment factors to those applied by the System Operator in NI?

Introduction to estimated data in the CFD contract

4.7.28. All LAMO volumes received from the BSCCo are to be assumed as accurate. The CFD Counterparty will only undertake an estimation process where it has not received any metered data from BSC Co (i.e. the LAMO volumes necessary for CFD Settlement are missing) for any reason. Under these circumstances, the Conditions require the CFD Counterparty to employ the specific estimation technique using the process described below:

4.7.29. For baseload technologies Metered Output volumes would be calculated by applying the last known Metered Output volume to all missing Settlement Units, until LAMO volumes are again received from the BSC Co.

4.7.30. For intermittent technologies Metered Output volumes would be calculated by determining the equivalent Settlement Units for the last seven Billing Periods and taking the average of these values. This process would be replicated until BSC Metered Output volumes are received.

4.7.31. Once the BSC Co recommenced sending Metered Output volumes, the estimated volumes would be reconciled by the CFD Counterparty.

Propositions and questions for implementation of estimated data in NI

4.7.32. Modifications will need to be made to the process for estimating data in order to enable it to function in NI. In the GB CFD the process only commences in the event that the BSCCo fails to provide metered data to the CFD Settlement Services Provider. As drafted, the aforementioned wording would have no binding effect for an NI generator because the BSCCo is not a recognised entity in NI, and the contract will need to include whichever NI body will be responsible for submitting metered data to the CFD Settlement Services Provider.

4.7.33. In order to maintain parity with GB generators, the minded to position is to extend the Estimated Data provisions contained within the CFD contract to NI. However, two possible approaches can be envisaged for how the estimation process will be implemented.

Option 1

4.7.34. The Option 1 approach would be to maintain identical provisions to those which are applied in the GB CFD contract. Under this approach the CFD Counterparty would estimate a generator's Metered Output based upon historical readings in the event no data was provided for CFD settlement by the System Operator. The method for estimating Baseload and Intermittent technologies would replicate that used in GB. Once the actual Metered Volumes become available, and were submitted to the CFD Settlement Services Provider by the System Operator, any reconciliation would be picked up in a generator's next Billing Statement.

Option 2

4.7.35. Under Option 2 a slightly different approach would be adopted in that it does not rely upon the use of historical data as in the first approach. Whilst the GB CFD only allows for settlement upon actual Metered Volumes, real-time or historical, the Private Network CFD Agreement does allow for the provision of data from alternative sources provided that the CFD Counterparty is content that the substitute data is sufficiently accurate. In the GB CFD contract this alternative is available to Private Network generators because they are in general smaller operators than other generators, and therefore a more flexible and proportionate approach is required.

4.7.36. Evidence from NI stakeholders reveals that existing arrangements allow for data from an alternative source to be submitted to the System Operator in the event that actual Metered Output volumes are not available. If this alternative data is shown fall within the 3% tolerance levels set by the System Operator, then the generator will receive settlement based upon the alternative data provided.

4.7.37. An option for NI could be that in the event that a generator's actual Metered Volumes are not available, CFD Settlement can take place based upon data from an alternative source until such a time as actual values become available, provided the alternative data falls within the required levels of accuracy set by the System Operator²⁹. The CFD Counterparty would also need to consider that the alternative data provided is a more accurate representation of a generator's output than historical values. It would be the responsibility of the generator to provide evidence to the CFD Counterparty of the accuracy of any alternative data. Generators that do not provide alternative data, or whose data is deemed inaccurate by the Counterparty, would receive CFD settlement based upon historical Metered Volumes until actual values become available.

4.7.38. When the actual Metered Volumes for the period in question become available, the Settlement Services Provider would recalculate a generator's Metered Output. The Reconciliation Amount would be included in the generator's next Billing Statement.

4.7.39. In terms of the timescales for reconciliation of estimated data, it should not be necessary to make alterations to the existing NI provisions which allow reconciliation of metered data to take place up to thirteen months following the relevant settlement period. This reconciliation would take place in the event that actual data became available following a period where the estimation techniques had been applied. The NI timescales are similar to those in GB, and therefore in the interests of consistency, there is no intention to modify them.

4.7.40. A position on the optimal approach to the estimated data provisions has yet to be taken for the NI CFD because more information is required regarding whether the second

²⁹ <http://www.soni.ltd.uk/media/documents/Operations/Grid-Code/WFPS%20Settings%20Schedule%20Rev%205%20291013%20-%20URegNI%20Approved.pdf>

option, which relies upon estimated data being submitted for settlement in the event no actual metered data is available, is feasible for NI generators. Comments on the options developed are invited and we request stakeholders to provide evidence regarding the accuracy of alternative sources of data.

Table 13 – Questions on estimated data

Consultation Question	
1.	Have you previous experience of submitting alternative metered data to the System Operator for settlement? How accurate a representation of actual output do you perceive these alternative values to be?
2.	Do you have evidence which implies that the implementation of option 2 would hold little benefit for the majority of NI generators?

Introduction to licensed-exempt embedded generators in the CFD contract

4.7.41. The Electricity Order 2013 (Northern Ireland) states that no generators of 10MW capacity or less are required to hold a generating licence.³⁰ These generators have the option not to participate in the Single Electricity Market (SEM) pool; therefore these sites' metered data is not always visible to either SONI or NIE.

4.7.42. The GB CFD has been designed to support Licensed and Licensed-Exempt Embedded generators (EEGs) trading on the licensed Transmission System or a licensed Distribution System in Great Britain. Similarly to licence-exempt generators in NI, EEGs metered data cannot be directly transferred for CFD settlement.

4.7.43. Generally, EEGs must enter into a Market Supply Agreement (MSA, i.e. Power Purchase Agreement etc.) to sell their output. Under the BSC, once a MSA has been executed with a licensed Supplier, the Supplier takes responsibility of the Metered Output volumes of the generator. Ordinarily under BSC Settlement, these Metered Output volumes are aggregated with the Metered Output volumes of other generators also associated with the same Supplier. This makes it impossible to work out the Metered Output volume actually generated by the CFD-holding EEG, over each Settlement Unit.

4.7.44. Therefore to ensure that EEG's can effectively operate under the terms of the CFD, changes have been made to the BSC code to ensure the responsible Supplier ensures that the Metered Output volumes of its CFD-holding EEG, are kept distinct and separate for CFD Settlement via the registration of an Additional BM Unit (A.BMU)³¹

Propositions and questions for implementation of licensed-exempt embedded generators in NI

4.7.45. The EEG solution is not directly transferable to NI. The mechanism developed for the GB CFD relies heavily upon existing BSC arrangements such as Additional Balancing

³⁰ http://www.legislation.gov.uk/nisr/2013/93/pdfs/nisr_20130093_en.pdf

³¹ As a result of consequential changes to the BSC code (to give effect to EMR), licensed Suppliers have an A.BMU automatically registered (by the BSC Co) in each licensed Distribution System on which they operate. These A.BMUs remain dormant until and unless the Supplier enters into a MSA with a CfD-holding EEG. Suppliers are not subject to ordinary BSC Charges for A.BMUs registered in accordance with this purpose.

Mechanism Units, which do not a feature of the NI market. The majority of NI generators will directly sell their output into the Single Electricity Market (SEM) pool and subsequently their metered volumes are kept distinct for settlement purposes. However there are also licence-exempt, distributions-connected generators that do not participate in the SEM and it is unclear whether the metered volumes provided by these operators could be passed for CFD settlement.

4.7.46. Another potential solution to implement the GB provisions in the NI context would be complex to implement and would demand widespread changes to industry codes and licences in NI. It was initially proposed to implement a similar mechanism to that employed in GB for NI, and therefore DECC sought to develop a bespoke metering solution to enable licence-exempt Generators to participate in the scheme. This led to a proposal requiring Intermediaries, the agent which can register Units on behalf of smaller operators, to register a Generator Unit on behalf of a licence-exempt party. This process would be enforced through modifications to either the Trading and Settlement Code or the SONI Grid Code.

4.7.47. This proposed solution also included two potential options for accelerating the process for registering Generator Units , something which currently takes around three months' in NI. DECC initially considered the possibility of implementing the approach which has been employed in GB, whereby Generator Units would be registered for all Intermediaries operating in the NI market. The second option suggested creating a mechanism similar to the existing Trading and Settlement Code Supplier of Last Resort process, which would allow for a Generator, which had chosen to move to a different Intermediary, to continue to receive CFD Settlement whilst the new Intermediaries' Generator Unit was being set up.

4.7.48. The two options discussed were presented to NI stakeholders in late September 2014. The majority of comments from stakeholders regarding the proposed options were that they were both complex to implement and that they would demand widespread changes to industry codes and licences. Most significantly, stakeholders confirmed that one of either SONI or NIE would have visibility of the metered data from any site in Northern Ireland of 5MW or above, therefore capturing all Generators that would be of eligible capacity to qualify for a CFD contract.

4.7.49. On the basis of existing evidence the minded to position is that it is not necessary to extend the GB licence-exempt generators metering policy to NI. All NI generators wishing to participate in the CFD scheme will need to ensure their metered data can be passed to SONI or NIE in accordance with the timescales stipulated in their contract. Most significantly, it appears that NIE would have visibility of the metered data from sites in Northern Ireland of 5MW or above, therefore capturing all generators that would be of eligible capacity to qualify for a CFD.

Table 14 – Questions on licensed-exempt embedded generators

Consultation Question	
1.	Do you have evidence to support DECC’s decision to not creating a bespoke metering arrangement to cater for Non-SEM participants?
2.	Are you aware of any generators in NI whose metered data would not be visible to the System Operator? If so, how is their data measured?
3.	Have you examples of where DECC’s proposed position for Non-SEM participant generators may not work?

Introduction to metering disputes in the CFD contract

4.7.50. The BSC’s Trading Disputes procedure will be used for all Metering Dispute under the CFD contract, which has an impact on CFD Settlement.

4.7.51. All decisions taken by the BSC’s Trading Disputes Panel with regard to a Metering Dispute will be final, and the result will be passed onto the CFD Counterparty for reconciliation.

Propositions and questions for implementation of metering disputes in NI

4.7.52. The CFD Metering Disputes process cannot be transferred to NI because it utilises the existing BSC process which has no binding influence on NI generators.

4.7.53. The intention initially was to find a single Metering Disputes process which is applicable to all generators. Discussions with stakeholders revealed that it would prove difficult to identify a single vehicle in which to accommodate all CFD Metering Disputes, because NI generators are governed by a variety of code documents each containing a separate Metering Disputes process. This differed from GB where the BSC applies to all generators except those who operate on a Private Network.

4.7.54. In light of the lack of an obvious route to choose, three potential solutions may be envisaged. The first two options seek to utilise existing industry codes and licences to implement the Metering Disputes process, whilst the third approach involves an extension of the GB CFD Disputes Resolution Procedure:

Option 1

4.7.55. The first option, and the minded to position, is for the current Metering Disputes process outlined in the SONI Grid Code to be utilised for CFD purposes. It is the only codified disputes process which captures both transmission and distribution connected NI generators. The existing SONI Grid Code provisions regarding disputes (contained within the Metering Code) refer issues where parties have a dispute regarding metering to the Metering Committee. The Metering Committee members will be appointed by the disputing parties and in some cases by the Authority³². Committee members will decide the outcome of the dispute by voting in favour of one of the parties. Any decision taken by the Metering Committee will be final and binding. This process bears similarities to the BSC process whereby a Trading

³² In this context “the Authority” means the Northern Ireland Authority for Utility Regulation.

Disputes Committee arbitrates on metering disputes. Whilst this process is not commonly used for resolving Metering Disputes in NI, it is the understanding that may be possible to utilise this process for CFD purposes.

4.7.56. In terms of implementation, the CFD could simply reference that all Metering Disputes will be dealt with in accordance with the SONI Grid Code Metering Disputes process.

Option 2

4.7.57. Option 2 combines different disputes processes in order to deliver the necessary requirements. This approach would see both the Trading & Settlement Code and Distribution Code Disputes processes utilised depending on which code was applicable to the generator in question. In order to implement this solution, there is a possibility that modifications would be required to both the Trading & Settlement Code and the Distribution Code to enable the respective processes to be utilised for CFD purposes. The powers under the Energy Act 2013 do not confer the power to Government to make changes to NI code documents, therefore making amendments to multiple codes could prove a complex and difficult to implement. In addition, any modifications to the Trading & Settlement Code would extend into the ROI, therefore would need to pass through a more complex process to obtain approval.

Option 3

4.7.58. A third option would be to create a bespoke Metering Disputes process whereby the Senior Representatives from the disputing organisations will attempt to resolve any issue through convening a meeting. In the event that no compromise is reached at the meeting, then the dispute will be referred for Expert Determination. The disputing parties will need to agree on an expert which will be appointed. The expert appointed will be required to have an appropriate level of experience in metering disputes matters. Any determination made by the expert will be considered final and binding. This process bears similarities to the existing Dispute Resolution Procedure in the GB CFD, and would not require any modifications to be made to NI code and licence documents in order to be implemented. The majority of NI projects are likely to be of smaller capacity than those in GB, and therefore this bespoke process might be a more proportionate approach and continue to meet the needs of NI generators. A further factor which should be taken into account when considering the implementation of this third option is the minded-to position that English Law will govern NI CFDs, and whether this could result in disproportionate costs to NI generators.

Table 15 – Questions on metering disputes

Consultation Question	
1.	Of the three suggested approaches, do you have evidence that confirms that DECC’s favoured option is the most suitable approach for dealing with Metering Disputes under the CFD contract?
2.	In your experience are NI industry processes sufficiently rigorous for dealing with Metering Disputes?
3.	Do you have evidence of any alternative options which you believe DECC should consider?
4.	None of the NI code Disputes processes contain a de minimis threshold for the value of a dispute which can go before a committee. Are you aware whether this stands to remain the same under the I-SEM?

Introduction to metering undertakings in the CFD contract

4.7.59. The CFD places the same on-going obligation on the generator to ensure that the metering system (defined in the contract as Facility Metering Equipment) and communication system is properly installed, maintained, commissioned and operated; and therefore that the BSC Settlement meter(s) record accurate and complete data volumes. The BSC applies sanctions in the event that certain events of non-compliance have been identified.

4.7.60. The BSC also contains rules and standards that a generator’s metering and communication system needs to meet in order to ensure that the metered data volumes recorded are correct for BSC Settlement.

4.7.61. In addition, the contract also provides provisions for two further obligations on the generator: an Information Obligation and an Access and Testing Right. The BSC also contains similar provisions regarding access and information provision.

4.7.62. There are three CFD obligations relating to metering compliance:

- a. **Metering (Technical) Compliance obligation** - the obligation is limited to significant occurrences of non-compliance and is only triggered where the BSCCo has sought rectification of the non-compliance issue for BSC Settlement; and/or the issue has a direct impact on the quality or accuracy of metered data for settlement purposes.

The generator is allowed 60 business days without penalty (from the point at which their Metering Remediation Plan is approved by the BSC Co) to resolve the non-compliance issue. However, if the issue is not resolved on the 61st business day, the CFD Counterparty has a discretionary right (but not obligation) to terminate the CFD Agreement.

- b. **Electrical Schematic (Informational) Compliance obligation** - The generator is obliged to ensure that the CFD Counterparty has an up-to-date copy of the Facility’s electrical schematic. Where it undertakes a Metering Change it must advise the CFD Counterparty immediately and provide an updated schematic within ten business days.

All electrical schematic diagrams must be date and time stamped, and accompanied by a Director's Certificate. Where the generator is not compliant with this obligation, the CFD Counterparty will have the right to apply a full payment suspension from the 11th business day. This suspension would continue until an updated schematic had been provided. No termination right is provided to the CFD Counterparty.

- c. **Metering Access and Testing Right** - The generator, on request from the CFD Counterparty must provide access to its metering and communication systems within a specified time. The time allowed will depend who has ownership of the generator's metering system under the BSC. Where the generator is the BSC Registrant - 10 business days; not the BSC Registrant (i.e. EEGs) - 15 business days.

Where access has not been provided within the specified time above, the CFD Counterparty may apply a full payment suspension commencing at the beginning of the following business day. The generator is then given a further 20 business days to provide access (with the payment suspension in place). If access has still not been provided at the end of this period, the CFD Counterparty may draw on its discretionary right (but not obligation) to terminate the CFD Agreement.

A Metering Access Right will always include a right, where applicable, to conduct testing of the Facility Metering Equipment. Any costs associated with testing rights will be resolved in accordance with the CFD.

Propositions and questions for implementation of metering undertakings in NI

4.7.63. The Metering Undertakings are bespoke to the CFD and were designed to reflect the average timescales for the resolution of issues of non-compliance in GB.³³ Through discussions with stakeholders DECC has learnt that whilst all NI code documents contain provisions to mitigate any risk of metering non-compliance, prescribed timescales such as those contained within the Metering Undertakings are not present in the NI. Due to the potential impact on CFD budgets, it is essential that the intent of the Metering Undertakings is maintained for NI. Whilst the intent of the undertakings will remain the same, DECC is open to suggestions regarding the appropriateness of applying the GB CFD timescales to NI generators.

4.7.64. It is the intention not to make any changes to the Metering Undertakings for the NI CFD. Each issue is examined in turn below:

Technical Non-Compliance

4.7.65. NI stakeholders advised that the timescales for resolving an issue of technical metering non-compliance in the Grid Code were shorter than those prescribed in the GB CFD contract. The Grid Code does not contain specific timescales, instead favouring to state that all issues of technical metering non-compliance should be resolved "as quickly as is reasonably practicable in all circumstances". Further, the only penalty for technical non-compliance within the Grid Code is that the generator only receives settlement based upon historical data until the fault is rectified.

4.7.66. From an operational perspective, stakeholders advised that all new generators in NI will be mandated to install IP Communications systems to allow transfer of data from meters to

³³ Average timescales were based upon data provided by the BSCCo.

SONI. This means that SONI will be able to make contact with all meters electronically, and will subsequently accelerate the process for identifying an issue of technical non-compliance. This upgrade should enable the timely notification of any issue of suspected technical non-compliance from the System Operator to the CFD Counterparty.

4.7.67. Regarding the penalties associated with technical non-compliance, the intention is to maintain the LCCC’s option to terminate a generator’s contract in the event they fail to remediate the fault in the designated timeframe. In terms of the timescales, DECC’s minded to position is for the current provisions of 60 business days to remediate a metering fault shall continue to be applied to NI generators.

CFD Testing and Access Right

4.7.68. Concerning the testing and access right, existing Grid Code provisions confer the System Operator the right to undertake a site inspection without any prior notice in the event it has reason to believe it would not be appropriate for the registrant to test the metering equipment. Alternatively, if the System Operator is undertaking a routine inspection, conducted annually, it must provide the registrant with one months’ prior written notice. Minded the variation between these two timescales, the existing GB CFD timescales for obtaining access to a site should remain the same. Any costs incurred with undertaking inspections shall be dealt with in accordance with a generator’s CFD contract whereby each party will shall bear all costs and expenses it incurs.

Electrical Schematic (Informational) Compliance obligation

4.7.69. In terms of the informational obligation, current Grid Code provisions state that details relating to metering equipment shall be supplied by the registrant to the System Operator on request, however similar to issues of technical non-compliance no timescales are prescribed and no penalties are associated with a failure to supply the relevant information. Due to the gaming risk associated with a generator failing to fulfil the informational undertaking , for example by making a material change to their metering arrangements, the minded to position is to apply the same mechanism to that which is contained in the GB CFD contract.

Table 16 – Questions on metering undertakings

Consultation Question	
1.	Are you aware of the average timescales for resolving an issue of metering non-compliance in NI? Are these longer than 60 business days, or significantly shorter?
2.	In your experience, is ten business days a sufficient period of time to develop and return an updated electrical schematic?
3.	Have you examples of when ten or fifteen business days may be too short a period of time to provide access to a generating station?

Introduction to phasing for offshore wind in the CFD contract

4.7.70. A phased delivery approach allows a large modular project (up to a maximum capacity of 1500MW) to deliver its desired capacity, in 2-3 smaller manageable sub-projects (i.e. phases) over a number of years.

4.7.71. Developers who apply for and are successful in obtaining CFD support for their project are required to enter into and sign a CFD Agreement for each individual phase on award. These CFD Agreements will set out the phasing-specific binding conditions for each respective phase. A set of standard Terms and Conditions will also be applicable to each individual phase.

4.7.72. All phases must be constructed within the same specified Crown Estate lease area (i.e. developers who are building projects in separate lease areas will not be eligible for CFD support under this phasing policy).

4.7.73. To ensure that all CFD-supported phased projects can operate technically under their contracted terms; developers have the opportunity to select one of two variations of the CFD Agreement. Each variation will apply a different approach to metering, to support developer differences in project design, metering system build and ownership structure. These options are as follows:

- a. Single Metering - This option requires the installation of a Boundary Point metering system for each of the individual phase within a Phased Project. Each phase must separately and accurately meter the net output generated and supported under its individual CFD Agreement for CFD Settlement. Flows of electricity (i.e. interconnection) between phases are prohibited. That is, phases are treated as individual Projects for the purposes of metering.
- b. Apportioned Metering - The alternative option provided draws on the principle of apportionment, as applied under the Renewables Obligation scheme. Under this approach, the Metered Output of the entire Project would be recorded by at least one BSC (installed, registered and approved) Settlement meter. An apportionment methodology would then be used to assign the net generation of the Project as a whole per Settlement Unit, to each individual phase based on the overall functionality of that phase. The Project's monitoring and control system (i.e. SCADA system) would be used to determine how many turbines were operating during each Settlement Unit, allowing the CFD Counterparty to calculate the percentage of Metered Output attributable to each phase

Propositions and questions for implementation of phasing for offshore wind in NI

4.7.74. One of the Phasing proposals rely upon a technical metering solution whereby the electrical output is pro-rated across multiple phases of a project based upon the availability of the turbines in each phase.

4.7.75. The minded to position is that the policy for Phased projects does not need to change for NI and therefore the intention is to make both Phased CFD Agreements available to NI generators in their current form.

4.7.76. Under existing SONI Grid Code arrangements it is technically possible for both the Single and Apportioned Metering Options to be deployed. Therefore no changes need to be made to the Metering Policy for Phased Offshore Wind projects in NI.

Table 17 – Questions on phasing for offshore wind

Consultation Question	
1.	Do you have evidence which opposes DECC’s decision to apply the GB CFD Phasing policy to NI?
2.	In your experience is it possible to apply both the apportioned and single metering approaches in NI?

Introduction to dual scheme facilities (DSF) in the CFD contract

4.7.77. DSFs are large Generating Stations seeking CFD support for additional, distinct and separate capacity installed on a site which has existing capacity registered under the Renewables Obligations (RO) scheme.

4.7.78. Under the CFD scheme, the generator must also ensure that its Facility Metering Equipment accurately records all Imported Input Electricity used by the Generating Station and separately records BM Unit Metered Volume generated by the Facility from that generated by the rest of the Generating Station.

4.7.79. Provisions offered under RO Transitional policy also allow Biomass Co-firers with support under the RO to convert individual fossil units to full Biomass (as a Biomass Conversion technology) under the CFD scheme as a DSF. Generators can also apply for a CFD as a full-station Biomass Conversion, although it would not be captured by the DSF policy. This is because the full station would move from RO subsidy to CFD.

4.7.80. Similarly, offshore wind projects that are accredited under the RO and seek to register turbines in one or more phases, will have the option of applying to commission their remaining phases under the RO, the CFD or both. Where an offshore wind project (which is partially commissioned under the RO scheme) is awarded a CFD in relation to a different phase, the project will technically become a DSF (i.e. with phases supported under the RO and CFD), but its CFD-supported phases will instead be subject to the CFD phasing provisions above.

4.7.81. Importantly, offshore generators will not have an option to choose from the metering approaches outlined above. Instead, the Single Metering approach must be implemented in order to ensure that generation and metered data associated with the different support schemes remain distinct and separate.

4.7.82. Individual DSF metering policies have been developed to account for the differences in baseload and intermittent generation. These policies are available on the CFD Expert Group on Metering webpage³⁴.

Propositions and questions for implementation of dual scheme facilities in NI

4.7.83. The Dual Scheme Facilities provisions rely upon a technical metering solution whereby the imported input electricity is measured separately from station output and is then pro-rated across the generating units. Considering that NI generators are governed by

³⁴ <https://www.gov.uk/government/groups/contracts-for-difference-expert-sub-group-on-metering>

separate metering rules to those in GB, it might be problematic attempting to implement such a solution in NI.

4.7.84. The minded-to position is to offer the Dual Scheme Facilities to NI generators in exactly the same form as applies to GB generators.

4.7.85. NI Stakeholders have confirmed to DECC that current SONI Grid Code arrangements allow for imported input electricity to be measured separately from output, something that is key to the apportionment calculation which enables the policy to function.

4.7.86. Following discussions with NI stakeholders it emerged that there are not any Dual Scheme Facilities in the current NI development pipeline, however in order to maintain parity with the GB CFD regime, the policy should be made available to NI generators. Moreover, through making the policy available in NI it mitigates any future risks of a NI Dual Scheme Facility coming forward and being unable to obtain a CFD contract.

Table 18 – Questions on dual scheme facilities

Consultation Question	
1.	Are you aware of any Dual Scheme Facilities being developed in NI?
2.	In your experience will it be possible to apportion imported input electricity for CFD settlement purposes?

4.8. Introduction to the billing and payment provisions in the CFD contract

4.8.1. Section 4.8 describes the key points of the settlement provisions within the Billing and Payment terms and conditions of the CFD as implemented in GB, Figure 4 summarises the timings for billing notices and payments. Section 4.9 and Table 19 sets out the questions on which evidence is sought.

Provision of metered data and calculation of payments

4.8.2. Within GB, settlement of CFDs is based on metered data provided in line with the BSC. This means that metered volumes for the generators are taken to be what the BSCCo determines them to be at the time and when the BSCCo alters that determination (i.e. following a metering dispute or a timetabled reconciliation), CFD settlement is recalculated to take account of the BSCCo's more recent determination. The only exceptions to this are CFD generators on private networks (for whom different arrangements have been put in place).

4.8.3. Once each working day, the BSCCo will provide the Settlement Services Provider with metered data for each settlement unit for all preceding Settlement Days for which data has not yet been provided, together with any reconciled data following additional Settlement Runs for other Settlement Days.

4.8.4. Once the Settlement Services Provider has received the metered data, it calculates the amounts required for the billing statement and issues a Billing Statement.

4.8.5. Metered data received from generators and suppliers are adjusted to account for transmission and distribution losses in line with loss adjustment factors calculated under the BSC.

Provision of Billing Statements

4.8.6. The CFD requires the LCCC to provide a CFD generator with a Billing Statement each working day for each Billing Period. Billing Statements will be delivered no later than seven working days after the end of the relevant Billing Period. Under the terms and conditions, a Billing Period is a 24 hour period starting at 00.00 on a day.

4.8.7. Each Billing Statement contains: identification information, the Aggregate Difference Amount Calculation (the sum of their difference payments (the amount paid to generators calculated as their metered output in each hour multiplied by the difference between the reference price and strike price in that hour)), additional amounts such as reconciliation amounts, compensatory interest, renewable qualifying multiplier amounts, combined heat and power amounts and imported electricity allowance amounts. From these amounts a net payable amount is calculated and included in the billing statement. The statement contains sufficient information on the figures used to calculate these amounts that the CFD generator can audit the result. This includes the details of the metered output for each settlement unit and the market reference price and strike price applicable to each settlement unit.

4.8.8. For baseload technologies, the settlement unit is a half hour period whereas for intermittent technologies, it is an hour period.

Making CFD payments

4.8.9. The LCCC is responsible for the management of the payment of the Net Payable Amount to/from generators. The net payable amount is the sum paid to or by CFD generators following receipt of a Billing Statement.

4.8.10. Where the net payable amount results in a payment by the LCCC to the CFD generator, this payment will be made no later than twenty-eight calendar days following the billing period to which the Billing Statement relates. Where the net payable amount results in a payment by the CFD generator to the LCCC, the payment will be made no later than ten working days after the delivery of the Billing Statement. CFD generators will therefore receive a Billing Statement and make/receive CFD payments each working day.







Reconciliation of metered data

4.8.11. Under the BSC, the first settlement run is the Interim Information Run (II) which the BSC uses just for information rather than for settlement (although CFDs will use this run to issue the first billing statement for a settlement day). It is followed by the Initial Settlement Run (SF) which is the first run at which BSC settlement takes place, 1st Reconciliation (R1), 2nd Reconciliation (R2), 3rd Reconciliation (R3) and 4th Reconciliation R4 which takes place approximately 14 months after the settlement day. If a metering dispute has taken place a Post Final Reconciliation Run (DF) can also take place up to 28 months after the settlement day.

4.8.12. Where the Settlement Services Provider receives updated metered data from the BSCCo following one of these Settlement Runs, it will carry out a reconciliation calculation and include the updated Aggregate Difference Amount in the next available billing statement.

4.8.13. The settlement timetable for generators is shown in the diagram below:

Figure 4: Settlement timescales for CFD generators

Timetable	Low Carbon Contracts Company	CfD Generators
Settlement Day +7 Working Days		Receive Billing Statement
Settlement Day +17 Working Days		Make CfD Difference Payment (when strike price is below reference price)
Settlement Day +28 Calendar Days		Receive CfD Difference Payment
Data Reconciliation + approx. 2 Working Days		Receive Billing Statement
Data Reconciliation + approx. 12 Working Days (10 Working Days from Billing Statement)		Make Reconciliation Payment (when strike price is below reference price)
Data Reconciliation + approx. 21 Calendar Days		Receive Reconciliation Payment

4.9. Implementing the billing and payment provisions in NI

4.9.1. The key areas of CFD generator settlement are set out below with a consideration of whether the existing arrangements in GB are appropriate for CFDs in NI.

Provision of metered data and calculation of payments

4.9.2. As has already been described above, metered data in NI cannot be provided by the BSCCo as happens in GB and so it is proposed that metered data for CFD settlement is provided by SONI and NIE to the LCCC in order for CFD settlement to take place.

4.9.3. Within NI, both SONI and NIE have responsibility as meter data providers. The Energy Act allows regulations to require the provision of information by either the System Operator in NI (SONI or NIE) or NI licenced suppliers. The proposals for which institutions should provide metered data are set out in more detail in section 2 of this Call for Evidence.

4.9.4. Metered data received from NI generators and suppliers will need to be adjusted for transmission and distribution losses. As set out in 4.7.22, we propose using the loss adjustment factors calculated under the Trading and Settlement Code (TSC).

4.9.5. No further changes are required to the provision of metered data or calculation of payments.

Provision of billing statements

4.9.6. CFD generators within NI will require the same level of detail on a Billing Statement as GB CFD generators in order to allow them to carry out whatever audit they might feel necessary. No change is proposed to the level of detail provided in Billing Statements.

4.9.7. Metered generation data will need to be provided by SONI and NIE to the Settlement Services Provider broken down into half hourly intervals in order for CFD settlement to take place for baseload generators which will have a half hour settlement unit. Intermittent generators will have a settlement unit of an hour. There should be no difficulty with providing data to this level of detail because TSC data is already broken into half hourly Trading Period. Therefore no change to the length of settlement units for the CFD in NI should be required.

4.9.8. Metered data under the TSC is available earlier than metered data under the BSC. There is therefore no change required to the timescale for the LCCC to deliver Billing Statements to CFD generators.

Making CFD payments

4.9.9. As described above the CFD in GB settles payments to/from generators on a daily basis. In NI, SEM settlement is carried out on a weekly basis compared to daily for BSC settlement for large GB generators and monthly settlement for smaller generators outside of the BSC. It will therefore need to be considered whether NI generators should be allowed to make and receive CFD payments on a weekly basis or to align with the GB CFD framework and settle on a daily basis.

4.9.10. The minded to position is to align the NI CFD payments with the GB framework and implement the regime with daily settlement of generator CFD payments in order to maintain consistency with the GB framework and minimise the costs to the LCCC. Making the necessary changes to the LCCC's systems to allow weekly settlement for some suppliers and generators while retaining daily settlement for the majority would incur considerable costs that would ultimately be passed onto consumers.

4.9.11. Whilst generators may have to make changes to their own systems in order to cope with daily settlement, daily settlement is likely to provide cash flow benefits for generators as CFD generators will be receiving payments from the LCCC on a more frequent basis. It should also be noted that the cashflow benefits of daily settlement would impact generators over the lifetime of the CFD, in comparison to the costs of switching to daily settlement, which may only need to be incurred once. DECC anticipates that these benefits should offset the additional administrative costs of settling daily.

4.9.12. Furthermore, discussions with PPA providers within GB suggested that PPA providers saw the benefit of offering to provide CFD settlement services to CFD generators and so would be able to handle the administrative costs of daily settlement on behalf of the generator, passing on the CFD payments to the generator in line with the standard times for their PPA (either monthly or weekly depending on the PPA). In this situation, the PPA provider would receive the billing notices and make and receive payments on a daily basis on the generator's behalf. They would then pass then payments on to the generator or require that the generator makes those payments in line with the timescales agreed in the PPA – this would mean that the generator was experiencing weekly settlement while the CFD would be providing daily settlement. Given these points, it is proposed that daily settlement should be retained for NI CFD generators.

Reconciliation of metered data

4.9.13. In the usual course of business NI data reconciliation (resettlement) will be complete before GB reconciliation as second resettlement takes place 13 months after the settlement day (compared to 14 months under the BSC). However, the TSC allows for the possibility of resettlement to be performed manually following a Dispute Resolution Board for up to six years, whereas in GB further reconciliations can only take place up to 28 months after the settlement day where there has been a trading dispute.

4.9.14. Although the precise timetable of data reconciliation prior to 14 months after the settlement day is not the same for NI generators and GB generators³⁵, there should be no impact on CFD generator settlement. It is not necessary for data reconciliation for NI generators to follow precisely the same pattern as that for GB generators. The requirements set out in the CFD contract are that (following the first issuance of invoices and billing notices) newly received metered data is acted upon when received rather than in line with a specific timetable. For the NI CFD, it should be possible to make a similar requirement so that SONI sends the reconciled data when available and the Settlement Services Provider includes this in calculations as and when received.

4.9.15. Given the differences in the resettlement process between GB and NI, it will need to be considered whether the regulations and CFD should allow for the outcome of these later resettlements (those after 28 months following the settlement day) to be taken into account in CFD and supplier obligation settlement.

4.9.16. It is proposed that CFD liabilities are finalised 28 months after the day of supply, and reconciliation runs after that point are not taken account of. This is because allowing for later reconciliations would increase uncertainty for both suppliers and generators with the final obligation owed by suppliers and final CFD payments to generators potentially being changed four years later than is currently the case under the CFD. Moreover, historically, adjustments made after 28 months are exceedingly rare and would likely be of a relatively low magnitude.

4.9.17. As described above, the minded to position is to broadly maintain the billing and payments provisions for CFD generators used in GB but adapted to take account of the differences in metered data provision in NI. In order to minimise costs to consumers, it is proposed that the daily settlement frequencies and the 28 month timeframe for metered data reconciliation are maintained for the NI CFD payment provisions. This means that any data reconciliations received from the System Operator after 28 months after the settlement day will not be taken account of in the calculation of CfD payments.

Table 19: Questions on Billing and Payment for CFD Generators

Consultation questions	
1.	Do you have any comments on how metered data should be provided for the calculation of CFD payments?

³⁵ For example, in NI first Resettlement takes place in the 4th month after the Billing Period, and the second in the 13th month after the Billing Period. In GB, there are 4 Resettlements, with the 2nd Resettlement (R2) taking place between 81 and 85 working days after Settlement Day (approx. 4 months), and the final Resettlement (RF) taking place between 289 and 293 working days after Settlement Day (approx. 14 months).

Consultation questions

2.	What factors should be applied to metered data to adjust for transmission and distribution losses, and who should apply those factors?
3.	Should CFD billing statements contain any additional data for NI generators?
4.	How would daily settlement affect cash flow for generators?
5.	On balance, which do you believe would be most cost effective: a) Daily Settlement b) Weekly Settlement
6.	What administrative costs would a generator incur under a) daily and b) weekly settlement?
7.	For how long after a Settlement Day should CFD settlement take account of resettlement runs? Please provide evidence to support your reasoning.
8.	Do you have any other comments on the billing and payment provisions for generators?

4.10. Introduction to the Change in Law and related provisions in the CFD contract

4.10.1. There are a number of provisions within the CFD that are designed to operate where a change to the legal circumstances in which a generator operates has occurred, these being:

- Change in Law
- Qualifying Shutdown Events
- Generation Tax
- Sustainability Change in Law
- Change in Applicable Law

4.10.2. The first four of these have the potential to result in compensation being owed, while Change in Applicable Law is intended to ensure the continuation of the CFD in circumstances that would otherwise render this impossible.

4.10.3. As with other compensatory provisions within the CFD, Changes in Law act to ensure that a CFD-holding generator that is impacted by a change to its circumstances is not placed at a disadvantage solely to as a result of its holding a CFD.

4.10.4. Non-CFD generators may pass any increase in costs through, but CFD generators cannot do so without eroding the revenue they are provided under the CFD. Thus, Change in Law and other provisions act to support the continuation of the revenue that a CFD otherwise represents.

4.10.5. What follows are descriptions of the individual provisions, beginning with Change in Law itself.

Change in Law

4.10.6. In the GB CFD generators are compensated for Changes in Law ('CiL') which are deemed to be unforeseeable and which specifically target particular generators, Projects, technologies or CFD-holders in a manner which is unduly discriminatory and cannot be objectively justified ('Qualifying Changes in Law'). The provisions also provide the CPB with compensation where such changes mean generators are realising savings in respect of such Changes in Law. The discussion below discusses the regime for generators but it should be noted that the provisions are of symmetrical application.

4.10.7. The provisions are designed to ensure that generators are not pricing the risk of expensive but unlikely changes in law into their Strike Price bids as this would force the consumer to absorb a range of expensive and uncertain regulatory risks which are unlikely to materialise. The Change in Law provisions provide a mechanism whereby the generator can claim compensation for unforeseeable changes which fall within certain definitions, ensuring that the consumer is only absorbing the costs of changes which actually crystallise.

4.10.8. When a putative Change in Law occurs, there are a number of steps a generator must follow in order to demonstrate that the change is a Qualifying Change in Law ('QCiL') and these are described below. If each of the following is assessed positively, the result is a QCiL.

4.10.9. The definitions section of the GB CFD provides a definition of what will be considered a Change in Law. There are three areas of change that will be considered a CiL:

- (i) Laws and Directives;
- (ii) Industry Documents; and
- (iii) Required Authorisations

4.10.10. When any of the above are newly introduced or come into effect that will be considered a CiL. 'Coming into effect' also refers to a situation where, for example, a new law is introduced but the changes it makes come into effect at a later date to allow those affected a certain amount of time to bring themselves into compliance.

4.10.11. A **Specific Change in Law** is one that specifically applies to one of four groups denoted (A) to (D) in the definition of Change in Law:

4.10.12. The first, group A are generating facilities which deploy the same Generation Technology. This would encompass a law that affected all Biomass conversions, for example, irrespective of whether such biomass generators held CFDs or not.

4.10.13. For the purposes of qualifying for a Specific Change in Law wind generators can either be defined as onshore or offshore wind, as appropriate, or as wind generators (i.e. offshore plus onshore wind as a combined group).

4.10.14. Group B refers to generating facilities which are subject to a CFD. This group is designed to encompass Changes in Law which target CFD-holding generators only, of whatever technology type, and no other generators.

4.10.15. Group C covers generators which all deploy the same Generation technology and which are subject to a CFD. Changes in Law targeting all deep geothermal generators with a CFD, for example, would satisfy this group's requirements.

4.10.16. Group D refers to Changes in Law which target the holding of shares in companies (or the holding of economic interests in general) in the generators captured by groups (A) to (C). This group is designed to ensure that Changes in Law which are focussed on holding shares in such companies rather than targeting the companies themselves will still be allowed to qualify for Change in Law protection under Specific Change in Law.

4.10.17. A **Discriminatory Change in Law** is one which targets (A) the particular Project, (B) the particular Facility or (C) the particular generator.

4.10.18. The '**Other Change in Law**' as a concept is designed to capture Changes in Law which are not directly discriminatory (i.e. which don't meet the bar set by the Discriminatory Change in Law) but when compared to one of the comparator groups defined in limbs (A) to (D) of the definition it is objectively clear that the CiL has had an undue and discriminatory effect on that particular generator's out-of-pocket costs.

4.10.19. Before looking at the relevant comparator groups there are several aspects of this definition that require further explanation. The focus of the comparison that must be made is based around a generator's out-of-pocket costs. This term has not been defined in order to preserve an aspect of fluidity in its application so that it can be looked at on a case-by-case basis. Put simply, however, it is intended that the out-of-pocket costs look at actual cash which the generator has had to expend in order to meet the requirements of this new CiL.

4.10.20. Next the definition looks at whether the comparative effect on the generator in question is 'undue' and 'discriminatory' when compared to certain comparators (broadly similar to those outlined within Specific Change in Law above). The definition provides some guidance on what 'undue' means in parentheses as 'being not objectively justifiable'. Again this is a difficult concept to encompass on a generic level but it seeks to exclude those changes in law which cannot be 'objectively justified'. Such a determination is to be made on a case-by-case basis but will involve consideration of the proportionality of the measure and the legitimacy of its aim.

4.10.21. Having determined that a CiL falls within one of the above categories, the final requirement for it to be considered a QCiL is that it was not foreseeable. The definition of foreseeability hinges on a set of legal sources including Acts of Parliament, draft bills, draft consultations etc. Any proposal contemplated (including as the stated preferred proposal where more than one is being considered) published between 1 January 2000 and the Agreement Date will be deemed 'foreseeable' and will not be eligible for Change in Law compensation.

Compensation Mechanics

4.10.22. If a QCiL has occurred, the generator may be able to apply for compensation. There are five different types of compensation mechanic through which such claim may be routed but all of these, at a basic level, seek to put the generator in a 'No Better, No Worse' position, on principle, i.e. the same position in which the generator would have been had the Change in Law not been enacted. A QCiL does not necessarily imply compensation, although many will.

4.10.23. There are a number of payment mechanics that cover cost scenarios from operational expenses to capital expenses and payments following closure of the facility (on which see QSE below). In all cases, there is provision for a true-up to ensure that any initial compensation is eventually corrected in order to reflect any over or underestimation in the initial compensation.

Qualifying Shutdown Events

4.10.24. A Qualifying Shutdown Event (or QSE) is a trigger that is distinct from a QCiL, but which will also result in a QCiL Operations Cessation Event. Unlike a QCiL, which revolves primarily around the enactment or repeal of a law, a QSE captures a different array of possible scenarios that sit outside a change to the law.

4.10.25. A QSE is triggered where a Government Authority takes an action or causes an action to be taken that either (i) forces it to cease operation permanently or (ii) forces it to remain inoperative for a period exceeding 24 months.

4.10.26. The actions that fall within this include the Authority changing the law as it presently exists, and in this instance may well overlap with QCiL. However, QSE captures a far wider array of changes made by or at the behest of the Government Authority, including:

- a. A change to the published guidance or stated policy of the Authority (e.g. a decision to change a policy within the discretion of the Authority such that a particular permits will no longer be renewed for plant older than five years);
- b. An exercise of power by a competent body at the express direction of the Authority (e.g. a binding direction to Ofgem to withdraw a license); or
- c. An exercise of power by a competent body that was requested by the Authority.

Generation Tax

4.10.27. Generation Tax is a special form of Change in Law, applying where a tax (or similar measure, such as a levy) is introduced, amended or repealed (or required to be enforced) by the UK Government. Whatever form it takes, this measure must apply specifically to electricity generators. As a result, a general increase in taxation (corporation tax, VAT etc.) will not be included and no compensation will follow.

4.10.28. The process that follows differs substantially from that employed for more general Changes in Law above. Once the parties have agreed that a Generation Tax has been imposed, the CFD Counterparty appoints an Energy Consultant, an independent entity charged with quantifying the impact of the Tax for the purposes of compensating generators.

Sustainability Change in Law

4.10.29. As with Generation Tax, Sustainability Change in Law (SCiL) is a special form of Change in Law protection designed to provide coverage for only those changes that impact upon the Sustainability provisions of the CFD contract.

4.10.30. The compensation provisions relating to SCiL mirror those applied in relation to a QCiL, with only minor alterations and a subset of comparable mechanics applying, in particular providing for Opex, Capex or Adjusted Revenues calculated through means that mirror that employed in the equivalent QCiL provisions.

Change in Applicable Law

4.10.31. The Change in Applicable Law (CiAL) process sits to one side of the other processes set out above, which revolve around compensating either the generator or the CFD Counterparty following a change in circumstance, legal or otherwise. CiAL triggers on largely the same basis as Change in Law; the coming into force, amendment or repeal of a Law, or a change to the interpretation thereof.

4.10.32. The CiAL process is intended to ensure that (i) the CFD continues to have force and (ii) that no individual element of it is rendered illegal or otherwise unenforceable.

4.11. Implementing the Change in Law and related provisions in NI

4.11.1. Much of the GB CFD describes sources of action or change that are appropriate for Northern Ireland. In particular the definitions of Competent Authority and UK Competent Authority already import any such body operating within Northern Ireland (and in the former case, the Republic of Ireland).

4.11.2. However, as drafted, Changes in Law are constrained in a number of ways that exclude the recognition of actions undertaken by Northern Irish third parties:

- The definition of “Law” refers only to those Laws enacted by the UK Parliament, and therefore excludes legislation enacted by devolved administrations such as the NI Assembly;
- The definition of “Other Change in Law” also imports only those changes in Law introduced by the UK Government;
- Generation Tax refers only to those taxes introduced by the UK Government; and
- QSE hinges upon actions undertaken by the UK Government, whether directly or by directing another authority.

NI Assembly Legislation

4.11.3. The GB CFD does not provide coverage within CiL provisions for actions undertaken by the devolved administrations.

4.11.4. Although it operates through the vehicle of a private law contract, the CFD ultimately operates as a scheme regulated by UK national legislation. Further, neither Scotland nor Wales hold competency over energy, making it unlikely that any change in legislation that they might introduce would rise to the levels of coverage provided by the various forms of CiL where this was not already accounted for through existing definitions (i.e. Required Authorisations, changes to which would capture changes made by devolved administrations to planning schemes and health and safety).

4.11.5. However, the NI assembly does hold competency with regard to Energy. It may therefore be appropriate to provide coverage for those Changes in Law implemented by the NI Assembly. However, any payment resulting from a CiL originating in NI would potentially lead to a liability on the part of non-NI consumers.

Generation Tax

4.11.6. As with the definition of ‘Law’, the definition of a Generation Tax Change in Law refers only to the United Kingdom Parliament. This reflects the inability, at present, for any devolved administration, including NI, to implement changes to taxation on electricity generation.

QSE

4.11.7. QSE is intended primarily to defend against politically-motivated closure, and its drafting therefore reflects the potential avenues that this might reasonably be achieved through. As above, the UK Parliament and the UK Government retain the relevant authority in

the context of the GB CFD. However, within NI it is within the gift of both the Assembly and the NI Government to act in the same ways that the QSE drafting presently protects against and it may therefore be appropriate to expand the definitions that QSE depends upon in order to protect against this.

Comparator Groups

4.11.8. In the case of both Specific and Other Changes in Law, the relevant CiL is compared against a number of comparator groups in order to determine whether it has had an unreasonably discriminatory effect, and where this is so will compensation be due.

4.11.9. In a GB context, all generators presently compared to one another in this way operate within the same market. Geographical location is largely immaterial, and the regulatory regime under which they operate is (presently) consistent throughout.

4.11.10. As a distinct generating market (both financial and otherwise), it may be unreasonable to expect Northern Irish generators faced with what might otherwise be a clearly discriminatory CiL (whether Specific or Other) to face comparison with all other CFD-holding generators, the majority of whom will always be based within GB and against whom a CiL may appear minor and reasonable.

CiAL Thresholds

4.11.11. Throughout the conditions relating to CiAL there are procedures that allow for generators either to dispute or trigger events (such as a review) where a certain number of generators (by volume or number) can band together to obligate the CFD Counterparty to act.

4.11.12. Given the relatively small volume likely to be represented by NI CFDs, and the even smaller total number, it is unlikely that NI generators facing a Change in Law would be able to force a CiAL Review.

4.11.13. This issue would be particularly acute were CiL as a concept to be amended to include NI Assembly legislation, as NI generators that have a genuine belief in the need for a review would lack the required influence to force the CFD Counterparty to undertake one and would instead depend either upon convincing non-NI generators to support its request.

4.11.14. As a result of the above, there are a number of circumstances in which it may be appropriate to extend coverage of existing Change in Law and related provisions in order to encompass circumstances arising wholly in NI. In particular, Change in Law itself, Change in Applicable Law and QSE may each see equivalents to relevant GB circumstances arise within NI.

4.11.15. This section does not consider the appropriateness of such an expansion, as this will require consideration of the views of industry and a more detailed review of the likelihood and relevance of such circumstances, with the questions below seeking to begin to build understanding of the likelihood and scale of events that might feed into any expanded definition of Change in Law or similar provisions.

Table 20 – Questions on Change in Law

Consultation Questions	
1.	Should NI-derived legislation and actions be considered for the purposes of Change in Law? If so, please provide examples of real or hypothetical events that would be captured that are not at present.
2.	Should legislation or actions undertaken within the Republic of Ireland be considered for the purposes of Change in Law? In what way are such events likely to manifest?
3.	Who is it appropriate to compare NI CFD generators to when assessing whether a Change in Law is Specific or Other?
4.	Who is appropriate to group NI CFD generators with when assessing whether a threshold has been met to require action to be taken by the LCCC?

4.12. Introduction to the curtailment provisions in the CFD

4.12.1. The Curtailment provisions are designed to compensate the generator for forcible partial or total Curtailment of their Facility by the System Operator. The CFD Curtailment provisions are designed to ensure that the CFD generator receives a revenue stream for all of the low-carbon generation they produce, and reflect arrangements in the GB market whereby generators are paid when they are taken or moved off the network.

4.12.2. Curtailment in the CFD means:

- The prevention or restriction of the export of the generator under instruction from the System Operator of all of the electricity being produced during the period in question;
- the generator has not been prevented from exporting electricity due to a ruling by a Competent Authority relating to an issue of non-compliance;
- the generator's export has not been restricted due to an unplanned outage on the transmission system, a breach of its CFD, a failure to act in a reasonable manner or a health and safety matter.³⁶

4.12.3. A Curtailment Event, under the CFD, will only be deemed to have occurred if a change in law has been made which results in the System Operator no longer conducting operations in an economic and efficient manner, rather than covering all events where a generator's output is curtailed. This means that the CFD Curtailment provisions do not compensate a generator in the event that the System Operator, in either NI or GB, curtails their output and this action is not driven by a change in law. This section should be read in conjunction with the change in law provisions in this paper.

³⁶ These provisions are identical for an event where a generator's output is partially curtailed, and it is restricted from export some of its output.

4.12.4. In order to be entitled to Curtailment compensation from the LCCC a generator must provide the CFD Counterparty with a preliminary written report evidencing why it believes a Qualifying Curtailment Event occurred.

4.12.5. The LCCC will decide whether it believes an event can be deemed a 'Qualifying Curtailment Event'. In the CFD a 'Qualifying Curtailment Event' can only be deemed to have occurred if it meets the following criteria:

- A change in law is made which results in the System Operator no longer conducting operations in an economic and efficient manner in regard to the overall physical constraints applied to the system or the technical and operating characteristics of the generators connected to the transmission system.
- An example of this would be the generator being prevented by new rules and regulations from exporting its output or laws being introduced which meant no compensation was paid to generators in an event where they ordinarily would receive such a payment.³⁷

4.12.6. The Generator needs to state in its Curtailment Report the circumstances in which the Qualifying Curtailment Event has occurred, when and why it has taken place and the MWh output which the Facility has foregone. The Generator will then need to state the amount of Defined Curtailment Compensation it believes it is entitled to.

4.12.7. Defined Curtailment compensation comprises the following:

- lost generation revenues (including any difference amounts in the event of a partial curtailment);
- any additional costs directly attributable to the Curtailment Event;
- any resulting shortfall in the generator's Energy Credited Volume³⁸;
- Net any income or gains made by the generator relating to such a Curtailment event other than any Curtailment Compensation;

4.12.8. The generator will be required to set out how much it believes it is entitled to in relation to each of the payment parameters in the report it submits to the CFD Counterparty.

4.12.9. The 'Curtailment Compensation' is defined simply as the actual compensation received or receivable by the Generator in respect of any Qualifying Curtailment, including compensation from sources other than the CFD. If, in the contract year in question, the Curtailment Compensation is greater than the Defined Curtailment Compensation the difference between the two amounts is called the 'Curtailment Compensation Excess'. If this amount is less than the Defined Curtailment Compensation the difference is the 'Curtailment Compensation Shortfall'. The aggregate amount of whichever of these sums is applicable for the year should be contained in the Report.

4.12.10. Following agreement of the report by the LCCC and the generator, the direction in which the compensation payments travel will be subject to difference in the Aggregate Curtailment Compensation Shortfall and the Aggregate Compensation Excess. If the shortfall exceeds the excess the LCCC compensates the generator, and if they are reversed the

³⁷ These provisions are identical for a Qualifying Partial Curtailment event in the CfD.

³⁸ Note – Credited energy volume is not relevant in NI.

generator pays the LCCC. Compensation will comprise either a lump sum or series of payments.

4.13. Issues for implementing the curtailment provision in NI

4.13.1. The existing CFD Curtailment provisions cannot be replicated in NI in their current form, because there are a number of key differences between Curtailment rules and principles in the SEM market and those in the GB market. The intent is to develop CFD terms that are aligned with the on-going I-SEM reforms, and the following section outlines the main arguments which need to be considered when attempting to identify a policy solution for Curtailment in NI.

4.13.2. Further, there is a difference in how Curtailment is defined in the GB CfD and how the term is used in NI. In NI Curtailment refers to a system-wide issue where the System Operator would be required to reduce the output of any or all generation in the interests of system security. A situation which results in the System Operator reducing the output of one or a small group of generators due to a localised issue on the transmission network.

4.13.3. The GB CfD definition of Curtailment (para 4.12.2) does not differentiate between events of Curtailment and those constraint and the interaction of this with the NI market context shall need to be considered going forward.

4.13.4. There are three principle arguments which will need to be considered prior to finalising a policy on Curtailment for CFD-holders in NI:

Risk of undermining the I-SEM reforms;

4.13.5. In 2013 the SEM Committee announced that in the event of a tie-break, and price-taking participants such as wind generators are curtailed by the System Operator, as of 1 January 2018 they will no longer be paid Dispatch Balancing Cost payments from SEMO when their output is curtailed.

4.13.6. This decision was partly influenced by the fact that NI has a large level of wind generation relative to the size of the market, which coupled with low levels of interconnection leads to an increase in the likelihood of Curtailment, and compensation payments subsequently being made, occurring;

4.13.7. Curtailment compensation, as defined by the CFD, NI generators might risk work against the I-SEM reforms. It is the intention that CFD policy for NI will attempt to align itself with the I-SEM reforms, and the provision of Curtailment compensation, like that implemented for the GB CFD, might conflict with this objective.

4.13.8. Despite the SEM Committee's decision to no longer pay Dispatch Balancing Costs to price-taking generators from 2018; it will continue to make compensate generators that experience constraints. It will be important to continue to consider the aforementioned when designing the Curtailment provisions for the NI CfD.

Incentivising inefficient generation;

4.13.9. The SEM committee's decision was taken with the intention of mitigating system balancing issues across the island of Ireland. There is a risk that if the CFD in NI continued to provide compensation to CFD generators that have failed to balance effectively, perversely, it may incentivise the kind of behaviour which the I-SEM reforms are attempting to mitigate and may have an impact also on Republic of Ireland generators.

4.13.10. In addition to the above point regarding incentivising inefficient generation, there is a risk that continuing to provide compensation for Curtailment under the CFD could conflict with efforts to encourage more innovative generation operations in NI, such as batter storage.

Providing poor value for money for UK consumers;

4.13.11. Replicating the GB mechanism for Curtailment events in NI may lead to a disproportionate level of compensation being paid out to NI generators compared to their GB counterparts. The LCCC will be the body which compensates the generator, and the funding for such payments will be drawn from the Supplier Obligation levy, meaning consumers across the UK will pick up the costs.

4.13.12. The risk of increased cost for UK consumers in implementing the CFD curtailment provisions in NI is twofold:

4.13.13. Risk of high number of instances of Qualifying Curtailment Events in NI. Whilst a Qualifying Curtailment Event can only be deemed to have occurred if a change in law restricts the System Operator’s ability to act in the most economic manner, there may be an increased risk of this occurring in the NI market because of the aforementioned issues surrounding high wind penetration and low levels of interconnection.

4.13.14. High cost of each instance of Qualifying Curtailment Events in NI. Since there will be no compensation from the NI TSO to curtailed NI generators from January 2018, the LCCC would have to pick up the entire bill as opposed to only the shortfall of the compensation not paid by the TSO as is the case for GB CFD generators.

4.13.15. In conclusion, a set of potential approaches to Curtailment under the CFD in NI has yet to be developed because it is considered that more analysis of possible approaches is required prior to producing a range of options for stakeholders to comment on. Analysis to identify potential policy options is currently being progressed.

4.13.16. This Call for Evidence welcomes views on whether the right issues relating to Curtailment have been identified and also on suggested options for implementation.

Table 21 – Questions on curtailment

Consultation Questions	
1.	Are all of the relevant arguments regarding the implementation of the CFD Curtailment provisions in NI being considered?
2.	Do you have any evidence of any further risks regarding the application/disapplication of CFD Curtailment compensation in NI which have not been considered?

4.14. Introduction to the balancing system charge

4.14.1. The Balancing System Charges provisions in the contract are intended to preserve the value of generators Strike Price by compensating generators for increases in charges relating to the GB System Operator balancing the system and losses incurred on the Transmission system.

4.14.2. The first part of this section explains how Balancing System Charges are treated under the GB CFD, and the second discusses the equivalent mechanisms, the differing characteristics, and finally develops two possible solutions for implementation in NI.

4.14.3. The GB CFD contains provisions which ensure that generators are compensated annually for changes in Balancing Service Use of System Charges (BSUoS), Residual Cashflow Reallocation Cashflow (RCRC) and Transmission Loss Multiplier (TLM). Generators are unable to pass these costs through in an open market situation; therefore this measure was taken to preserve the value of the Strike Price set.

4.14.4. When a GB generator signs the CFD Agreement the Initial Strike Price they receive will be adjusted for assumed levels of BSUoS, RCRC and TLM charges. This adjustment will be based upon the average Balancing System Charges that were incurred by all GB electricity generators in the year preceding the date of the signing of the CFD contract.

4.14.5. Once each calendar year the Counterparty will provide the generator with two written reports stating the difference (expressed in MW/h) between the Actual Balancing System/TLM charges and the initial Balancing System/TLM charges. The reports will then state the adjustment that will be made to the generator's Strike Price for the following calendar year.

4.14.6. Due to differences between the NI and GB markets, none of the charges applied in GB are replicated in NI, and therefore it is important to consider which adjustments may be required to preserve the strike price of NI CFD-holders, and which will not be applicable.

4.15. Implementing the balancing system charge provisions in NI

4.15.1. It is not possible to transfer the GB Balancing System Charges provisions directly to NI because of fundamental differences in the market conditions in the SEM. The current SEM arrangements mean that all generators from NI and the ROI sell their electricity into a single pool, and are guaranteed to receive the System Marginal Price, which is set based upon the lowest bid made. NI generators are not currently exposed to any balancing risk, and even if their generation is curtailed they continue to receive the System Marginal Price for their power, although this is due to change from 2018. The new market will see the System Operator take on an increased role in balancing the market, and this may result in an increase in the charges incurred.

4.15.2. The costs incurred by the System Operator in balancing the system under the SEM are currently recovered through the SEMO Imperfections Charge and the SONI System Support Services (SSS) Charge which are levied on Suppliers only. This is a critical difference compared to the GB market because Balancing Charges are passed through to generators rather than consumers. The principle of the Balancing System charge Strike Price adjustment in GB is to preserve the value of the Strike Price, whereas in NI suppliers pick up these costs through the Imperfections Charge, meaning it is questionable whether such an adjustment is necessary because the current arrangements do not impact upon NI generators.

4.15.3. The I-SEM reforms will see the creation of a single imbalance price will reflect the marginal costs of balancing actions taken by the System Operator. Generators will receive a single imbalance price based upon their position following the closure of the Balancing Mechanism. However, it is not yet clear whether the costs of balancing an increasingly liquid intra-day market will result in the development of an alternative mechanism for recovering the costs of balancing system charges.

4.15.4. There is also no existing mechanism which is comparable to the Residual Cashflow Reallocation Cashflow (RCRC) process in NI, therefore the averaging calculation would simply account for total charges, and not subtract any credits which generators may have obtained over the year. This may result in NI generators receiving a greater Strike Price adjustment than GB generators. Similarly to Balancing System charges, it remains to be seen as to whether the I-SEM reforms will introduce a procedure akin to RCRC.

4.15.5. NI Transmission Loss Adjustment Factors (TLAFs) are set on the high-level principle that a MW generated closer to demand is worth more than one that is produced further away. TLAFs are applied to all generators that participate in the SEM, including distribution-connected stations. TLAFs are set on a site-by-site basis to reflect this principle, with interconnectors having the highest loss factors applied to them, and all figures are published on the System Operator's website. TLAF calculations are made in advance of each tariff year based on a model of expected network flows and consequential marginal losses at different locations.

4.15.6. As discussed above, there are a number of fundamental differences between the calculation of the TLAFs and TLM in GB. Minded that the GB factors are set on an averaging basis and are then adjusted for actuals, it raises the question as to whether there would be any impact upon NI generators' Strike Price if site-specific TLAFs are applied to output in the first instance, as occurs presently.

4.15.7. In GB, metering installed at each generator, supply point and at the bulk supply points (where the transmission and distribution networks meet) allow transmission losses to be shared between Generators and Suppliers. Significantly, only 45% of transmission losses are applied to generators in GB and the remaining 55% is applied to suppliers. Conversely, in NI 100% of transmission losses are applied to generators. This means that there is a risk that CfD eligible volumes could be less for an NI generator compared to a GB generator because of the greater adjustment for transmission losses.

4.15.8. A final point relating to TLAFs is that there may yet be changes to the calculation of these factors prior to the finalisation of the I-SEM reforms. If the I-SEM reforms contain changes for the TLAF calculation and application process, then the suitability of the new factors for CFD will need to be considered.

4.15.9. Overall, there remains significant uncertainty with regard to the treatment of Balancing System Charges in NI due to the on-going I-SEM reforms, and the significant differences between transmission loss adjustment factors in NI and GB. As a result, DECC has not yet decided on an appropriate approach for how to replicate the provisions in the NI CFD. On this basis, DECC has developed two possible options based upon the current NI market context, and invites stakeholders to express their views on both approaches. DECC is minded that any implementation of both options is dependent on more detail emerging as to the treatment of Balancing System charges in the I-SEM, and therefore these positions must be considered to be at very early stages. These are discussed below.

Option 1

4.15.10. The first option would not adjust generator's Strike Price adjusted each calendar year for the difference in charges relating to the Transmission Loss Adjustment Factor and Balancing System Charges. This approach would mirror the existing market arrangements in NI, however the CFD contract drafting would need to be modified in order to reflect that the dates for this adjustments taking place will differ between NI and GB.

4.15.11. The rationale for not including either Strike Price adjustment for Balancing System Charges is because it is not clear that current provisions for either loss adjustment or

balancing the system would impact upon NI generator's Strike Price. Due to the calculation of TLAFs being set on a site-specific basis, rather than averaged as occurs in GB, it is unclear whether an NI CFD-holder's Strike Price would require adjustment in order to account for differences between an average and actual charge. Regarding use of system charges, under current arrangements all these costs are picked up by Suppliers, rather than generators, through the Imperfections Charge which is levied by the System Operator. Further, it is DECC's understanding that there is no mechanism which is similar to the Residual Cashflow Reallocation Cashflow process that is key to the BSUoS adjustments calculation in the GB CFD. Therefore, any additional adjustment might see NI generators result in NI being able to enter a lower bid into the CFD auction, because the existing process would not erode their Strike Price. Moreover, they would retain the advantage of not having to pay any Balancing System Charges.

4.15.12. It remains unclear as to whether there are any additional processes in the NI market which would impact upon generator's Strike Price, and we welcome evidence which identifies any processes which may not have been included in this initial assessment of market conditions.

Option 2

4.15.13. The second option which DECC is considering is to adjust NI generators' Strike Price for costs incurred in reconciling Loss Adjustment Factors, and set Actual Balancing System Charge in the generator's contract to zero.

4.15.14. Regarding TLAFs, as mentioned due to the many differences between the GB and NI loss factors, this option would see the GB TLM figures applied to NI CFD-holders' output. This would require the Metered Output volumes submitted for CFD settlement by the System Operator to not be loss adjusted for NI-specific factors (i.e. TLAFs). One complication of this approach would be that the CFD Settlement Services Provider would be required to know whether to apply the Delivering or Offtaking TLM, however this would not be too problematic because the metered data provided by SONI would identify whether this was the case or not. An NI generator's Strike Price would subsequently be adjusted annually in the same way as a GB CFD holder.

4.15.15. An additional complication of the above approach is that NI generators would have their output adjusted for averaged figures applied in a market with far different characteristics to that in NI. It remains to be seen what the consequences of this may be, but analysis will be required to assess the feasibility of applying such a measure.

4.15.16. In terms of Balancing System Charges, the process would see an NI generator's Actual Balancing System Charge in its CfD contract be set to zero. This could result in a decrease in NI generators Strike Price because they would not be required to factor in a potential adjustment to their Strike Price when bidding into the CfD auction. This would reflect the fact that they do not face equivalent costs in the SEM, or are expected to in the I-SEM, and would mean they receive similar treatment to embedded CfD-holders in GB.

4.15.17. However, it is important to add that the I-SEM will see the System Operator having to play a bigger role in balancing the system, and this may result in greater costs being incurred. The I-SEM High-Level Design does not imply that a new mechanism, where the costs are transferred to generators will be introduced; however this may yet be a feature of the new scheme. If such a mechanism was to be introduced then analysis would be required to determine the potential impact of any new adjustments upon NI generator's Strike Price. Further, the I-SEM High Level Design does not imply that a comparable mechanism to the GB

Residual Cashflow Reallocation Cashflow process will be developed, however one still may be adopted.

4.15.18. If this Option 2 was to be progressed and the I-SEM changes its approach for recovering Balancing System Charges, then it would require transitional arrangements to be put in place for the period intervening between the introduction of the NI CFD regime in 2016 and the commencement of the I-SEM in 2017. DECC is open to suggestions as to where an appropriate interim figures for both Balancing System charges and Residual Cashflow Reallocation Cashflow could be sourced.

Table 22 – Questions on balancing system charges

Consultation Questions	
1.	Do you have evidence of any charges which are levied on NI generators, other than those mentioned, which may impact upon NI generators' Strike Price?
2.	What are the nature of the costs that are imposed on the you as a generator?
3.	Do you have evidence that suggests that DECC's first option confers an unfair level of risk on NI generators compared to those in GB?

5. Supplier obligation

5.1.1. This Chapter is split into two, the first deals with the design of the supplier obligation while the second discusses the settlement arrangements for the supplier obligation. Section **Error! Reference source not found.** sets out the design of the supplier obligation within GB as set out in regulations, Section 5.3 describes the changes that may be required in order to implement the supplier obligation in NI and lists the questions on which evidence is sought. In the second half, Section **Error! Reference source not found.** sets out the settlement arrangements which are in place for the supplier obligation within GB, Section **Error! Reference source not found.** describes the changes that may be required to settlement of the supplier obligation in NI and lists the questions on which evidence is sought.

5.1.2. Further details on the supplier obligation design can be found in Chapter 2.3 of the *Implementing Electricity Market Reform*.³⁹

5.1. Introduction to the supplier obligation

5.1.1. The payments due to generators under CFDs will be determined by each CFD contract. These amounts will be calculated and paid out by the LCCC (utilising its Settlement Services Provider). The LCCC receives the funds for the CFD payments through the CFD supplier obligation, a compulsory levy on electricity suppliers. The amounts owed by individual suppliers will be dependent on their market share (volume of electricity supplied). The supplier obligation has been designed to deliver payment certainty to CFD generators while minimising the costs to suppliers, and therefore consumers.

5.1.2. The requirements of the supplier obligation (including the requirement to make payments) will be enforceable in GB as if they were relevant requirements under the Electricity Act 1989. This means that Ofgem may investigate and enforce breaches of the requirements of the supplier obligation in the same way as a breach of the conditions of electricity supply licences. Ofgem's approach to enforcement is set out in its Enforcement Guidelines.

5.1.3. Electricity suppliers in GB will be liable for payments to CFD generators from 1 April 2015.

5.1.4. The underlying amount owed through the supplier obligation will be exactly equal to the net CFD payments made to (or by) generators. These CFD payments are made up of:

- Generation payments – payments to or from CFD generators that are calculated directly by reference to an amount of electricity generated. These are expected to be the vast majority of payments under CFDs; and
- Non-generation payments – ad hoc payments to or from CFD generators that are not directly related to an amount of electricity generated. These could include change in law compensation payments or termination payments.

5.1.5. A supplier's liability for CFD payments will vary depending on the type of payment:

39

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324176/Implementing_Electricity_Market_Reform.pdf

- Generation payments – the supplier’s liability is based on the volume of electricity supplied by the supplier, as a proportion of total electricity supply, on the day of generation (the date the payment relates to); and
- Non-generation payments – the supplier’s liability is based on its average electricity supply, as a proportion of total electricity supplied, over the levy period (i.e. quarter) that the payment liability occurs in.

5.1.6. The underlying amount owed is expressed in legislation by formulae set out in Regulations 4 and 5 of The Contracts for Difference (Electricity Supplier Obligations) Regulations 2014⁴⁰. The exact amount owed may not be known until up to 28 months after the day of generation as generation and supply data are updated.

Interim Payments under the Supplier Obligation

5.1.7. Prior to determination of the underlying levy, suppliers will be required to make interim payments to the LCCC to enable it to make payments to generators. These interim payments will take the form of:

- An interim unit cost fixed rate. The LCCC will forecast the total expected CFD costs and total expected supply for the levy period, and set a pounds per MWh (£/MWh) rate (the interim levy rate) against which suppliers are charged according to their supply on a daily basis.
- Reserve payments, to cover mismatches between interim rate payments received from suppliers and payments out to generators. The LCCC will set the total reserve amount such that there is a 19 in 20 probability (i.e. 95 per cent) that it will be able to make CFD payments, having consideration to a broader range of scenarios than were predicted when the interim rate was set (for example, lower market reference prices or higher CFD generation than forecast). Suppliers will be required to pay this amount as a lump sum at the start of each quarter.

5.1.8. The interim levy rate and total reserve fund amount will be set three months in advance of each quarterly levy period. The levy periods will start on 1 April, 1 July, 1 October and 1 January each year.

Adjustments to interim payments

5.1.9. The LCCC can adjust the interim rate and/or reserve amount during a levy period in exceptional circumstances. The interim rate can be increased or decreased and the reserve amount can be increased. Given the frequency of forecasting and the conservative approach to sizing reserve amounts it is expected to be extremely infrequent that the LCCC would need to make such an adjustment. Should the LCCC need to make any in-period changes, they will be determined in the same basis as the original interim rate and reserve amounts and suppliers would be given at least 30 days’ notice before any in-period adjustment.

Reconciliation of interim payments against the actual payments made to CFD generators

5.1.10. Shortly after the end of every quarterly levy period the LCCC will reconcile (true up) the interim payments paid by each supplier against their underlying liability for CFD payments for the quarter just finished and all preceding quarters for which data has not yet been

⁴⁰ <http://www.legislation.gov.uk/ukxi/2014/2014/made>

finalised. Reconciliation payments owed to or by suppliers will payable 90 days after they are determined, and offset against suppliers' reserve payments for the following quarter.

Collateral

5.1.11. Suppliers will be required to post collateral to protect the LCCC against the possibility of late payment. Collateral is sized according to the period between the day on which electricity is supplied and the last day on which the LCCC can expect to receive payments. This amounts to 21 calendar days.

5.1.12. Suppliers will be required to post collateral sized to cover 21 days of interim rate payments. This amount is known as the 'minimum credit cover'. The minimum credit cover of new market entrants will increase daily from the first day of supply until they have posted collateral of 21 days. The LCCC will have discretion to call collateral to cover default by a supplier on any type of supplier obligation payment, including defaults on the interim rate, reserve, reconciliation and mutualisation payments. It cannot, however, be used by the LCCC to cover default by a different supplier or default on the operational cost levy or accrued interest. Collateral can be posted in either cash or letter(s) of credit provided that the institutions issuing those letters of credit meet the minimum short-term credit rating and have a branch in London⁴¹. The minimum short-term credit rating is A-1 with Standard and Poor's; or P-1 with Moody's; or F-1 with Fitch Group. Suppliers can use more than one letter of credit to meet the minimum required credit cover as long as each issuing institution meets the minimum credit rating and is on terms regarded as appropriate by the LCCC. The minimum credit cover required by a supplier will be sized on a rolling basis, according to the supplier's interim rate payments for the most recent period of 21 calendar days for which the initial volume allocation run has been completed. The amount of minimum credit cover will change as changes in volume of electricity supplied feed through to the rolling 21 calendar days.

5.1.13. When a supplier does not pay any amount which is due under the Contracts for Difference (Electricity Supplier Obligations) Regulations, the LCCC will notify that supplier of the non-payment and the supplier will have a further two working days to pay the outstanding amount. Working days are defined as "a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any date that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971." This period is known as the 'payment rectification period'. The LCCC will have discretion to draw on that supplier's collateral before the two working day rectification period has elapsed if it is of the opinion that there is no prospect of that supplier making the payment due by the end of the payment rectification period. If the outstanding amount is not rectified, the LCCC may report the non-payment to Ofgem within GB. The details of the non-payment may be published on the LCCC's website and the LCCC may recover outstanding amounts as a debt through the civil courts. Default interest will be charged by the LCCC on late payments from the day after the day that the payment was due at a rate of 5% per annum over the Bank of England base rate.

Mutualisation of defaults

5.1.14. The LCCC can mutualise defaults on supplier obligation payments once the defaulting supplier's collateral is exhausted, or if it determines that the collateral will be exhausted within the next five working days. The ability to mutualise defaults helps deliver payment certainty to CFD generators. Defaults will be mutualised across all non-defaulting

⁴¹ The template for acceptable letters of credit is available at https://lowcarboncontracts.uk/system/files/CFD%20Letter%20of%20Credit%20Template_1.pdf.

suppliers according to their market share on the day that the original payment related to (for defaults on interim rate payments), or over the most recent 30 day period for which supply volume data is available (for defaults on all other payments). Where amounts are recovered from a defaulting supplier after mutualisation has taken place, these will be passed through to the suppliers who contributed to the mutualisation event in proportion to their contribution.

Disputes

5.1.15. Within GB, disputes by suppliers over the metered supply data used to calculate the supplier obligation are considered by the relevant BSC procedures. The LCCC is not a party to the BSC and so would not ordinarily have visibility of disputes. Where a dispute under the BSC has been initiated, modifications made to the BSC require the BSCCo to inform the LCCC of this dispute to ensure that it has early knowledge of disputes. In addition, where the LCCC believes that there has been an error in metered data that could affect the supplier obligation, it will inform the BSCCo. Under the existing terms of the BSC, where the BSCCo becomes aware of “any matters which would or might reasonably be expected to give rise to a Trading Dispute”, it shall raise a trading dispute under the BSC.

5.1.16. Any other disputes (other than metered supply i.e. disputes about determinations by the LCCC) can be raised within 28 calendar days of the determination of a notice that is being disputed. The LCCC will then make a determination on the dispute within 28 calendar days of receiving the notice from the disputing supplier and will notify any other supplier who it thinks is likely to have been affected by that determination. Where a supplier has disputed a determination made by the LCCC, the supplier must continue to comply with that determination, including paying amounts under the regulations when they fall due. Where the LCCC varies or revokes the original determination and money had already been paid by it to suppliers, or suppliers had already paid it, that money must be returned within five working days of making the determination – or within a longer period if the LCCC does not think it reasonable to require repayment so quickly. If a supplier remains unsatisfied with the LCCC’s decision on a determination the supplier can make an application for judicial review.

Exemptions to the supplier obligation

5.1.17. The Government intends to exempt the most Electricity Intensive Industries (EII) from some of the costs of contract for difference, where they post a significant risk to UK competitiveness, subject to State Aid approval. The eligibility criteria and procedures for applying for an exemption are set out in the Government responses to the consultations on *Electricity Intensive Industries – relief from the indirect costs of renewables*⁴² and *Changes to the CFD supplier obligation*⁴³. 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 proportion 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

⁴² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/395809/bis-15-31-electricity-intensive-industries-relief-from-the-indirect-costs-of-renewables-government-response-to-the-public-consultation.pdf

⁴³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396197/SO_and_BSC_consultations_Government_Response_Final.pdf

operational cost levy payments, and the time period the exemption will cover. BIS will also provide information on eligibility to the LCCC to ensure the exemption is correctly administered.

5.1.18. 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.

5.1.19. The LCCC will exclude any exempt electricity when calculating suppliers' market shares for the purpose of determining their liabilities under the supplier obligation and operational costs 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.

5.1.20. We expect that competitive market conditions will ensure that suppliers pass on the value of the exemption to eligible businesses through their electricity bills. 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. 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.

5.1.21. In addition, as a condition of State Aid approval for the CFD for renewables from the European Commission, the Government agreed to exempt eligible imported renewable electricity from contributing to the costs of CFDs. The 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.

5.1.22. It is intended that the EII and imported renewable electricity exemptions will both apply UK-wide from the point at which NI enters the supplier obligation. Prior to this point, they will apply only to GB.

Operational costs levy

5.1.23. A levy paid to the LCCC by suppliers will allow it to recover the operational costs it incurs in connection with the performance of its functions of administering CFDs. This would include, for instance, staff, estate and IT costs, as well as potential legal fees in relation to dispute resolution. A fixed levy rate (£/MWh of electricity supplied) will be charged which will be set in regulations in advance of each operational cost levy period, following a public consultation.

5.1.24. The levy rate will usually apply for a financial year, i.e. 1 April to 31 March. The levy rate will be calculated based on the LCCC's agreed annual budget divided by total estimated electricity supply in the same year. Since the rate is based on the company's annual budget, it is highly likely that the rate will change every year. This will be done through an amendment to the principal regulations, subject to the affirmative procedure in Parliament. We expect to consult in autumn each year for the following year's rate e.g. October/November 2015 for the 2016/17 rate.

5.1.25. The LCCC's operational costs will be divided between suppliers based on their market share with this being determined using the Initial Volume Allocation (SF) Run, which is usually available 16 working days after settlement. As SF data will be used as final supply

data, suppliers' share of operational costs will be partly based on estimates. Compared to what will be collected from suppliers under the supplier obligation for CFDs, the LCCC's operational costs will be small, and therefore there is not the same need to reconcile data for 14 months.

5.1.26. As the LCCC's may receive working capital from Government in order to manage cash flow issues arising from a payment default or otherwise (for operational costs only) it is not necessary to collect or use collateral for the operational cost levy. A default in operational cost payments will not lead to mutualisation of the outstanding debt across other suppliers. However, the LCCC will be able to pursue debts through the courts.

5.1.27. We will keep the design of the supplier obligation under review after implementation of EMR, in view of the conflicting opinions over the optimal design and the impact the mechanism will have.

5.2. Implementing the supplier obligation in NI

Issues, Propositions and Questions for implementation in NI

5.2.1. The intention is that the supplier obligation will be extended to cover NI electricity suppliers from 1 April 2017 – the first day on which it is intended that NI generators will be eligible to receive payments under CFDs. From this point we intend that the supplier obligation will be implemented on a UK-wide basis, with costs that will be shared between all UK licensed suppliers based on share of UK electricity sales.

5.2.2. There are three areas where we consider changes to the design may be required for NI suppliers: i) enforcement of the obligation ii) metered data disputes and iii) letters of credit.

5.2.3. Enforcement of the supplier obligation: As set out in Section 2 of this Call for Evidence, within NI, UREGNI regulates licensed suppliers rather than Ofgem and so for the supplier obligation, we propose that URGNI carries out the regulation of the supplier obligation role carried out by Ofgem in GB. This means that the LCCC will report supplier obligation defaults to UREGNI where it is a supplier licensed in NI that is in default. URGNI will then enforce the supplier obligation in line with their existing regulatory enforcement processes.

5.2.4. Metered data disputes: The supplier obligation provisions in GB rely on the BSC procedures to handle disputes over metered data because the metered data itself were provided from the BSC in line with their procedures. Within NI, supplier data disputes are dealt with under the TSC. The intention is to rely on the existing TSC processes for metered data disputes for the supplier obligation in order to provide consistency with the existing GB process and to simply matters for NI suppliers. However, it may be necessary for the LCCC to be informed where a data or settlement query or a settlement dispute has been lodged that will affect supplier obligation settlement.

5.2.5. There are two different options to ensure both that the LCCC is kept informed of metered data disputes that relate to CFD or supplier obligation settlement. First, is to amend the TSC to give the LCCC such rights. Second, is to place requirements on suppliers who are already parties to the TSC to ensure that this information is provided by the supplier to the LCCC. The preference is to avoid requesting modifications to the TSC where possible because of the potential impact on wider TSC settlement and the impact on the Republic of Ireland. Furthermore, the Secretary of State does not have the power to direct modifications to the TSC in the way that modifications to the BSC could be directed in GB.

5.2.6. Views and evidence is sought on the following proposal:

- A requirement on NI suppliers to notify the LCCC when they i) raise a Data Query, Settlement Query or Settlement Dispute on metered data that could impact their supplier obligation or ii) when they are informed by the Market Operator that they are the Affected Participant of a Data Query, Settlement Query or Settlement Dispute on metered data that could impact their supplier obligation.

5.2.7. The use of the TSC process for metered data disputes under the supplier obligation is likely to mean that the LCCC will not have the ability to raise data disputes itself as the TSC only allows participants (suppliers and generators) to do so. The expectation is that in the majority of cases suppliers themselves will initiate data disputes where they believe that there is an error in either their own data or in the data of another supplier. If this is the case, it may not be necessary for the LCCC to be able to raise data disputes under the TSC. Views are sought from respondents over the potential implications of this.

5.2.8. It is not necessary to change the procedures for disputes other than metered data. In those cases, where a supplier is disputing the determination made by the LCCC but is not disputing the metered data used to make that determination, there is no difference between a GB or an NI supplier and so it is appropriate that the same disputes process is used.

5.2.9. Letters of credit: The intention is that the same requirements for letters of credit are placed on NI suppliers as for GB suppliers. However, evidence is sought through the questions below as to whether there are any reasons why the proposed requirements for letters of credit set out in **Error! Reference source not found.** are as appropriate for NI suppliers as they are for GB suppliers.

5.2.10. As set out above, the minded to position is to extend the existing supplier obligation structure and requirements to NI as is set out in the existing regulations with alterations specifically for NI limited to three key areas: (1) as set out in Chapter 2, a different institution will enforce the supplier obligation in NI compared to in GB; (2) it is intended that metered data disputes within NI will be handled under existing TSC processes rather than under the BSC process as happens in GB; and (3) there may be different settlement arrangements. These settlement arrangements are dealt with in Section 4.8.

Table 23 Questions on Supplier Obligation

Consultation questions	
1.	Do you have any comments on the applicability of the requirements for the letters of credit to NI suppliers?
2.	Do you have any comments on the enforcement process for the supplier obligation?
3.	Do you support the proposal to use the existing TSC query and dispute process for metered data disputes?
4.	Do you have any comments on the proposal for a requirement for suppliers to inform the LCCC where they initiate a TSC data query, settlement query or settlement dispute or where they are informed that they are the Affected Participant of a TSC data query, settlement query or settlement dispute?
5.	Use of the TSC data dispute process means that the LCCC will not be able to initiate data disputes. This means that data disputes could only be launched by suppliers. Do you think that there will be instances where a supplier is unwilling to launch a data dispute or where the supplier is not aware of an error in data that would require a dispute?
6.	Do you have any other comments on the application of the supplier obligation in NI?

5.3. Introduction to the settlement of the Supplier Obligation

Provision of metered data and calculation of payments

5.3.1. The settlement process for the supplier obligation in GB will use metered data calculated according to the BSC and provided from BSC data systems. The Settlement Services Provider will use the data provided by the BSC, which will be a mixture of profiled data based on estimated consumption and half hourly metered consumption data. Supplier consumption data will be defined as all electricity imported from the total electricity system for which a licensed supplier is responsible under the BSC, loss adjusted for transmission and, if appropriate, distribution losses.

Making supplier obligation payments

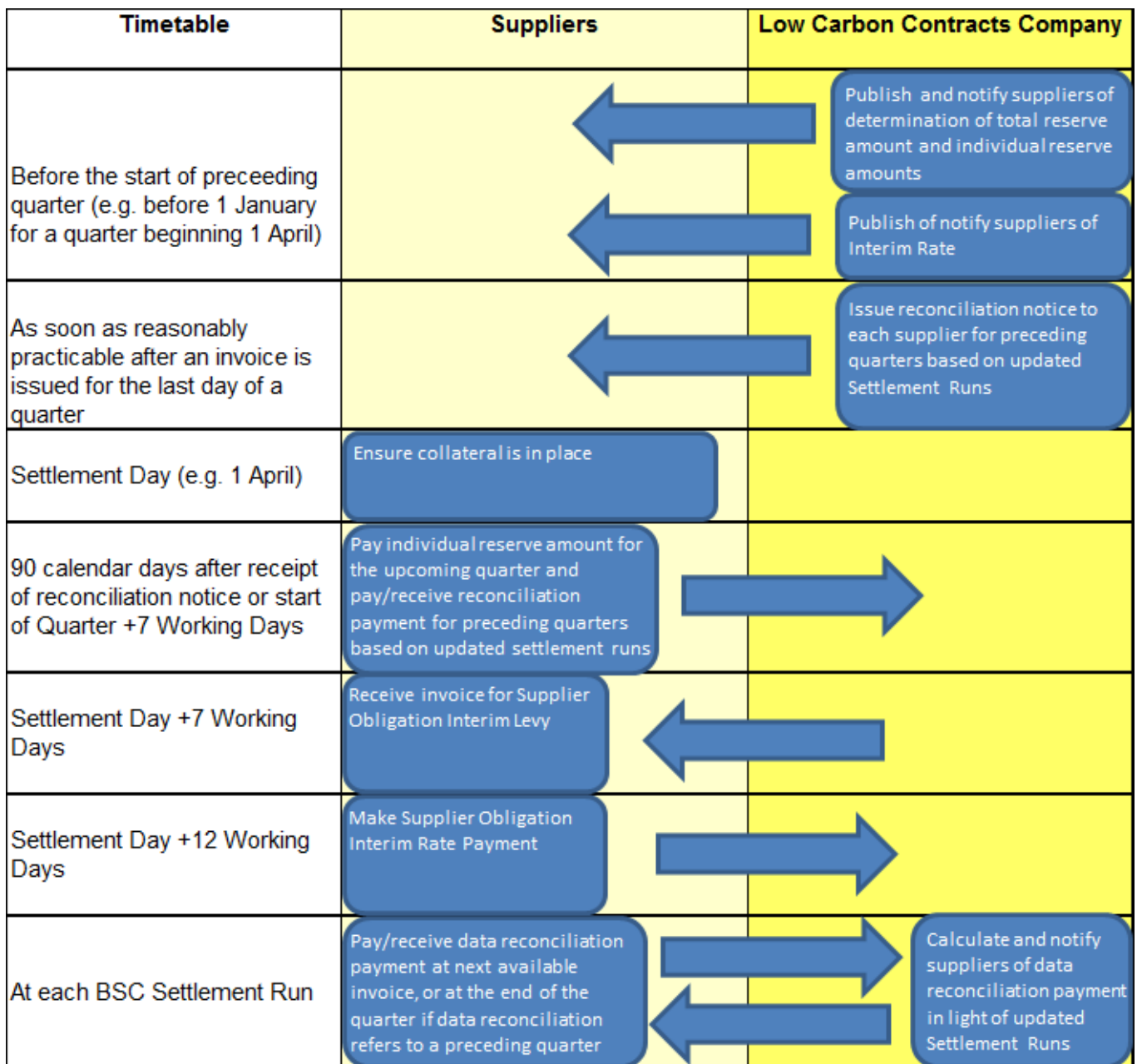
5.3.2. To align with BSC settlement processes, minimise administrative costs and reduce the amount of collateral required, the interim rate payments will be settled (calculated and paid) on each working day within GB. This results in a one day billing period, coinciding with the BSC's Settlement Day. Daily payments will be calculated using the Interim Information Volume Allocation (II) run, which is available five working days after the day of supply/generation. The Settlement Services Provider will then have two days to calculate and generate the relevant invoices and billing notices.

Final data reconciliation

5.3.3. Under the BSC, a supplier's metered output begins as a mixture of profiled and actual data from meter readings. This is due to the fact that domestic customers in particular have their meters read infrequently. The BSC carries out reconciliation runs which update the metered data for specific settlement periods, in most cases over a 14 month timetable. Further reconciliations can happen as late as 28 months after the settlement day where there has been a trading dispute.

5.3.4. The settlement timescale for suppliers is shown in the diagram below:

Figure 5: Settlement timescales in the supplier obligation⁴⁴



⁴⁴ Working days are defined as “a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any date that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.”

5.4. Implementing the Supplier Obligation settlement in NI

Issues, propositions and questions for implementation in NI

5.4.1. The key areas of supplier obligation settlement are set out below with a consideration of whether the existing arrangements in GB are appropriate for the supplier obligation in NI.

Provision of metered data and calculation of payments

5.4.2. Metered data in NI cannot be provided by the BSCCo as happens in GB. In NI, both SONI and NIE have responsibility as meter data providers. The Energy Act allows the regulations to require the provision of information by either the System Operator in NI (SONI and NIE) or NI licenced suppliers. Therefore, it is proposed that metered data for supplier obligation settlement is provided by SONI and NIE to the LCCC in order for supplier obligation settlement to take place.

5.4.3. Metered data received from NI generators and suppliers will need to be adjusted for transmission and distribution losses. As set out in section 4.7.22, we propose using the loss adjustment factors calculated under the TSC.

Making supplier obligation payments

5.4.4. Settlement of the supplier obligation and the CFD in GB is done on a daily basis (with invoices sent and payments received each working day), whereas in NI, whilst metered data is available on a daily basis, SEM settlement is carried out on a weekly basis. DECC will therefore have to consider whether to allow NI suppliers to make supplier obligation payments on a weekly basis, or to align settlement with the GB framework and settle payments on a daily basis.

5.4.5. Maintaining weekly settlement would entail some additional costs for NI suppliers. As described above in section **Error! Reference source not found.**, in order for generators to have confidence that payments will be met, the supplier obligation regulations require suppliers to hold collateral in case of payment default from the point at which electricity is supplied until the invoice is settled.

5.4.6. Given that weekly settlement would increase the timeframe between the point at which electricity is supplied and the invoice is settled, allowing weekly settlement for NI suppliers would necessitate holding additional collateral equal to an extra 6 days of supplier obligation payments, with collateral requirements therefore rising from the previous 21 calendar days of supplier obligation payments to the previous 27 calendar days of supplier obligation payments. This would necessitate suppliers posting larger quantities of collateral to cover the risk of default.

5.4.7. Were a supplier to default on a weekly payment, the size of that default would be seven times greater than if it had defaulted on a daily payment and the LCCC will become aware of the default six days later. Within that period, if the strike price continues to be above the reference price, the supplier would have continued to build up payments that would have been due to the LCCC before the LCCC is able to start enforcement action.

5.4.8. Conversely daily settlement would mean smaller daily payments and lower collateral requirements, but may require suppliers in NI to change their payment processes to be able to make a payment each working day. Nevertheless, the LCCC will allow suppliers to make their payments by direct debit, which may mitigate some of the administration costs of making daily payments. It should also be noted that suppliers will have 30 days from the receipt of an

invoice in which to raise a dispute if they believe that the LCCC has made an incorrect calculation, meaning that due diligence to check outgoing payments would not necessarily need to be performed by suppliers on a daily basis, further reducing the additional administration costs of daily settlement.

5.4.9. On balance the benefits of the reduced collateral requirements from daily settlement are likely to more than offset the additional administrative costs of any required system changes, particularly given that the costs of higher collateral requirements would impact suppliers over the lifetime of the supplier obligation, in comparison to the costs of switching to daily settlement, which may only need to be incurred once.

5.4.10. In addition, making the necessary changes to the LCCC's systems to allow weekly settlement would incur considerable costs that would ultimately be passed onto consumers.

5.4.11. Therefore, the minded to position is to align the NI supplier obligation with the GB framework and implement the regime with daily settlement of supplier obligation payments in order to minimise the collateral requirements on suppliers and minimise the risks to the LCCC in managing CFD payments to generators.

5.4.12. In the usual course of business NI reconciliation (resettlement) will be complete before GB reconciliation as second resettlement takes place 13 months after the settlement day (compared to 14 months under the BSC). However, the TSC allows for the possibility of resettlement to be performed manually following a Dispute Resolution Board for up to six years after the settlement day, compared to 28 months in GB.

5.4.13. It is therefore proposed that CFD liabilities are finalised 28 months after the day of supply, and no account is taken of reconciliation runs after that point. This is because allowing for later reconciliations would increase uncertainty for both suppliers and generators with the final obligation owed by suppliers and final CFD payments to generators potentially being changed four years later than is currently the case under the CFD. Moreover, historically, adjustments made after 28 months are exceedingly rare and would likely be of a relatively low magnitude.

5.4.14. As described, the minded to position is to broadly maintain the settlement provisions for the supplier obligation used in GB but adapted to take account of the differences in metered data provision in NI. In order to minimise costs to consumers and collateral requirements for suppliers it is proposed that daily settlement is maintained for the NI supplier obligation. As in GB, it is proposed that CFD liabilities are finalised 28 months after the day of supply.

Table 24 - Questions on settlement of the supplier obligation

Consultation questions	
1.	What would be the administrative costs (both one-off system changes and ongoing operational costs) of implementing daily settlement of the supplier obligation?
2.	How would daily settlement affect cash flow for suppliers?
3.	On balance, which do you believe would result in lower costs to consumers: a) Daily settlement with 21 days collateral b) Weekly settlement with 27 days collateral
4.	How frequently does resettlement occur more than 28 months after the Settlement Day and how material are such adjustments? Are some suppliers more prone to post-28 month resettlements than others?
5.	Do you have any other comments on the settlement provisions of the supplier obligation?

