



Department  
of Energy &  
Climate Change

# CONTRACTS FOR DIFFERENCE

Consultation on Changes to the Non-Delivery  
Disincentive for CFD Allocation

May 2016

# CONTRACTS FOR DIFFERENCE

## Consultation on Changes to the Non-Delivery Disincentive for CFD Allocation

The consultation and Impact Assessment can be found on DECC's website

<https://www.gov.uk/government/consultations/consultation-on-changes-to-the-non-delivery-disincentive-for-cfd-allocation>

CONTRACTS FOR DIFFERENCE

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[psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk). Any enquiries regarding this publication should be sent to us at [DECCContractsForDifference@decc.gsi.gov.uk](mailto:DECCContractsForDifference@decc.gsi.gov.uk).

# Introduction

1.1. The Electricity Market Reform (EMR) programme launched in August 2014, with the implementing legislation coming into force and the independent EMR delivery bodies becoming designated and operational. The first Contracts for Difference (CFD) allocation round concluded in March 2015.

1.2. We introduced amendments<sup>1</sup> to the Contract for Difference (Allocation) Regulations 2014<sup>2</sup> (the “Allocation Regulations”) to introduce the Non-Delivery Disincentive which applied to the first CFD allocation round.

1.3. The Non-Delivery Disincentive (NDD) aims to incentivise applications to be made only by projects likely to be delivered, and therefore to ensure that projects which are awarded a contract in a CFD allocation round are incentivised to sign that contract and to make their best efforts to meet the Milestone Delivery Date (MDD). This is provided for by an exclusion applying to the site of a project that was awarded a CFD but where (i) the applicant in respect of that project failed to sign, or (ii) the CFD was terminated prior to, or due to a failure to meet the MDD. The exclusion applies to the site and is for 13 months from the date of the CFD notification<sup>3</sup> for that project. The aim is that such sites would be excluded from being used for an application for the next CFD round.

1.4. As allocation rounds have not occurred as frequently as originally envisaged, it has become necessary to consider updating the exclusion period.

1.5. We are also taking this opportunity to make two minor technical changes to clarify the site description and amend the ‘non-delivery case’ to make clear that it captures termination occurring:

(a) prior to the MDD; or

(b) due to a failure to meet the stages of delivery required by the MDD,

as well as to consult on a further extension of protections to CFDs terminated due to sustainability change in law.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2015/981/made>

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2014/2011/contents/made>

<sup>3</sup> As defined in section 12 of the Energy Act 2013.

# Contents

Introduction	2
General information	4
Purpose of this consultation	4
How to respond	4
Confidentiality and data protection	5
Quality assurance	5
Catalogue of consultation questions	7
Consultation Question	7
NDD Changes	8
Exclusion Period	8
Site Description	9
Non-Delivery case	9
Sustainability Change in Law	9

# General information

## Purpose of this consultation

The Government is seeking views from stakeholders planning on participating in future CFD Allocation Rounds on proposals to amend the CFD Non-Delivery Disincentive.

**Issued:** 26 May 2016

**Respond by:** 22 June 2016

### **Enquiries to:**

CFD Allocation

Department of Energy & Climate Change,

4th Floor Area D,

3 Whitehall Place,

London, SW1A 2AW

Tel: 0300 068 6148

Email: [DECCContractsForDifference@decc.gsi.gov.uk](mailto:DECCContractsForDifference@decc.gsi.gov.uk)

Consultation reference: URN 16D/224 – Contracts for Difference: Consultation on Changes to the Non-Delivery Disincentive for CFD Allocation

### **Territorial extent:**

England, Scotland and Wales

## How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Please provide responses to the Email address above marked Non-Delivery Disincentive.

### **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/consultation-on-changes-to-the-non-delivery-disincentive-for-cfd-allocation>

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](mailto:consultation.coordinator@decc.gsi.gov.uk)



# Catalogue of consultation questions

## Consultation Question

1.	<p>Do you agree that the NDD exclusion period should be changed so that the relevant site is excluded from being used in respect of a CFD application for:</p> <ul style="list-style-type: none"><li>(a) any CFD allocation round commencing in the period of 13 months from the date of the relevant CFD notification; and</li><li>(b) the first of any CFD allocation rounds commencing between the end of that period and 24 months after CFD notification?</li></ul> <p>If not, why not and what alternative approach would you propose which delivers our objective?</p>
2.	<p>Do you agree that the change to the site description provides greater clarity?</p>
3.	<p>Do you agree that we amend the 'non-delivery case' to make clear that it captures termination occurring:</p> <ul style="list-style-type: none"><li>(a) prior to the MDD; or</li><li>(b) due to a failure to meet the stages of delivery required by the MDD.</li></ul>
4.	<p>Should we extend exemption protection to projects which have terminated due to Sustainability Change in Law? Please support your answer with evidence of why it should or should not be exempted.</p>



# NDD Changes

## Exclusion Period

1.6. The Non-Delivery Disincentive (NDD) aims to incentivise applications to be made only by projects likely to be delivered, and therefore to ensure that projects which are awarded a contract in a CFD allocation round are incentivised to sign that contract and to make their best efforts to meet the Milestone Delivery Date (MDD). This is provided for by an exclusion applying to the site of a project that was awarded a CFD but where (i) the applicant in respect of that project failed to sign, or (ii) the CFD was terminated prior to, or due to a failure to meet the MDD. The exclusion applies to the site and is currently for 13 months from the date of the CFD notification<sup>4</sup> for that project.

1.7. When the NDD was set up it was anticipated that CFD allocation rounds may occur as frequently as annually. The mechanism therefore sets out that the exclusion prevents an excluded site from being used as part of an application in a subsequent CFD allocation round for a 13 month period from the date on which a successful applicant is notified that they have been successful in being allocated a CFD by the Delivery Body.

1.8. As, in future, allocation rounds may occur at a different tempo than annually, the 13 month exclusion period is less likely to be effective. To provide more certainty, we are proposing that we should therefore extend the 13 month exclusion period to include an exclusion from the next allocation round following the MDD, with a maximum period of 24 months. Given that the aim was to prevent any project which fails to sign, or terminates prior to or due to a failure to meet the MDD from entering the next round with the same site, we believe that the site should be excluded from the next round following the MDD. Recognising that this could be viewed as a somewhat open-ended exclusion we think it would be proportionate to limit the exclusion to 24 months after the date of CFD notification.

1.9. We are therefore proposing to change the Allocation Regulations to ensure that the site of a project which fails to sign its contract or terminates prior to, or due to a failure to meet the MDD is excluded from being used in respect of a CFD application for:

- (a) any CFD allocation round commencing in the period of 13 months from the date of the relevant CFD notification; and
- (b) the first of any CFD allocation rounds commencing between the end of that period and 24 months after CFD notification.

1.10. We anticipate that implementing this proposal would require amendment to regulation 14A(2) and (6) of the Allocation Regulations, although other amendments may also be required.

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<sup>4</sup> As defined in section 12 of the Energy Act 2013.

### Site Description

1.11. We also propose to amend regulations to make clear that for the purposes of NDD, the relevant site is that of the main generating structures of the CFD unit (whole or part of an eligible generating station) rather than the eligible generating station. In the case of (for example) a CFD for a wind farm extension, the policy is that the site of the extension only, not the site of the entire wind farm including the extension, would be excluded in the event of a breach of the NDD.

1.12. We anticipate that implementing this proposal would require amendment to regulations 14A(2)(a) and (6), 14B(8) and 14C(6)(e) of the Allocation Regulations, although other amendments may also be required.

### Non-Delivery case

1.13. We propose to amend the 'non-delivery' case to clarify drafting capturing a termination occurring:

- (a) prior to the MDD; or
- (b) due to a failure to meet the stages of delivery required by the MDD.

1.14. We anticipate that implementing this proposal would require amendment to regulation 14A(1)(b), although other amendments may also be required.

### Sustainability Change in Law

1.15. Following changes to the change in law termination events in the CFD terms and conditions to include termination by reason of Sustainability Change in Law (SCiL) we are proposing to extend the exemptions to the NDD exclusion to include this termination event. We think there are good arguments of consistency for including SCiL as we already include exemptions for other Change in Law termination events. However, we would be interested in views as to whether there are reasons why this should not be so included.

1.16. We anticipate that implementing this change would require amendment to regulation 14B(7) of the Allocation Regulations, although other amendments may also be required.

