



Department for
Energy Security
& Net Zero

Contracts for Difference for Low Carbon Electricity Generation

Consultation on drafting amendments to the
CfD contract for Allocation Round 6

Closing date: 30 January 2024



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Any enquiries regarding this publication should be sent to us at: contractsfordifference@energysecurity.gov.uk

Introduction

Scope of this consultation

This consultation invites views on proposed amendments to the CfD Standard Terms and Conditions (STCs) and the Private Network (PN) CfD Agreement for Allocation Round 6 (AR6). The changes ensure that the Contract for Difference (CfD) contract reflects current policy and that the scheme continues to function as originally intended. We welcome responses from all interested parties on the amendments to the CfD STCs and PN CfD Agreement proposed in this consultation.

Context

A CfD is a private law contract between a Generator of low carbon electricity and the Low Carbon Contracts Company (LCCC), a government-owned company. These parties are referred to in the contract as 'Generator' and 'CfD Counterparty' respectively. The Generator receives or pays 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 cost measure of the average GB market price for electricity). Contracts are awarded in a series of competitive auctions. The lowest priced bids are successful, and this drives efficiency and cost reduction. CfDs incentivise investment by giving greater certainty and stability of revenues to electricity Generators by reducing their exposure to volatile wholesale prices, while protecting consumers from paying for higher support costs when electricity prices are high.

The CfD contract terms have been amended ahead of each allocation round to reflect policy developments and ensure they remain fit for purpose. The changes proposed in this consultation document will apply to contracts signed from AR6. The proposed drafting changes are highlighted as tracked amendments in the PN CfD Agreement and CfD STCs, published alongside this consultation document.

This document refers to the 'CfD contract', which is composed of the 'CfD Agreement' and the 'CfD Standard Terms and Conditions'. The CfD Agreement is a bespoke document which successful CfD applicants will sign following an allocation round. It contains project-specific information and stipulates which conditions of the CfD STCs apply to that project. There are variants to the generic CfD Agreement drafted for phased offshore wind projects ('Phasing Agreements'), private network generators ('Private Network Agreement') and Unincorporated Joint Ventures ('CfD Agreement for Unincorporated Joint Ventures'). The CfD STCs are generic and applicable to all technologies.

We encourage respondents to this consultation to read and consider the draft amendments to the contract carefully. Any final changes will be transposed into the other variants of the CfD contract as appropriate and published before AR6 opens to applications, which is planned to be in March 2024.

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General information

Why we are consulting

The CfD scheme is the Government's main mechanism for supporting new, low-carbon electricity generation in Great Britain. AR6 will be the second annual auction and is planned to open to applications from Generators of renewable technologies in March 2024. The indicative timetable for AR6 is available on the AR6 Resource Portal¹.

Views are now invited on proposed amendments to the contract terms and conditions for AR6. The proposed changes are designed to ensure the CfD contract continues to function as originally intended and reflects current Government policy.

The PN CfD Agreement is being amended to ensure that Generators that directly supply offshore oil and gas facilities are ineligible for that Agreement from AR6. This is intended to prevent consumers, who ultimately fund the CfD scheme through their energy bills, from subsidising this electricity. The proposed amendments to the PN CfD Agreement will implement the Government's decision on this matter as published in its July 2023 response to the consultation on considerations for future CfD rounds².

We are proposing to strengthen the Know Your Customer (KYC) checks in the CfD STCs to ensure that Generators engage effectively with KYC requirements across the full contract term and particularly so, given the increasing number of projects supported by the CfD scheme. The contract provisions and events which precipitate KYC checks to be administered by LCCC and to be completed by Generators, will be more explicit. LCCC will also be able to suspend payments for Generators who fail to comply with KYC requirements.

Amendments to the Change Control Procedure through which LCCC can amend contracts are also proposed in order to clarify an ambiguity in the current Annex 2 contract terms. The current Change Control Procedure seems to prevent a Technical Amendment (General Amendment) from applying to a single Generator who has issued a Classification Objection in relation to a proposed amendment. This is regardless as to whether or not 75% of relevant Generators have issued a Technical Amendment Response Notification objecting to the amendment being classed as Technical, as is currently required.

We propose to amend the definition of Milestone Delivery Date (MDD) to allow the MDD to be extended where a Generator has not received confirmation from the Ministry of Defence (MOD) that it has met certain obligations in relation to mitigating adverse effects on defence radar systems.

This consultation also includes a call for evidence on the operation of the 18-month MDD, which came into effect from Allocation Round 4. The Government will reflect on all responses received and decide on whether to consult on specific changes to the MDD for future allocation rounds. Any changes would not be made until Allocation Round 7 at the earliest.

¹ <https://www.cfdallocationround.uk/ar6-timeline>

² <https://www.gov.uk/government/consultations/considerations-for-future-contracts-for-difference-cfd-rounds>

Additionally, minor corrections to the drafting of Condition 3.28 and 32.4(A)(ii), and clause 2.6 of Part B, Further Conditions Precedent, have been made to the STCs. These changes are for information and not subject to consultation.

Consultation details

Issued: 19 December 2023.

Respond by: 30 January 2024.

Enquiries to: contractsfordifference@energysecurity.gov.uk

Consultation reference: Contracts for Difference for Low Carbon Electricity: consultation on drafting amendments to the CfD contract for Allocation Round 6.

Audiences:

The Government welcomes responses from anyone with an interest in the proposals. We envisage that the consultation will be of particular interest to those considering participating in AR6.

Territorial extent:

The consultation applies to Great Britain only as the CfD scheme does not currently operate in Northern Ireland.

How to respond

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

Your response should be submitted online using the dedicated online portal:

Respond online at: <https://energygovuk.citizenspace.com/clean-electricity/cfd-contract-changes-for-allocation-round-6>

Alternatively, please email your responses to the following address and including **‘CFD consultation on contract amendments’** in your email subject line.

Email to: contractsfordifference@energysecurity.gov.uk

Please do not send responses by post to the department, as we may not be able to access them.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The 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 way this consultation has been conducted, please email: bru@energysecurity.gov.uk.

Proposed changes to the CfD contract

Private Network CfD Agreement

Policy context

The PN CfD Agreement allows a Generator to receive and make CfD payments for electricity supplied via 'private wire'.³ Private wire supply, also referred to as private network generation, involves a Generator directly supplying electricity to an end-user via an unlicensed, 'private' wire rather than over the 'public' electricity grid comprising licenced distribution and transmission networks.

The main incentive for private wire supply is that it avoids certain network charges and some policy costs, including those imposed on licensed supply to fund renewable support schemes, such as the CfD. The savings are shared between the Generator and the end-user so that the latter buys electricity below the retail cost of grid electricity while the former sells above the wholesale market price.

To be eligible for the PN CfD Agreement, among other requirements, a Generator must be a 'Private Network Generator' as defined in the Agreement (Condition 1.3):

“The Generator shall be deemed to be a “Private Network Generator” if:

- (A) it is exempt from the requirement to hold a licence for the generation of electricity pursuant to the Electricity (Class Exemptions from the Requirement for a License) Order 2001;
- (B) the Facility generates electricity solely or partly for supply to a Private Network; and
- (C) the Facility Metering Equipment is not, and is not required to be, registered in accordance with the BSC⁴ (except, where the Facility is a Dual Scheme Facility, in respect of the Boundary Point Metering System used to measure the Imported Input Electricity).”

There are two subsets of Private Network Generator: an Islanded Generator and a Hybrid Generator.

The PN CfD Agreement defines an Islanded Generator as 'a Private Network Generator which has a Market Supply Agreement with an Onsite Customer, but which does not have access to a Grid Connection'. This definition means that an Islanded Generator only supplies electricity to a private wire end-user, i.e. an 'Onsite Customer'.

The PN CfD Agreement defines a Hybrid Generator as 'a Private Network Generator which has access to a Grid Connection and has a Market Supply Agreement with an Onsite

³ This is not possible under other CfD contract variants as these require a Generator's metering arrangements to adhere to the Balancing and Settlement Code, which does not encompass private wire supply.

⁴ The Balancing and Settlement Code.

Customer’.⁵ This definition means that a Hybrid Generator supplies electricity to both a private wire end-user and the national electricity grid.

Only a small number of the CfDs awarded to date have been PN CfD Agreements.

Electrification of offshore oil and gas facilities

Following the emission reduction targets agreed under the North Sea Transition Deal,⁶ the offshore oil and gas (O&G) sector is considering abatement initiatives, including electrification of its facilities. A key feature of some of the electrification design concepts under consideration is private wire supply from a nearby windfarm. This is because connecting to the grid may be prohibitively expensive for many offshore O&G facilities due to their distance from shore. Moreover, and as noted above, private wire supply enables the avoidance of network charges and policy costs, which would be payable if the facilities connected directly to the grid.

Considering the electrification design concepts, the Government anticipates that some Generators may wish to apply for a PN CfD Agreement to support the electrification of offshore O&G facilities. If this materialised, consumers – who ultimately fund the CfD scheme – would subsidise the offshore O&G sector’s electricity demand.

Policy consultation

In December 2022, the Government consulted on its minded-to decision to make Generators that directly supply offshore O&G facilities ineligible for the PN CfD Agreement from AR6 to prevent consumers from subsidising this electricity. In July 2023, following analysis of the consultation responses, the Government confirmed its minded-to decision, stating that it would implement the decision by amending the PN CfD Agreement (and by making corresponding changes to the Allocation Framework⁷).

The Government recognises the importance of reducing emissions in the offshore O&G sector and has introduced an 80% investment allowance within the Energy Profits Levy for investment expenditure on upstream decarbonisation. This measure will support the sector to deliver on its commitments in the North Sea Transition Deal.

Proposed amendments to the PN CfD Agreement

The Government proposes the following amendments to the PN CfD Agreement to implement this policy decision:

- **Insertion of a definition of ‘Offshore Installation’, i.e. an offshore O&G facility, in Section 1 (Definitions and Interpretation).**

The Government seeks to prohibit the direct supply of electricity from a Generator with a PN CfD Agreement to a specific end-user, namely an offshore O&G facility. This end-user is not

⁵ This has the same meaning as ‘partial connection’ in the CfD application process, i.e. where a Generator’s output is exported to both the transmission or distribution system and a private network.

⁶ These targets are for the sector to reduce production emissions by 10% by 2025, 25% by 2027 and 50% by 2030 (against a 2018 baseline). The North Sea Transition Deal is available here:

<https://www.gov.uk/government/publications/north-sea-transition-deal>.

⁷ The Allocation Framework sets out the rules and eligibility requirements for a given allocation round. The draft Allocation Framework for AR6 is available here: <https://www.gov.uk/government/publications/contracts-for-difference-cfd-allocation-round-6-allocation-framework>.

currently defined in the PN CfD Agreement. As such, the Government considers it necessary to add such a definition to the Agreement.

'Offshore Installation' is the standard term used to refer to offshore O&G facilities in existing legislation. For consistency, the Government suggests using the same term in the PN CfD Agreement. However, the Government does not propose to cross-refer to an existing legislative definition of 'Offshore Installation', such as in section 44 of the Petroleum Act 1998,⁸ as such definitions may be subject to change and are more extensive than is required for the purpose of amending the PN CfD Agreement. We therefore propose to insert a bespoke definition of 'Offshore Installation' into the PNA CfD Agreement.

- **Insertion of a new undertaking in Section 6 (Generator Undertakings: General and Route to Market) that a Generator shall not, via a private network or directly connected cable, supply electricity to an Offshore Installation (as defined) or a person that supplies such an installation via a private network or directly connected cable.**

As part of the effective implementation of the policy decision, the Government considers that it is necessary to require a Generator with a PN CfD Agreement to undertake not to directly supply an Offshore Installation or a person that directly supplies such an installation. This additional element is proposed in order to prevent supply arrangements that seek to allow an Offshore Installation, via an intermediary, to still benefit from the lower cost of electricity made possible by a Generator's CfD payments, thereby undermining the policy decision.

- **Insertion of the new undertaking in Condition 6.2 so that, if a Generator breaches the undertaking, the CfD Counterparty may suspend payments to the Generator and recover any payments made while the Generator was in breach.**

In the event of a breach of the new undertaking, the Government considers that it is proportionate and reasonable for the CfD Counterparty to be able to suspend CfD payments to the Generator and to recover any payments made during the breach until it is satisfied that the Generator is no longer in breach.

The CfD Counterparty already has this recourse in respect of other Generator undertakings. The Government considers that it is consistent to extend it to the proposed new undertaking.

- **Amendments to Conditions 6.3, 8.4 and 9.5, in relation to the provision of a Market Supply Agreement, to support the CfD Counterparty in monitoring compliance with the new undertaking.**

The CfD STCs define a Market Supply Agreement (MSA) as 'an agreement between the Generator and a counterparty in relation to the Facility pursuant to which the counterparty agrees to purchase the electricity generated by the Facility for a defined period.'

In the case of a Generator holding a PN CfD Agreement, an MSA may be used to identify the Generator's 'Onsite Customer' (i.e. its private wire end-user), although identification is not guaranteed. The PN CfD Agreement defines an Onsite Customer as 'a customer of which the Generator is the supplier of electricity pursuant to a Market Supply Agreement and which is located on the same Private Network as the Generator.'

⁸ <https://www.legislation.gov.uk/ukpga/1998/17/section/44>.

Given that an MSA may be used to identify a Generator's Onsite Customer, it may also assist the CfD Counterparty in verifying that a Generator is compliant with the proposed new undertaking (as referenced above).⁹

The PN CfD Agreement currently requires a Generator to provide copies of any MSAs at certain points in the CfD process, for example, to evidence a route to market. However, copies are not always required. For example, if a Generator with an existing route to market enters into a new MSA during the lifetime of its CfD, it is not required to provide a copy of the relevant MSA to the CfD Counterparty, only notification.

To enable the CfD Counterparty to monitor compliance with the proposed new undertaking as effectively as possible, the Government proposes to amend existing conditions in the PN CfD Agreement concerning the provision of an MSA, namely Conditions 6.3, 8.4 and 9.5.

In the case of Conditions 6.3 and 9.5, where there is already a requirement to provide a copy of an MSA, the proposed amendments require a Generator to also include with any MSA a signed declaration that the Onsite Customer referenced therein is not an Offshore Installation (as defined) or a person that supplies such an installation via a private network or directly connected cable. These amendments are proposed because an MSA alone does not guarantee identification of an Onsite Customer (as referenced above). In the case of Condition 8.4, the proposed amendments require a Generator to provide a copy of the relevant MSA, instead of only a notification as is currently the case, when an MSA with an Onsite Customer is entered into, becomes effective, is novated, assigned or otherwise transferred to a different counterparty. Similar to the proposed amendments to Conditions 6.3 and 9.5, the proposed amendments to Condition 8.4 also require the generator to include with any MSA a signed declaration as to the identity of the Onsite Customer.

Consultation questions:

- 1. The Government welcomes views on the proposed definition of 'Offshore Installation' in the draft PN CfD Agreement published alongside this consultation document.**
- 2. The Government welcomes views on the proposed new undertaking in the draft PN CfD Agreement published alongside this consultation document.**
- 3. The Government welcomes views on the proposed penalty and remedy in the event of a breach of the proposed new undertaking, i.e., suspension of CfD payments and the recovery of any payments made during the breach.**
- 4. The Government welcomes views on the proposed amendments to existing conditions concerning the provision of a Market Supply Agreement in the draft PN CfD Agreement published alongside this consultation document.**

⁹ An electrical schematic, which a Generator is obligated to provide under the PN CfD Agreement (as well as other CfD contract variants), may also assist.

Know Your Customer

Policy context

LCCC collects and reviews information to assess the legal ownership and control structure of all successful CfD applicants in line with HM Treasury anti-money laundering and Managing Public Money obligations under the 'Know Your Customer' (KYC) checks. The KYC process focuses on establishing facts about each company, such as ultimate beneficial owners, alongside screening checks on whether individuals are subject to UK sanctions and/or are associated with adverse media that would cause a reputational risk to LCCC and the Government.

Successful CfD applicants are subject to KYC checks by LCCC upon signing the CfD contract. The KYC process is undertaken for new applicants as part of the Initial Conditions Precedent process (ICP).¹⁰ Generators must fulfil the ICPs for their CfD contract to progress. LCCC may terminate a contract if a Generator fails to fulfil any of its ICPs, including the failure to provide evidence to inform KYC checks¹¹. Once a CfD contract has been signed, KYC checks are reviewed annually and biannually depending on the level of risk, as classified by LCCC. High risk counterparties undergo enhanced due diligence checks annually, whilst low risk counterparties undergo (non-enhanced) due diligence checks every two years.

Proposals to strengthen the KYC process

Other than at ICP stage, current contract terms do not enforce consequences for Generators failing to provide KYC information and the contract does not outline in an explicit manner an obligation to provide KYC information.

LCCC has advised the Government that approximately 20% of Generators have needed to be contacted further by contract managers following due-diligence reviews since 2022. An estimated 25% of Generators require additional chasing and often require re-investigations as previous screenings become out of date. As a result, LCCC have identified a risk of failing to meet its legal obligations to monitor its contractual counterparties appropriately and a risk of failing to ensure timely compliance with any requirements. These risks potentially impact on LCCC's reputation and on their financial management costs and are of particular concern given the rising number of projects under contract.

We propose to amend the CfD contract to introduce new contract provisions which ensure relevant KYC information is provided when required and within specified timeframes. The proposed contract terms to reflect this would be amended as follows:

- **Part B Further Conditions Precedent – Condition 2.1(F):** Introducing KYC checks as an Operational Condition Precedent¹² (OCP) as per the new Condition 2.1(F) in Part B, will obligate Generators to provide KYC information in a timely manner and allow LCCC to impose consequences on Generators that fail to comply. We believe that introducing an OCP requirement will help ensure due diligence is performed before operations start and before CfD difference payments begin.

¹⁰ The ICP is the first stage in the contract signing process for successful CfD applicants, requiring generators to provide specific company and project-related information to LCCC.

¹¹ Some CfDs are obliged to provide KYC information under the Novation agreement in the event of some ownership structure changes.

¹² An OCP is a requirement or event that must occur before the CfD contract can come into effect.

- **KYC Notification – Condition 79.10 to 79.12:** Introducing a specific obligation on Generators to provide LCCC with a ‘KYC Notice’ if there is, where relevant, a change in, for example, ownership structure and ultimate investor.

A KYC Notice shall also include, where relevant, details of the Generator’s new legal name, new legal jurisdiction, and any details of any incoming or outgoing investors.

Each KYC Notice shall be accompanied by a Director’s Certificate in relation to the information contained, and enclosed with, the KYC Notice.

- **Generator Undertakings: Provision of Information to the CfD Counterparty – Condition 32.1(L):** Introducing a new clause in the General Undertakings section of Part 7 of the STCs, obligating Generators to respond to information requests within 20 Business Days. As it currently stands, information requests must be provided no later than 5 (five) Business Days (or, if such information is not within the possession of the Generator, no later than 10 (ten) Business Days. To allow Generators more time, given the potential consequences for non-compliance (i.e., suspension of payments), we have extended this clause to twenty (20) Business Days (or, if such information is not within the possession of the Generator, no later than 30 (thirty) business Days.
- **Suspension of Payments (Failure to Provide KYC Information):** The proposed consequence for failing to provide required KYC information, following any of the outlined trigger events, will be a suspension of payments.

The Government believes that contract termination would not be reasonable and appropriate in such instances, whilst suspension of payments represents a more balanced consequence to ensure due diligence and to maintain investor confidence.

Consultation questions:

5. **The Government welcomes views on the proposals to strengthen the KYC checks to ensure that LCCC can monitor counterparty risk effectively.**
6. **The Government welcomes views on the proposed amendments in the draft STCs published alongside this document, namely:**
 - (i) **The introduction of KYC checks as an OCP,**
 - (ii) **The obligation on Generators to provide a KYC Notice,**
 - (iii) **The extension of time for Generators to provide KYC information when requested by LCCC.**
7. **The Government welcomes views on the proposed consequence for failure to provide KYC information, namely, suspension of CfD payments.**

Change Control Procedure

Policy context

The Change Control Procedure in Annex 2 of the CfD STCs creates a mechanism whereby the CfD STCs can be changed after they have been signed, within limited scope. Only LCCC has the right to propose contract amendments in accordance with the Change Control Procedure and LCCC may propose two categories of amendment, a Material Amendment or a Technical Amendment. Both terms are defined in the STCs, but in summary:

- A Material Amendment is one which would have an adverse effect on: (i) the revenues and/or costs of the Generator which are not fully compensated; or (ii) the overall balance of risks, benefits and liabilities of the Generator.
- A Technical Amendment means any proposed amendment which is: (i) not a Material Amendment; or (ii) required to correct a manifest error in the contract.

Technical Amendments can either be proposed on a bilateral basis, where a proposed change would only apply to a single Generator's contract, or on a general basis (a General Amendment) where the proposed amendment would apply to the whole portfolio of CfD Generators or to a particular subset of Generators, e.g., offshore wind or all Private Network Agreements.

In the drafting of the CfD STCs for previous allocation rounds, the process for a proposed Technical Amendment (General Amendment) – set out in paragraph 2.9 of Annex 2 – provides that the Generators' agreement is deemed to have been given, and the proposed amendment comes into effect within 20 business days and shall be binding on all of the affected Generators, unless 75% or more of the Generators affected by the General Amendment object. Generators object by submitting a Technical Amendment Response Notification (TARN) to LCCC.

Where the 75% objection threshold is reached, LCCC is obliged, in accordance with paragraph 2.8(B)(ii) of Annex 2, to consider the objections of those Generators who have submitted a TARN. LCCC may alter its proposed amendment as it deems appropriate, having regard to the objections it has received, following which the proposed amendment will become binding on both LCCC and all affected Generators from the date specified by LCCC.

The exception to this is if a single Generator submits a TARN which includes an objection to the proposed amendment being classified as a Technical Amendment. This is referred to in the STCs as a Classification Objection. Paragraph 2.9(C) stipulates that if a Generator submits a Classification Objection, the TARN shall constitute a Dispute Notice and the proposed amendment shall only become binding on the Generator if it is determined in accordance with the CfD Dispute Resolution Procedure, that the proposed amendment is a Material Amendment and not a Technical Amendment.

Operational experience indicates that the current drafting of paragraph 2.9 of Annex 2 has given rise to several difficulties with the application of the General Amendment provisions. These difficulties include the interaction of paragraphs 2.9(A) and 2.9(C) of Annex 2 which may suggest that a single Generator can prevent a Technical Amendment (General Amendment) from applying to them whether or not the 75% objection threshold has been met. Each Classification Objection also potentially triggers an individual dispute between a Generator and LCCC, with the drafting of paragraph 2.9 leaving some Generators confused as to their rights

to object to a General Amendment. This has resulted in LCCC having to enter into separate lengthy and expensive dispute resolution processes with Generators that have issued a Classification Objection and inconsistencies in contract application, with some Generators being bound by amendments whilst others are not, due to ongoing disputes. LCCC's costs as a result of these issues are met by energy consumers.

LCCC are managing significantly larger numbers of contracts following allocation rounds 4 and 5, and their portfolio is expected to grow further following the introduction of annual auctions. In this context and to ensure consistency of application and help avoid costly disputes where possible, the Government believes that CfD parties would benefit from a stand-alone General Amendment process that does not require the parties to use the existing single Technical Amendment process.

Proposed amendments to the Change Control Procedure

Several changes to paragraph 2.9 of Annex 2 are proposed to address the issues outlined above and to simplify the trigger points that will apply if Generators wish to object to an amendment proposed by LCCC:

- **New Threshold Requirement**

In future, more than 50% (a simple majority) of Generators affected by a proposed General Amendment will need to issue a TARN containing a Classification Objection to LCCC in order to trigger a Dispute. Where this threshold is met, a Dispute will be deemed to have arisen between LCCC and all Generators affected by the proposed amendment, whether or not they have submitted a Classification Objection.

If more than 50% of Generators affected by a proposed General Amendment submit a TARN but the number of TARNs containing a Classification Objection is lower than this threshold, then a General Amendment Classification Dispute will not be triggered. In any case, whether the Classification Objection threshold of more than 50% is met or not, all objections that are not Classification Objections that are included in a TARN will still be taken into consideration by LCCC. Following this step, the proposed amendment will become binding on all affected Generators from the date specified by LCCC. This replaces the current 75% objection threshold in paragraph 2.9(A) of Annex 2.

If 50% or less of the Generators affected by a proposed amendment submit a TARN, the proposed amendment is deemed to be acceptable to all relevant Generators and will come into effect within 20 business days.

- **Revised Dispute Resolution Procedure**

Under the current contract terms, LCCC deal with Classification Objections to a Technical Amendment that is a General Amendment through the Dispute Resolution Procedure set out under Part 14 of the CfD STCs. The existing contract provisions under Part 14 envisages bilateral disputes between LCCC and the Generator only. As indicated above, this approach can be lengthy and expensive for LCCC and is not suitable given the expanding portfolio of CfD projects.

Rather than relying on general provisions in Condition 61 to consolidate several disputes, the Government considers it more appropriate to provide a bespoke regime to ensure that a Classification Dispute under Annex 2 can be managed efficiently and effectively from its outset through a single process involving LCCC and all parties affected by a Dispute.

To streamline the Dispute Resolution Procedure in light of the proposed changes to Annex 2, all Classification Objections received in response to a proposed amendment will be handled as a single dispute (i.e., a group objection) under a new procedure inserted as Condition 57.9. Where an arbitration arises, the LCIA¹³ Arbitration Rules will apply.

The new provisions for the Dispute Resolution Procedure under Condition 57.9 allow for all CfD parties to be notified once a Classification Dispute arises and to have the opportunity to participate in discussions aimed at resolving the dispute (Condition 57.9(D)). Furthermore, if an arbitration starts, Generators will have the opportunity to participate as part of a unified cohort. Regardless of whether a party initiated the Classification Arbitration, all affected parties will be joined as parties to the Dispute Resolution Procedure. Once a resolution of the dispute is achieved, the Generator and all affected parties will be bound by the outcome regardless as to whether they chose to participate in the dispute or not.

New Definitions

New definitions of **CO Technical Amendment Response Notification** and **General Amendment Classification Dispute** have been created to facilitate these changes to the General Amendment process. New drafting has been inserted into the Dispute Resolution Procedure at Condition 57 of the STCs to deal with the settlement of a General Amendment Classification Dispute. New Condition 57.9 sets out special provisions for multi-CfD disputes relating to a Classification Objection.

Consultation questions:

- 8. The Government welcomes views on the proposed amendments to the Change Control Procedure and associated new definitions.**

¹³ LCIA is defined in the STCs to mean “the London Court of International Arbitration”.

Extension to the Milestone Delivery Date for air defence radar mitigation

Policy context

Wind generation plays a central part in meeting our nation's renewable energy needs. It contributes to our energy security, attracts inward investment, and will help to fulfil our Net Zero ambitions. Government is aware that windfarm installations can adversely impact the quality of data obtained from long-range Primary Surveillance Radars, which are the backbone of the UK's Air Defence (AD) detection capability.

The presence of windfarms can negatively impact military air defence radar systems because rotating turbine blades reflect radio waves making it difficult to track and monitor aircraft. Any resulting degradation in the ability of our AD systems to protect the nation's security is unacceptable.

These issues are well understood by Government and industry. A technological solution, or combination of solutions, is needed to ensure the long-term co-existence of windfarms and AD to enable the continued deployment of offshore wind to help meet the Government's renewable energy targets. To that end, and through the Joint Air Defence and Offshore Wind Task Force, the Ministry of Defence (MOD) is currently working on procuring mitigation solutions in the near term that will secure the next generation of large-scale offshore windfarms, and a number of onshore windfarms, that are expected to become operational from 2025 and beyond.

Several windfarm developments that may wish to apply to participate in AR6 in 2024 are currently subject to planning restrictions to ensure that they do not interfere with air defence radar systems. These requirements will prevent the operation of these windfarms until measures acceptable to the MoD are in place to mitigate radar interference. Individual developers will have to enter into Radar Mitigation Scheme Agreements (RMSAs) with MOD. These RMSAs commit developers to funding a mitigation solution to be implemented by MOD in order to satisfy their planning requirements.

Satisfying the MOD's requirements as set out in an RMSA is one of several factors that a windfarm developer would have to address in order to be able to take a final investment decision and proceed with its project. The Government's ongoing procurement competitions to identify and approve technical solutions to radar interference are expected to conclude between 2025 and 2026. Projects that are successful in AR6 will be required to meet one of the two CfD Milestone Requirements by their Milestone Delivery Date (MDD), which is likely to fall between February and April 2026, depending on when AR6 contracts are signed. The Government is aware of the possibility that the proximity between these two separate processes may allow insufficient time for AR6 wind farm projects to demonstrate that they have met a Milestone Requirement by their MDD. (An explanation of the MDD and its requirements are in the call for evidence chapter below).

'Minded to' proposal to amend the MDD definition

CfD Generators who do not satisfy a Milestone Requirement by their MDD risk LCCC terminating their CfD contracts. The Government wishes to help Generators avoid this potential outcome by identifying suitable ways, within the context of the CfD contract, to help address the particular radar-related risk as outlined above.

The Government is minded to amend the definition of 'Milestone Delivery Date' in the CfD STCs. Provided that a Generator has entered into its RMSA, if no confirmation has been received by the Generator from the MOD that radar mitigation measures acceptable to the MOD have been identified and are ready to fund, and the confirmation is not received before the MDD, then the Generator may ask LCCC for an extension to its MDD. Extensions to the MDD would not be granted where the delay results from a breach of the Generator's obligations under the RMSA or its failure to enter into its RMSA. The Government welcomes views on the following potential amendments to the STCs to address this matter, namely the addition of the following two new definitions:

- **"Radar Mitigation"** means measures acceptable to the Ministry of Defence to prevent or remove adverse effects which the Facility may have on air defence radar and defence related air surveillance and control operations;
- **"Radar Mitigation Scheme Agreement"** means an agreement between the Ministry of Defence and the Generator relating to identification, implementation and funding of Radar Mitigation;

The following additional limb (limb (C)) would be added to the definition of 'Milestone Delivery Date' which sets out the circumstances in which LCCC could grant relief for a delay to the MDD to allow for the fulfilment of obligations under a RMSA:

(C) where (i) the Facility Generation Technology is Offshore Wind or Onshore Wind; and (ii) a Radar Mitigation Scheme Agreement is in effect [*, the Ministry of Defence having not confirmed, [[by the date falling [/] days] / [before the Milestone Delivery Date]]], the measures that would constitute Radar Mitigation for the purposes of such Radar Mitigation Scheme Agreement]*

In order to qualify for an extension to the MDD on these grounds, a Generator would have to notify LCCC as soon as reasonably practicable that confirmation from the MOD that the Generator had fulfilled its obligations under an RMSA is outstanding. In addition, a Generator would have to use reasonable endeavours to mitigate the effects of a delay to the project, continue to fulfil its contractual obligations and also resume performance of its obligations as soon as reasonably practicable after confirmation that radar mitigation measures acceptable to the MOD are available. These qualification criteria are the same as those which apply in respect of relief for delays in connecting a CfD project to the grid (i.e., grid connection delay).

The amendments to the 'Milestone Delivery Date' definition suggested above reflect the Government's current thinking. We also believe that they achieve the Government's policy objective. Although these drafting proposals remain under development, we are confident that the principles underpinning the suggested changes should not alter. The Government intends to use the consultation period to engage closely and extensively with affected stakeholders with the aim of further refining the language of the proposed MDD relief provision, if necessary, to ensure it delivers the required reassurance to Generators in relation to taking investment decisions to be able to satisfy their contractual obligations by their MDD.

The Government does not propose that the definitions of Target Commissioning Window (TCW) or Longstop Date (LSD) be similarly updated to allow for day for day extensions due to air defence radar-related delays. We anticipate that the Government's procurement competitions will conclude around the time of the AR6 MDDs, and for the issues to be resolved in time such that extensions to the TCW or LSD are not required. However, we would welcome views from stakeholders on this.

The Government is only proposing an extension to the MDD for delays due to air defence-related radar requirements. The Government does not expect civil aviation radar-related interference mitigation requirements to impact developers to the same extent ahead of the MDD.

Consultation questions:

9. The Government welcomes views on the proposal to allow the MDD to be extended when a CfD Generator has entered into its RMSA but has not received confirmation by a specified date ahead of the MDD that radar mitigation measures acceptable to the MOD have been identified and are ready to fund.

10. The Government welcomes views on the outlined proposed amendments in the draft STCs published alongside this consultation document, namely:

- (i) Amendments to the definition of ‘Milestone Delivery Date’ (MDD) to give effect to the policy objective outlined above.**
- (ii) The new definition of ‘Radar Mitigation’.**
- (iii) The new definition of ‘Radar Mitigation Scheme Agreement’.**

11. With regard to when a Generator would be able to apply for an extension to its MDD, the Government welcomes views on:

(a) Whether a specific date or period ahead of the MDD by which a Generator has not received confirmation that radar mitigation measures acceptable to the MOD have been identified and are ready to fund should be included as the point at which Generators can request relief (see “*by the date falling [/] days before the MDD*” in the proposed contract drafting). If so,

(b) The appropriate number of days or length of period to insert; or,

(c) Whether the requirement should be that such confirmation has not been received “*by the Milestone Delivery Date*”.

12. The Government welcomes views on whether any issues are envisaged as to information sharing between Generators, LCCC and MOD to allow LCCC to assess and determine whether an extension to the MDD should be granted.

13. The Government welcomes views, with supporting evidence, as to whether the definitions of Target Commissioning Window and Longstop Date should also be similarly updated to allow for extensions if MDD relief is granted.

Corrections to the CfD contract not subject to consultation

The following corrections have been made in the CfD STCs:

- A correction has been made to a Condition Precedent clause within the CfD contract (Schedule 1, Part 3, Condition 3.28). The title and text refer to “Subsidy Control Declaration Operational CP” but should refer to “Subsidy Declaration Operational CP” as per the defined term. The same amendment has been made to the heading at paragraph 2.6 of Part B, Further Conditions Precedent in Schedule 1, Conditions Precedent of the CfD STCs.
- A correction has also been made to a clause in Generator Undertakings: Information Provision and No Cumulation of Subsidy, State Aid and/or Union Funding (Schedule 2, Part 6, Condition 32.4(A)(ii)). The text refers to “State Aid Declaration CP”, but it should refer to “Subsidy Declaration Operational CP”.
- A new clause (E) has been introduced to Condition 80.5 (*Deemed delivery*) to allow Generators to submit a ‘notice’ or any other CFD Document to LCCC’s electronic portal.
- All references to “retained EU law” in the CfD STCs will be replaced by the reference “assimilated law” in line with the Retained EU Law (Revocation and Reform) Act 2023.

Call for evidence – Milestone Delivery Date

The MDD is the deadline by which Generators awarded a CfD must demonstrate delivery progress, by providing evidence either of (i) spend of 10% of total pre-commissioning costs, or (ii) project commitments. Following consultation in 2020¹⁴ the Government extended the MDD for all technologies from 12 months to 18 months. This change came into effect from Allocation Round 4 and applies whether Generators decide to demonstrate their Milestone Requirement through the 10% spend route or the project commitment route. The Government made this change in light of consultation feedback that 18 months better aligned with project timelines while still providing a suitable indicator of delivery progress.

The Government now invites views on how the 18-month MDD has been operating in practice, whether it should be adjusted in any way and if so, why. We would welcome views on whether the MDD should stay at 18 months, revert to 12 months or be set to a different length, and if so, what that length should be. Please provide reasons and evidence to support your responses. As indicated in the 2020 consultation, the Government is interested in hearing how any proposed changes would facilitate effective and efficient project delivery and reduce costs for consumers. We would also welcome views on any consequential amendments that might need to be made to the CfD scheme if the MDD is adjusted. The Government would welcome views from any stakeholders with an interest in this matter, including developers and supply chain companies.

The Government will reflect on all responses received to this call for evidence and decide on whether to consult on specific changes to the MDD for future allocation rounds. Any changes would not be made until Allocation Round 7 at the earliest.

¹⁴ <https://www.gov.uk/government/consultations/contracts-for-difference-cfd-proposed-amendments-to-the-scheme-2020>

Consultation questions

1. The Government welcomes views on the proposed definition of 'Offshore Installation' in the draft PN CfD Agreement published alongside this consultation document.
2. The Government welcomes views on the proposed new undertaking in the draft PN CfD Agreement published alongside this consultation document.
3. The Government welcomes views on the proposed penalty and remedy in the event of a breach of the proposed new undertaking, i.e., suspension of CfD payments and the recovery of any payments made during the breach.
4. The Government welcomes views on the proposed amendments to existing conditions concerning the provision of a Market Supply Agreement in the draft PN CfD Agreement published alongside this consultation document.
5. The Government welcomes views on the proposals to strengthen the KYC checks to ensure that LCCC can monitor counterparty risk effectively.
6. The Government welcomes views on the proposed amendments in the draft STCs published alongside this document, namely:
 - (i) The introduction of KYC checks as an OCP,
 - (ii) The obligation on Generators to provide a KYC Notice,
 - (iii) The extension of time for Generators to provide KYC information when requested by LCCC.
7. The Government welcomes views on the proposed consequence for failure to provide KYC information, namely, suspension of CfD payments.
8. The Government welcomes views on the proposed amendments to the Change Control Procedure and associated new definitions.
9. The Government welcomes views on the proposal to allow the MDD to be extended when a CfD Generator has entered into its RMSA but has not received confirmation by a specified date ahead of the MDD that radar mitigation measures acceptable to the MOD have been identified and are ready to fund.
10. The Government welcomes views on the outlined proposed amendments in the draft STCs published alongside this consultation document, namely:
 - (i) Amendments to the definition of Milestone Delivery Date (MDD) to give effect to the policy objective outlined above.
 - (ii) The new definition of 'Radar Mitigation'.
 - (iii) The new definition of 'Radar Mitigation Scheme Agreement'.

- 11. With regard to when a Generator would be able to apply for an extension to its MDD, the Government welcomes views on:**
- (a) Whether a specific date or period ahead of the MDD by which a Generator has not received confirmation that radar mitigation measures acceptable to the MOD have been identified and are ready to fund should be included as the point at which Generators can request relief (see “*by the date falling [/] days before the MDD*” in the proposed contract drafting). If so,**
 - (b) The appropriate number of days or length of period to insert; or,**
 - (c) Whether the requirement should be that such confirmation has not been received “*by the Milestone Delivery Date*”.**
- 12. The Government welcomes views on whether issues are envisaged as to information sharing between Generators, LCCC and MOD to allow LCCC to assess and determine whether an extension to the MDD should be granted.**
- 13. The Government welcomes views, with supporting evidence, as to whether the definitions of Target Commissioning Window and Longstop Date should also be similarly updated to allow for extensions if MDD relief is granted.**

Next steps

Following the close of this consultation, we will analyse the responses, summarise the views expressed and set out final decisions in a government response. We intend to publish this alongside the final versions of the CfD contract documents for AR6 before the allocation round opens in March 2024.

This consultation is available from: <https://www.gov.uk/government/consultations/contracts-for-difference-contract-changes-for-allocation-round-6>

If you need a version of this document in a more accessible format, please email alt.formats@energysecurity.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.