



Department for  
Energy Security  
& Net Zero

# Contracts for Difference: Allocation Round 6

Government response to consultation on  
drafting amendments to the CfD contract

March 2024



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# Introduction

## Context

The Contracts for Difference (CfD) scheme is the Government's main mechanism for supporting new, low-carbon electricity generation in Great Britain. Allocation Round 6 (AR6) will be the second annual allocation round and will open to applications from Generators of renewable technologies on 27 March 2024.

On 19 December 2023, the Government published a consultation that invited views on amendments to the CfD Standard Terms and Conditions and Private Network Agreement for AR6. The draft CfD Standard Terms and Conditions (STCs) and Private Network Agreement (PNA) were published alongside the consultation, with the proposed drafting amendments shown as tracked changes. The consultation closed on 30 January 2024. This document summarises the responses received and sets out the Government's decisions on the proposed amendments in the consultation.

## Overview of consultation proposals

We invited views on amendments to the Private Network (PN) CfD Agreement to ensure that Generators that directly supply offshore oil and gas facilities are ineligible for that Agreement from AR6 onwards. The proposed amendment is intended to prevent consumers, who ultimately fund the CfD scheme through their energy bills, from subsidising this electricity. This implements the Government's decision on this matter as published in its July 2023 response to the consultation on considerations for future CfD rounds.<sup>1</sup>

The consultation also set out our proposals 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 numbers of projects supported by the CfD scheme. We also welcomed views on the introduction of suspending payments for Generators who fail to comply with KYC requirements.

In addition, the Government invited views on amendments to the Change Control Procedure – through which the Low Carbon Contracts Company (LCCC) can amend contracts. The change aimed to clarify the current Annex 2 contract terms, which gave rise to possible cases where General Amendments are not implemented uniformly across the class of affected CfDs.

We also proposed to amend the definition of the Milestone Delivery Date (MDD) to allow the MDD to be extended where a Generator has not received confirmation from the Ministry of Defence (MOD) of the availability of suitable mitigation measures in relation to interference between windfarms and air defence radar systems.

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<sup>1</sup> <https://www.gov.uk/government/consultations/considerations-for-future-contracts-for-difference-cfd-rounds>

Finally, we included a call for evidence on the operation of the 18-month MDD, which came into effect in Allocation Round 4.

## Engagement with the consultation responses

The consultation attracted thirteen responses. Of these, twelve were from developers of renewable generating stations and one was from a related trade association body.

## Next steps

The final CfD Standard Terms and Conditions and Private Network Agreement, together with the generic CfD Agreement and other contract variants for AR6, are published alongside this Government response. The application window for AR6 opens on 27 March 2024 and will close on 19 April 2024. All potential timeline scenarios for AR6 are provided on the [CfD microsite](#).

# Explanation of changes to the CfD Standard Terms for Allocation Round 6

Regulation 4(1) of the Contracts for Difference (Standard Terms) Regulations 2014 (as amended) requires that where the Secretary of State publishes revised standard terms in compliance with section 11(5) of the Energy Act 2013, the Secretary of State must also publish an explanation as to why the revisions have been made.

This Government response explains why revisions to the standard terms have been made for AR6.

In this respect, 'standard terms' includes Version 6 of the CfD Standard Terms and Conditions, the CfD Agreement and the corresponding versions of the Phased (Apportioned Metering) Terms, Phased (Single Metering) Terms, Private Network Terms and Unincorporated Joint Ventures Terms, which are published on the same date as this response.

# Extension to the Milestone Delivery Date for air defence radar interference mitigation

The Government proposed amendments to the definition of Milestone Delivery Date (MDD) in the Standard Terms and Conditions (STCs), and the creation of two new definitions. The proposals allow for extensions to the MDD where there are delays relating to potential interference between windfarms and military air defence radar.

## Proposals

The Government has opened procurement competitions, to identify and approve technical solutions to windfarm interference with radar, which are expected to conclude in 2026. The proposed amendments to the definition of Milestone Delivery Date (MDD) were made in recognition that this procurement timetable may not allow sufficient time for affected Generators who are successful at Allocation Round 6 to demonstrate they have met a Milestone Requirement by the MDD (expected to fall between February and April 2026).

Questions 9 and 10 welcomed views on the proposed amendments to the STCs, which included the creation of an additional limb, limb (C), to the definition of MDD. Limb (C) would allow Generators to apply to LCCC, as the CfD counterparty, for an extension to the MDD if they had not received confirmation from the Ministry of Defence (MOD) of the availability of suitable radar mitigation measures. Extensions to the MDD would not be granted where the delay results from a breach of the Generator's obligations under the Radar Mitigation Scheme Agreement (RMSA) with MOD, or its failure to enter into an RMSA.

In addition to the creation of limb (C), two new definitions were proposed. The first defines RMSA 'as an agreement between the MOD and the Generator relating to identification, implementation and funding of Radar Mitigation'. The second defines Radar Mitigation as 'measures acceptable to the MOD to prevent or remove adverse effects which the Facility may have on air defence radar and defence-related air surveillance and control operations'.

Question 11 sought views from respondents on whether the Government should specify a date or period ahead of the MDD from which the Generator can request relief, and what the length of the period should be if they thought that condition was appropriate.

Question 12 sought views on whether any issues were anticipated in regard to data sharing between Generators, LCCC and MOD to allow LCCC to assess and determine whether an extension to the MDD should be granted.

Question 13 welcomed views, with supporting evidence, as to whether the definitions of Target Commissioning Window (TCW) or Longstop Date (LSD) should also be similarly updated to allow for extensions if MDD relief is granted.

The consultation also noted that the proposals only related to MOD radar, not civil aviation radar-related interference mitigation requirements, as the Government does not expect civil aviation radar-related interference mitigation requirements to impact developers to the same extent ahead of the MDD.

## Responses to the consultation

Twelve of the thirteen respondents to the consultation responded to Questions 9-13.

## Views on proposals and Government response

Eleven of the twelve respondents to Questions 9-10 supported the proposal to allow extensions to the MDD for issues relating to radar interference mitigation. One respondent did not support the proposal as they believed allowing extensions to the MDD might lead to an acceptable mitigation solution being approved in a less timely manner. A few respondents suggested the proposed changes should also apply in future CfD allocation rounds. A few respondents also suggested Government should ensure the text of the definitions align with language used elsewhere in the RMSA.

The majority of respondents suggested that extensions to the MDD should also be available for Generators who have entered negotiations with MOD about the terms of the RMSA but have not yet signed their RMSA. This included one respondent who requested that this additional extension should only apply to those Generators who can demonstrate to LCCC that they have proposed a credible interim mitigation solution to MOD. A common rationale for extending MDD extensions to Generators who have not signed the RMSA is that negotiations between MOD and Generators have not yet begun and may take a long time to conclude. It was also suggested by one respondent there may be instances in which there are events outside of Generators' control that may prevent them signing the RMSA.

Some respondents suggested delays should be agreed on a 'month-for-month' or longer-term basis, rather than 'day-for-day' basis as proposed, to allow Generators sufficient time to meet the Milestone Requirement. A few respondents suggested a maximum MDD extension limit should be implemented to ensure that MDD dates do not slip in perpetuity and to ensure MOD deliver a timely solution.

In response to Question 11, the most common response was that Generators should be allowed the full 18 months between CfD contract signature and MDD to apply for an extension in order to benefit from the contract amendment. Other suggestions included 3-months' notice and 12 months' notice, the common rationale among respondents being that sufficient notice is required ahead of MDD to positively impact the risk profile of a project. One respondent recommended that DESNZ should come to an agreement with the MOD to provide an update to a Generator on Full Business Case (FBC) approval and contract award of a suitable mitigation measure no later than 60 working days prior to a Generator's MDD.



In response to Question 12, most respondents indicated that they identified no issues in principle in regard to data sharing between Generators, LCCC and MOD. At the same time, most respondents also observed that the RMSA terms were likely to contain confidentiality clauses that may prevent the sharing of information without MOD agreement. One respondent suggested that to overcome this, LCCC could be excluded from RMSA confidentiality clauses. Another suggestion was that issues with information sharing could be avoided if information sharing was conducted directly between the relevant Government departments.

In response to Question 13, all respondents supported extending the opportunity of delay relief to the TCW and LSD, in addition to the MDD. A common rationale given for extending to the TCW and LSD is that it is uncertain when MOD will confirm the availability of suitable mitigation measures, and so it is therefore not clear how long the delay to MDD will need to be. One respondent also raised that future projects may require additional mitigation solutions to be procured. Without extending the delay relief to the TCW and LSD, most respondents suggested there was a risk that Generators could suffer contract erosion, or contract termination, as a result.

In addition to direct responses to the consultation questions, some additional suggestions and comments were made by respondents. Some respondents asked for confirmation that the MDD extensions would apply to projects impacted by MOD air defence and MOD air traffic control, both onshore and offshore, as the consultation referred only to 'air defence radar'. Some respondents requested that we extend the MDD extensions to cover interference with civilian radar, as there are projects that are similarly impacted. One respondent suggested we apply the MDD extensions retrospectively to AR5 projects for both air defence and air traffic planning conditions.

**Policy response:**

We note that a vast majority of respondents support the proposal to amend the definition of MDD to allow extensions for delays relating to radar interference. We will therefore proceed with the change. We explained in our consultation that our drafting proposals remained under development and that if necessary, following further engagement with affected stakeholders during the consultation period and considering all consultation feedback, we would further refine the language of our proposed MDD relief provision. We have made some adjustments to the original proposals in light of respondents' feedback.

We note that a common response from respondents was that this contract amendment would not address the wider risks for Generators around taking a Final Investment Decision (FID) in the context of ongoing MOD procurement competitions to secure an approved solution to mitigate interference with military radar. MOD will continue to engage closely with Generators during their procurement process. The changes to the MDD definition in the CfD contract are intended to mitigate the risk of CfD contract termination that might otherwise exist given LCCC have the right, but not the obligation, to terminate CfD contracts if Generators cannot take FID and meet the Milestone Requirement before the MDD.

As a result of further feedback from MOD as well as an acceptance that the definition of radar mitigation should align with language used in the RMSA, we have decided not to introduce a new standalone definition of Radar Mitigation and have instead amended the definition of RMSA to include a more detailed description of what that agreement will entail. We have also made minor adjustments to the wording of limb (C).

We note that many respondents suggested that the proposal be amended to allow Generators who have entered RMSA negotiations, but have not yet signed the RMSA, to apply for an MDD extension. We accept that it is possible that RMSA negotiations will be lengthy, and if that is the case, Generators may well be approaching their Final Investment Decision (FID) when the RMSA is signed. However, we have decided not to alter the proposal on the basis that it will be too challenging for LCCC to assess whether the delays in agreeing the RMSA are outside a Generator's control.

We are also mindful that extending the MDD relief to cover the period before the RMSA is signed may lead to unintended consequences if Generators were to perceive there is benefit in intentionally prolonging RMSA negotiations for the purpose of delaying their MDD (and TCW and LSD). We explained in our consultation that Generators would not be granted an extension where delays were caused by a breach of their RMSA obligations. In line with this, we have extended, to also apply to our new limb (C), the existing provision within the definition of MDD, TCW and LSD that confirms that extensions will not be granted for delays resulting from the "fault or negligence" of the Generator.

Several respondents have suggested that 'day-for-day' relief is not appropriate, and that longer fixed extensions to the MDD will be required. We have not amended this text, as this is language used elsewhere in the contract and it is also similar to the other clauses of this nature in the contract. An extension of suitable length (assessed on a case-by-case basis) is likely to be granted by LCCC in practice. The provision of any extension is also likely to continue to be in place as long as LCCC are convinced there is delay outside the Generator's control that merits it.

In regard to Question 11, we received a range of responses and an explanation that in order for the clause to be beneficial, Generators would need to be granted an MDD extension with adequate notice. On balance, we have decided to allow applications for an extension at any point prior to the MDD (i.e. from CfD contract signature). This follows the precedent in other areas of the contract as to when applications can be made for extensions to key milestone dates.

In regard to Question 12, we are minded to agree with respondents who suggested that the best approach, to avoid issues for Generators relating to confidentiality clauses in the RMSA, is for MOD to share necessary information on a bilateral basis with LCCC upon request.

The unanimous view from respondents, in relation to Question 13, was that Generators should also be able to apply for an extension to the TCW and LSD. In light of these

responses and given that we accept that it is uncertain how long the extensions to MDD will need to be, we are of the view that it is appropriate that Generators and LCCC be given the opportunity to agree an extension to the TCW and LSD on a case-by-case basis to prevent contract erosion or contract termination, where necessary. We will not therefore be introducing a maximum extension to the MDD. The definitions of TCW and LSD have also been similarly updated to mirror the new definition of MDD although, unlike the MDD definition, applications for an extension to the TCW and LSD are not required to be made prior to the MDD.

We can confirm that the MDD (and TCW and LSD) extensions apply to onshore and offshore wind projects impacted by MOD air defence radars. We do not intend to introduce these changes retrospectively into AR5 contracts, but we will consider retaining the clause in contracts for future allocation rounds if we deem there is still a relevant risk.

We understand there are equivalent impacts in relation to civil aviation radar. However, we are not currently aware of any evidence which suggests that identifying and implementing a solution in these instances is sufficiently challenging to project development such that the requirements of the MDD cannot be met. It should be noted that we are already working with key aviation stakeholders via the Aviation Management Board to bring forward policy solutions as to the issue of wind turbine interference on civil aviation radar systems. Until such time that evidence is presented to Government indicating that there is no alternative, we will continue to prioritise the development of non-CfD policy solutions in this way. However, we will continue to monitor the situation.

# Proposed amendments to the Private Network CfD Agreement

The Government proposed several amendments to the Private Network CfD Agreement to implement its policy decision of July 2023<sup>2</sup> to make Generators that directly supply offshore oil and gas facilities ineligible for that Agreement from AR6 onwards.

## Proposals

Question 1 welcomed views on the proposed insertion of a definition of ‘Offshore Installation’, i.e. an offshore oil and gas facility, in Section 1 (Definitions and Interpretation) of the Private Network CfD Agreement.<sup>3</sup> This amendment was proposed because the Government seeks to prohibit Generators with a PN CfD from directly supplying Offshore Installations and this end-user is not defined in the PN CfD.

The Government proposed to use the term ‘Offshore Installation’, as opposed to ‘Offshore Oil and Gas Facility’, because the former is the standard term used to refer to such facilities in existing legislation. However, rather than cross-refer to an existing legislative definition of ‘Offshore Installation’, such as in section 44 of the Petroleum Act 1998,<sup>4</sup> the Government proposed to insert a bespoke definition of ‘Offshore Installation’ into the PN CfD. This is because existing legislative definitions of ‘Offshore Installation’ may be subject to change and are potentially more extensive than is required for the purpose of amending the PN CfD.

Question 2 welcomed views on the proposed insertion of new undertaking in Section 6 (Generator Undertakings: General and Route to Market) of the PN CfD. The proposed undertaking would require a Generator to undertake that it shall not, via a Private Network or directly connected cable, supply electricity to an Offshore Installation (as defined) or a person that supplies electricity via Private Network or directly connected cable to an Offshore Installation.

The Government proposed this amendment because it considers that such an undertaking is fundamentally necessary as part of the effective implementation of the policy. The additional, ‘person’ clause in the undertaking was proposed 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.

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

<sup>3</sup> Hereafter ‘PN CfD’.

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1998/17/section/44>.

Question 3 welcomed views on the proposed penalty and remedy in the event of a breach of the proposed new undertaking, specifically a suspension of CfD payments and the recovery of any payments until such time that the CfD Counterparty is satisfied that the Generator is no longer in breach. To allow the CfD Counterparty to take these actions in the event of a breach, the Government proposed inserting a reference to the new undertaking in Condition 6.2 of the PN CfD. In proposing this amendment, the Government noted that the CfD Counterparty already has recourse to suspend and recover payments in respect of other Generator undertakings that are breached, and therefore, it would be consistent to extend these existing powers to the proposed new undertaking. Moreover, the Government considers the consequence that the Generator will lose payments otherwise due to it is proportionate.

Question 4 welcomed views on proposed amendments to existing conditions in the PN CfD concerning the provision of a Market Supply Agreement (MSA), specifically Conditions 6.3, 8.4 and 9.5. These amendments were proposed to assist the CfD Counterparty in monitoring compliance with the proposed new undertaking.<sup>5</sup> In the case of a Generator holding a PN CfD, 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 currently requires a Generator to provide copies of any MSAs at certain points in the CfD process; however, copies are not always required.

To address the issue that an MSA does not guarantee identification of the Onsite Customer, where the PN CfD currently requires the Generator to provide a copy of an MSA (Conditions 6.3 and 9.5), the proposed amendments would require the 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.

To address the issue that the PN CfD does not always require copies of MSAs to be provided, where the PN CfD currently requires only notification of an MSA being entered into, becoming effective, being novated, assigned or otherwise transferred to a different counterparty (Condition 8.4), the proposed amendments would require the Generator to provide a copy of the relevant MSA, as well as a declaration as to the Onsite Customer's identity.

## Responses to the consultation

There were nine responses to these questions, from renewable electricity generators and a trade association body.

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<sup>5</sup> An electrical schematic, which a Generator is obliged to provide under the PN CfD (as well as other CfD contract variants), may also assist.

## Views on proposals and Government response

The majority of respondents supported the proposed amendments. Two respondents neither supported nor opposed the proposed amendments.

Comments provided in support of the amendments included that the amendments were appropriate, the proposed penalty and remedy for a breach of the proposed new undertaking was sensible, and it would not be appropriate for the consumer-funded CfD scheme to support electrification of offshore oil and gas facilities.

One respondent commented that projects that directly supply Offshore Installations should not be confused with projects that share a connection point with offshore (or onshore) oil and gas facilities, but do not directly supply such facilities, or with projects that produce hydrogen through electrolysis.

In relation to hydrogen production, another respondent commented that the proposed definition of 'Offshore Installation' should be more explicit so as not to inadvertently capture other offshore end-users, such as carbon capture, usage and storage (CCUS) projects and offshore hydrogen production.

In relation to the proposed amendments that Generators accompany an MSA with a declaration as to the identity of the Onsite Customer, one respondent commented that these amendments should include wording to clarify that the declaration confirms, 'at the time of signing', that the Onsite Customer is not an Offshore Installation or a person that directly supplies such an installation. The respondent stated that this additional wording was required because Generators should not be held responsible if the Onsite Customer subsequently changed how it used the power.

### **Policy response:**

Having considered the responses received, the Government has adopted the vast majority of the proposed amendments to the PN CfD. In respect of the proposed amendments to Conditions 6.3, 8.4 and 9.5, which concern how the CfD Counterparty will monitor compliance with the new undertaking, the Government has made slight refinements to the proposed changes to ensure clarity and consistency with the rest of the Agreement.

Collectively, the amendments implement the Government's previous decision of July 2023 to make Generators that directly supply offshore oil and gas facilities ineligible for the PN CfD from AR6 onwards. Where necessary, corresponding changes have also been made to the Allocation Framework, which sets out the rules and eligibility requirements for the round.<sup>6</sup>

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<sup>6</sup> <https://www.gov.uk/government/publications/contracts-for-difference-cfd-allocation-round-6-allocation-framework>

Regarding the definition of 'Offshore Installation', the Government remains satisfied that this definition sufficiently isolates the intended end-user, i.e. offshore oil and gas facilities. It is not the Government's intention that the definition also captures other end-users, such as dedicated hydrogen or CCUS projects, which do not per se require a licence 'to search and bore for and get petroleum'.

Regarding the declaration as to the Onsite Customer's identity and the recommendation from one respondent to add the wording 'at the time of signing' to the relevant contract amendments, the Government considers that placing a time limit on the Generator's declaration in this way would risk undermining the policy's effective implementation. The Government has therefore decided not to adopt this proposal.

# Proposed amendments to the Change Control Procedure and Associated New Definitions

The Government proposed amendments to the Change Control Procedure in Annex 2 of the STCs, including the introduction of a new threshold of more than 50% (a simple majority) of Generators needing to issue a Classification Objection to trigger a dispute, a revised dispute resolution process to achieve dispute resolution through a single process and the insertion of new definitions to facilitate these changes.

## Proposals

The Government proposals intended to clarify both paragraph 2.9 of the current Annex 2 contract terms and the interaction between paragraphs 2.9(A) and 2.9(C). The existing mechanisms in these paragraphs give rise to possible cases where General Amendments are not implemented uniformly across the class of affected CfDs, as described in the consultation document.

Question 8 sought views on amendments to the Change Control Procedure proposed to address the issues outlined in the consultation document through the introduction of a new threshold, dispute resolution process and associated new definitions.

## Responses to the consultation

Six of the thirteen respondents to the consultation responded to these questions. Responses were received from renewable electricity generators and a trade association body.

## Views on proposals and Government response

The majority of respondents agreed with the rationale for amending the Change Control Procedure.

A minority of respondents had concerns or disagreed with the amendments proposed. Some respondents stated that a blanket threshold of 50% would not be proportionate and appropriate as the impact of a change may vary according to a range of factors, namely a Generator's capacity, technology or applicable version of the CfD STCs. For instance, the financial implications of a contract amendment for a large offshore wind project may be significantly higher compared to other, smaller capacity projects or technologies.



One respondent suggested that the definition of 'CCP Affected Parties' be amended so that affected parties are those of the same specific technology type, e.g. fixed offshore wind. A few respondents suggested the definition be categorised by allocation round, pot and/or based on eligible capacity impacted by the proposed change rather than it being based on the percentage of contract holders. One respondent stated that it is important that the definition ensures each CfD contract is considered as one Generator and does not consolidate multiple CfD contracts (for multiple different technologies) under one Generator to ensure that smaller generators are not disadvantaged.

One respondent stated that the new threshold would lead to unintended consequences whereby Generators would be forced to raise a Classification Objection regardless of its relevance to them thus increasing the volume of objections and arbitration.

One respondent stated that the rationale behind the change is unclear and creates a risk to Generators that amendments can be made to their contract without their consent, given that the ability for individual Generators to raise a dispute is removed. Additionally, some smaller Generators may not have the resource and/or expertise to assess the impact of a contract amendment.

One respondent suggested that the time granted to Generators to respond to a Technical Amendment Response Notification should be extended from 20 Business Days to 30 Business Days.

A few respondents raised concerns as to the difficulty Generators will have in agreeing a single resolution and in coordinating a unified response as a single entity, particularly given that the sharing of sensitive information between Generators is likely to be required. One respondent suggested that there be visibility available to Generators as to whom is affected and an alert as to notices issued to help ensure responses are coordinated and to assist with the collaboration needed for a group objection. It was also suggested that trade associations be allowed to act as a representative body to assist affected Generators in agreeing a resolution as well as a centralised convening body to alert Generators to notices.

One respondent raised concerns that any decision made following a dispute will be binding on all Generators, regardless of whether they chose to participate in the dispute or not. One Generator also expressed concerns as to the outcome of a dispute being binding on all Generators, rather than on the specific types of Generators impacted by the amendment.

A few respondents suggested that amendments made must be implemented in a transparent manner, with the main objective and rationale being communicated by LCCC through an impact assessment including any alternative amendments considered, their impact on Generators and rationale as to why the proposed amendment was chosen. One respondent suggested that LCCC should conduct a thorough and formal consultation process when proposing an amendment.

In addition to direct responses to the consultation questions, one respondent also suggested specific minor drafting amendments to the contract terms namely that the wording of 'deemed to have arisen' be replaced with 'has been met' in Condition 57.9. It was also suggested that

the term “Relevant FiT Contract for Difference’ be replaced with ‘post-AR5 Contract for Difference’ because the former construct is already used elsewhere in the STCs for a different purpose, and where in Annex 2 there is mention of: “may make such amendments... as it deems appropriate,” the drafting should be amended to read “acting reasonably, deems appropriate”.

## Policy response

We note that the majority of respondents supported the rationale for the proposed amendments to the Change Control Procedure. The Government therefore intends to implement the proposed amendments and associated new definitions. We have, however, made some adjustments to the original proposals in light of respondents’ feedback.

The Government notes the concerns as to the potential varied impact a proposed amendment might have on different Generators. Currently, and in accordance with the definition of “General Amendment”, the LCCC may propose a General Amendment which is a Technical Amendment to have effect either on (i) all holders of a FiT Contract for Difference or (ii) on a particular category of such contract holders. The revised contract terms (version 6) make similar provisions for contracts entered into after 6 October 2023, i.e. there will be no change in practice to how the contract will operate with regard to the application of the General Amendment provisions. Consequently, the Government has decided that it is unnecessary to amend the definition of ‘CCP Affected Parties’ to make it specifically refer to a technology type or allocation round. Furthermore, defining ‘CCP Affected Parties’ by capacity would indirectly benefit large Generators (whose project(s) may have greater capacity overall) over smaller ones who should have a proportionate right to respond to proposed amendments.

To address concerns as to the varying impact of the proposed amendments, we have amended the Annex 2 contract terms to allow for one vote per CfD. This would mean, for example, that each contract of a phased Offshore Wind project would count as an individual vote. The definition of CCP Affected Parties has also been altered to clarify that the CfD of an Unincorporated Joint Venture (UJV) would count as a single vote regardless of the number of partner signatories to the UJV.

Regarding a respondent’s concern that an amendment can be made to their contract without their consent, the Government notes that Generators have the right to challenge and issue a Classification Objection as to any given amendment. Further to this, in the event that a Dispute Resolution Procedure is triggered, Generators are given the opportunity to engage in this process regardless of whether they initially submitted a Technical Amendment Response Notification (TARN) containing a Classification Objection or not. A Generator therefore has the right to challenge an amendment before any decision becomes binding on the affected parties.

The Government acknowledges that a unified response from Generators in the dispute resolution process may be challenging, particularly given the sensitive information that may need to be shared and the administrative work that such a process may involve. The Government notes the suggestion that trade associations be allowed to act as a representative body to assist affected Generators in agreeing a resolution as well as a centralised convening body to alert Generators to notices. While trade associations may be able to play a useful informal role in supporting coordinated Generator engagement with a dispute, given that CfDs are private law contracts between the LCCC and a Generator, the Government considers that it is not appropriate to allow trade bodies any formal role in the CfD contract, particularly relating to any dispute.

In regard to the suggestion that there be visibility between Generators – when an initial General Amendment is issued by LCCC, Generators are already potentially able to determine the identity of other affected CfD parties using the existing CfD register. Where a General Amendment becomes subject of the Dispute Resolution Procedure in Condition 57.9, LCCC shall in those circumstances also issue a written notice identifying which CCP Affected Parties have delivered an objection to the proposed amendment. As for the suggestion that LCCC provide guidance for Generators, this proposal has been communicated to LCCC.

The Government does not believe an impact assessment or a formal consultation process for each proposed amendment is appropriate. This will create undue administrative burden on LCCC, particularly as the majority of General Amendments, in practice, have been to correct a manifest error in the contract drafting. The Government also maintains that the existing timeframe, namely 20 Business Days, which Generators are afforded to respond to a Technical Amendment Response Notification, is sufficient as it aligns with existing similar contract provisions.

The Government notes the potential for confusion in relation to the proposed new definition and term “Relevant FiT Contract for Difference” and has amended this to ‘Applicable FiT Contract for Difference’. The Government has decided not to replace the wording, ‘the CfD Counterparty...may make such amendments...as it deems appropriate...’ to clauses 2.9(B)(ii)(b)(1), and 2.9(B)(ii)(c)(1), and 2.9(C)(i) in Annex 2 with the proposed alternative wording ‘acting reasonably, deems appropriate’. The Government’s proposed formulation relates to the Technical Amendment procedure and is to ensure consistency with the existing language used in paragraph 2.8(B)(ii)(b)(1) of the STCs in respect of the bilateral Technical Amendment process.

# Proposed amendments to strengthen the Know Your Customer provisions

The Government proposed amendments to strengthen the existing 'Know Your Customer' (KYC) process in the CfD contract by including further obligations upon Generators (in addition to those KYC obligations set out at Initial Conditions Precedent stage) to provide specific KYC information to LCCC and imposing consequences, namely a suspension of payments, for specific failures to do so.

## Proposals

Question 5 welcomed views on the Government's proposals to strengthen existing KYC checks to ensure that LCCC can monitor counterparty risk more effectively.

Question 6 welcomed views on proposals to introduce new contract provisions to ensure relevant KYC information is provided when required and within specified timeframes. The proposed contract terms to reflect this were as follows:

Part B Further Conditions Precedent – Condition 2.1(F): Introducing KYC checks as an Operational Condition Precedent (OCP) in a new Condition 2.1(F) in Part B of the contract. This new provision will oblige Generators to provide KYC information in a timely manner and allow LCCC to impose consequences on Generators that fail to comply. This amendment was proposed to help ensure due diligence is performed prior to operations beginning and before CfD payments start.

KYC Notification - Condition 79.10 to 79.12: Introducing a specific obligation on Generators to provide LCCC with a 'KYC Notice' if there is a change in, for example, ownership structure and ultimate investor, and for that information to be included in the KYC Notice. Each KYC Notice must be accompanied by a Director's Certificate attesting to the accuracy of the information contained in 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 KYC information requests within 20 Business Days (or, if such information is not within the possession of the Generator, 30 Business Days). In other cases, information must be provided in shorter time periods – for example, under Condition 32.1(B), the Generator must respond to the CfD Counterparty request no later than 5 Business Days (or, if such information is not within the possession of the Generator, no later than 10 Business Days).

Question 7 welcomed views on the proposed consequence for failure to provide KYC information, namely, suspension of CfD payments.

## Responses to the consultation

Nine of the thirteen respondents to the consultation responded to these questions. Responses were received from renewable electricity generators and a trade association body.

## Views on proposals and Government response

The majority of responses in relation to Question 5 were supportive of the Government's proposals to strengthen the KYC checks to ensure that LCCC can monitor counterparty risk effectively.

The majority of responses to Question 6 were also supportive of the Government's proposals. However, some respondents suggested amendments to the Government's proposals while others put forward alternative proposals of their own. One respondent commented that it was unclear how a KYC notice at Conditions 79.10 and 79.12 would link to the overall KYC information required under Condition 32.1(L) and that consideration could be given to including an obligation on LCCC to acknowledge receipt and confirm no further action would be taken against the Generator within a short period of time e.g. within 5 business days.

Some respondents were of the view that requiring a KYC Notice for a wide range of changes during operations would be disproportionate and place undue administrative burden on Generators, in particular, for example, on joint venture projects with multiple investors which could have several changes of director nominations in a given year. Another respondent stated that a KYC notice for changes such as a change of ownership or ultimate investor may be appropriate but changes as to the appointment of a director were not, given these appointments may be frequent, the new KYC requirements thereby increasing risk for Generators. One respondent suggested that KYC Notices should be annual and summarise changes that have taken place during the preceding 12 months rather than being triggered by a change in circumstances during operations.

A few respondents commented that the time to respond to information requests from LCCC should be extended from 20 Business Days to 30 Business Days. One respondent stated that this extension would allow for information gathering in complex processes such as project ownership changes and when divestment or project ownership changes are ongoing/in process, given information gathering during such periods is more complex and potentially incomplete, particularly for large scale multi-investor projects.

The majority of respondents to Question 7 supported the Government's proposed consequence for failure to provide KYC information, namely a suspension of CfD payments. However, some respondents viewed it as a disproportionate consequence due to its potential major impact on a project's viability versus the limited practical impact of the delayed provision of KYC information. These respondents suggested a more proportionate approach would be to apply a penalty charge following a trigger event in the form of a pre-determined deduction from CfD payments.

A few respondents also highlighted that payment suspension will lead to a loss of revenue and impact the commercial viability of a project, thereby increasing the risk profile of such projects. It would also potentially cause investors to respond by seeking a higher rate of return which will in turn increase the CfD strike price required for new projects and become a disproportionate additional cost to the consumer.

One respondent stated that suspended payments should be reimbursed when (or shortly after) the relevant KYC information is provided by the Generator. One respondent stressed that where information requested had been provided within the required timeframe, but additional detail was then requested by LCCC, in order to complete KYC checks, this should result in additional time being granted and should not result in a suspension of payments.

A few respondents highlighted a disadvantage of suspending payments to be the lack of incentive to provide KYC information when the market price is higher than the strike price. This is because during these periods the Generator has an obligation to make CfD payments rather than receive them, i.e. there would be no payments to be suspended in any event. Further, if the suspension is automatically applied following the trigger event with no further conditions or checks, during periods of high market prices, a Generator would potentially have an incentive not to provide KYC information with a view to automatically suspending their obligation to make CfD payments. Additionally, projects which are not yet in operation would have no incentive to provide KYC information until their operational start date approaches.

## Policy response

The Government notes that the majority of respondents were in support of the proposal to strengthen the existing KYC checks in the contract. As such, the Government will implement the proposed changes. We have, however, made some adjustments to the original proposals to address respondents' feedback.

We note that the majority of respondents were of the opinion that the introduction of a KYC Notice is disproportionate and may place an undue administrative burden on Generators, with particular concern raised regarding joint venture projects with multiple investors. The Government maintains the importance of ensuring LCCC are provided with the required KYC information. As explained in our consultation, approximately 20% of Generators have needed to be contacted further by contract managers following due-diligence reviews since 2022, whilst an estimated 25% of Generators require additional chasing and often require re-investigations as previous screenings become out of date. With the rising number of projects under contract and that number expected to further increase in AR6 and beyond, LCCC cannot risk further financial management costs, which ultimately has an adverse impact on consumers.

With regard to the suggestion that KYC Notices be submitted to LCCC annually, the Government does not believe that this would achieve the desired improvement given it is too similar to LCCC's current practice of reviewing generators' KYC information annually or biannually depending on the level of risk. The Government, however, acknowledges

the concern that the addition of certain events which would trigger a KYC Notice, such as a change of director, may be burdensome for some Generators, such as joint venture projects. The Government has therefore removed clause (D) of the KYC Notice under Condition 79.11, which triggers a KYC Notice in the event of an incoming or outgoing director.

One respondent was unsure how the introduction of Condition 32.1(L) linked to the overall KYC checks at Conditions 79.10 and 79.12. Conditions 79.10 and 79.12 require Generators to provide KYC information to the LCCC proactively whenever any of the changes specified under these conditions occurs whereas Condition 32.1(L) obliges Generators to respond to any information requested by LCCC to conduct KYC or similar identification checks.

In regard to Question 7, we note that a slight majority of respondents raised concerns about the Government's proposal to suspend Generator payments as a consequence of failing to provide KYC information when required. It is the Government's view that a suspension of payments is a proportionate consequence for a failure to provide required KYC information commensurate to the importance of the KYC checks themselves and particularly given LCCC's related legal obligations and the possible reputational risk to LCCC and the Government, should the obligations and requirements fail to be satisfied. Further, the contract already contains provisions which allow for payment suspension as a consequence for non-compliance (such as within the Subsidy Control provisions under Condition 32.9), extending the consequence to KYC non-compliance will therefore ensure consistency in the contract terms.

Whilst the Government has considered introducing a penalty charge mechanism into the contract, we do not believe this is a suitable alternative to a suspension of payments. The current STCs do not contain existing provisions relating to the imposition of a penalty charge. It is also not clear whether the introduction of a new category of consequence such as this, which would require the making and receiving of payments, would necessitate a change to the CfD regulations. It is also the Government's view that we may need to re-consult in relation to not least the level of penalty needed to act as a sufficient deterrent as well as how, when and how often to enforce the penalty etc. The Government is also of the view that a suspension of payments is preferable to having no countermeasure at all or imposing a termination of the contract which, although of more impact as a deterrent, would represent a disproportionate consequence in such circumstances.

We note the observation that Generators will not be incentivised to comply with KYC checks when reference prices are higher than strike prices because it will not be possible for LCCC to suspend difference payments where this occurs. While possible, the Government considers that the circumstances which might give rise to such situations are likely to be very limited and that Generators will, in any case, be obliged to comply with Condition 32.1(L) if market prices are below the Strike Price. LCCC will also have the usual remedies available to it with the potential to seek injunctive relief. Further, the

Government wishes to point out that non-compliance of the contract terms would be a breach of contract.

We note that some respondents were of the view that the time for Generators to respond to information requests should be extended from 20 Business Days to 30 Business Days. Currently, Generators have less time to respond to requests for information under other clauses, such as 5 Business Days to respond to information requests under Condition 32.1(B). In the interest of ensuring a reasonable timeframe for Generators to respond, the Government proposed extending this to 20 Business Days (or 30 Business Days if the information is not in its possession). We maintain the proposed timeframe is appropriate, particularly in ensuring consistency with other contract provisions.

The Government welcomes one respondent's suggestion for LCCC to also acknowledge receipt and confirm whether the Generator has complied with LCCC's request pursuant to Condition 32.1(L), no later than 20 Business Days after receipt of the information. Where a Generator subsequently provides LCCC with the required KYC information pursuant to Condition 32.1(L), having suspended payments, LCCC shall then reinstate them.



## Call for Evidence – Milestone Delivery Date

The Milestone Delivery Date (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. The Government extended the MDD for all technologies from 12 months to 18 months in Allocation Round 4.

The Government invited views on how the 18-month MDD has been operating in practice, whether it should be adjusted in any way and, if so, why. This included views on whether the MDD should stay at 18 months, revert to 12 months, or be set to a different length, and what this length should be. Government was interested in hearing how any proposed changes would facilitate effective and efficient project delivery and reduce costs for consumers. We also welcomed views on any consequential amendments that might need to be made to the CfD scheme if the MDD is adjusted.

The Government indicated that we would 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.

It is not practicable in this document to detail every single viewpoint or piece of evidence provided. However, we have reviewed and considered all submissions.

### Responses to the consultation

We received eight responses to this call for evidence. Responses were received from renewable electricity generators and a trade association body.

### Summary of responses

The majority of respondents expressed the view that the MDD should remain at 18 months for all technologies. Some respondents indicated that any reduction in the MDD would increase their costs with one stating that it would add additional project risk and make an outcome of non-delivery more likely as projects become more vulnerable to delay. They mentioned that more flexibility by each technology in timings and a linkage to the projects Target Commissioning Window (TCW) may be beneficial and allow for more efficient project delivery.

One respondent requested that the TCW for solar projects be increased from 3 months to 12 months to provide more flexibility in the construction timing of these projects and reduce the risk to the CfD contract term from construction delays. These changes should reduce the overall project cost. There was also a suggestion from another respondent that the provision of later delivery years for offshore wind could mitigate many of the supply chain and MDD risks that projects currently face. For floating offshore wind projects, it was mentioned by a respondent that the MDD will need to be considered in the context of any changes to the

period between auction dates and delivery years, as well as lead times for such projects given expected investment in local supply chains to support them.

One respondent indicated that the 10% spend route for achieving MDD could be improved with the inclusion of transmission costs as evidence of commitment to the project and, similarly, including large transmission contracts, as well as the option to evidence a similar expenditure and 'commitment to build', when pursuing the project commitment route.

One respondent suggested that the MDD be extended to 24 months as this would better reflect the spend and decision profile of a project and improve the negotiation process with the supply chain by allowing sufficient time. It would also give developers greater certainty over site design, technical specifications and pricing which would result in more robust contracts and reduced risk and additional costs at contract execution. Finally, it would provide a greater opportunity to explore innovative technologies and techniques, as well as new supplier options.

One respondent suggested that instead of falling 18 months after contract signature, the MDD should fall a set number of months before the TCW start date, as this would better suit development processes. This is because the MDD is linked to the signature of the contract, while the expected Target Commissioning Date can differ significantly from one project to another.

# Additional changes not subject to consultation

The consultation noted corrections which have been made to 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. We have inserted a definition of “Assimilated Version” into the STCs accordingly.

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