



Department for
Energy Security
& Net Zero

Contracts for Difference for Low Carbon Electricity Generation

Government response to the consultation on additions to the Contract for Difference contract arising from the introduction of a Clean Industry Bonus



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Context

The government has a target of clean power by 2030. The Contracts for Difference (CfD) scheme is the government's main mechanism to support the deployment of new low-carbon electricity generation projects in Great Britain. In 2024, the sixth CfD auction awarded contracts to a record 128 new green energy projects, which will deliver around 9.6GW of capacity (enough to power the equivalent of 11 million homes).

On 12 November 2024, the government launched the Clean Industry Bonus (CIB), which offers extra CfD revenue support to fixed and floating offshore wind applicants who choose to invest in more sustainable supply chains. This process also ensures that all fixed and offshore wind applicants entering a CfD round have met the CIB Minimum Standard of investment in supply chain sustainability. This CIB Minimum Standard is for an applicant to have invested at least £100m per GW for fixed-bottom offshore wind farm or £50m per GW for a floating offshore wind farm. Investments must meet at least one of two criteria: shorter supply chains or cleaner supply chains (see below). Applicants can apply for additional revenue support through a competitive process if they choose to invest further under either of these two criteria.

An applicant may be considered to have met Criterion 1, 'Investment in shorter supply chains', if an investment is made in an offshore or floating offshore wind manufacturing facility, installation firm, or port located in a UK deprived area. An applicant may be considered to have met Criterion 2, 'Shorter supply chains', if an investment is made in offshore or floating offshore manufacturing facilities or installation firms owned or operated by firms that can evidence having set or committed to a Science Based Target. The CIB Allocation Framework sets out the criteria in detail, how to apply for a Clean Industry Bonus, and how funding will be allocated. The CIB Guidance sets out the process for receiving CIB Payments and other matters related to the delivery of CIB commitments.

The CIB will be delivered through the CfD, requiring changes to the current draft of the contract that underpins the CfD scheme. The CIB refers to the scheme set out in the Contracts for Difference (Sustainable Industry Rewards) Regulations 2024, as the 'Sustainable Industry Rewards' (SIRs) policy, which has evolved and become the 'Clean Industry Bonus'. Whilst the regulations still refer to SIRs, this will be amended to CIB in the near future. A consultation on proposed additions to the CfD contract ran from 12 November to 10 December 2024. This government response sets out a summary of responses received and the government's final policy decisions.

Overview of consultation proposals

The consultation proposed the following additions:

- New definitions in Schedule 2, to outline key terms in the contract and cross-reference these to the terms employed in the CIB Allocation Framework and Guidance.

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- A provision requiring the generator to comply with the requirements set out in their CIB Statements.
- Provisions requiring generators to update the Low Carbon Contracts Company (LCCC) on the status of their CIB Statement, CIB Implementation Statement application, and their CIB Implementation Statement or CIB Refusal. This will ensure the LCCC has been informed of any material changes to the CIB Statement or CIB Implementation statements that could affect the value of CIB Payments or Performance Related Adjustments (Consultation Question 1).
- Provisions on Performance Related Adjustments linked to the CIB Minimum Standard in case of non-delivery, including the effect of CfD contract termination on this liability, and the methodology for settling Performance Related Adjustments (Consultation Question 2).
- Provisions on payments linked to fulfilling CIB Extra Proposals, including the determination, frequency and notice of instalment amounts, as well as the effects of CfD contract termination (Consultation Question 3).
- Provisions on the conclusiveness of Secretary of State determinations (Consultation Question 4).
- A provision to allow for adjustments to CIB Payments in case of a new determination by the Secretary of State (Consultation Question 5).
- Provisions to index CIB Payments and Performance Related Adjustment (Consultation Question 6).
- Provisions to apply default interest to CIB Payments and Performance Related Adjustment payments (Consultation Question 7).
- Amendments to the definition of Reconciliation Amounts to include CIB Payments or Performance Related Adjustments (Consultation Question 8).
- Amendments to the conditions of CfD Payments suspensions to exclude suspension of CIB Payments (Consultation Question 9).
- Amendments to exclude CIB from the CfD's provisions on force majeure, given CIB force majeure issues are covered in the CIB Guidance.

Engagement with consultation proposals

The consultation was published online and ran from 12 November to 10 December 2024. Responses were submitted through an online response tool (Citizen Space) or by email. The consultation received 12 responses to the nine questions therein, including nine from developers, one from a supplier, one from a trade union, and one from an advocacy group. The government is grateful to stakeholders for taking the time to engage with the consultation.

In reporting the overall response to each question, the 'majority' indicates the clear view of more than 50% of respondents in response to that question, and 'minority' indicates fewer than 50%. The following terms have been used in summarising additional points raised in the

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responses: 'most respondents' indicates more than 70% of those answering the particular question; 'a few respondents' means fewer than 30%; and 'some respondents' refers to the range in between 30% and 70%. Summaries will indicate how many responses were received for each question, as not all respondents answered all questions.

Next steps

Alongside this government response, we have published the final amendments to the CfD contract that relate to the Clean Industry Bonus. There may be other amendments to the contract arising from Allocation Round 7 reforms as outlined in the Clean Power Action Plan. We will consult on these in due course.

The CIB application window is currently scheduled to open in February 2025 and close in April 2025.

Section 1 – Proposed additions to the CfD contract pertaining to CIBs in Schedule 2

Definitions

The consultation proposed a list of definitions for key terms used in the contract. Minor modifications have been made in the final draft to improve the clarity of terms used.

Compliance with the CIB Statement

The consultation proposed to add a provision to the CfD contract requiring generators to comply with the conditions set out in their CIB Statement. Failure to comply with these conditions would amount to a breach of the contract, with associated contractual consequences in the form of Performance Related Adjustments. The government did not receive any opposing views to this proposal. It will be taken forward with no modifications.

CIB notice requirements

Proposals

To avoid Performance Related Adjustments relating to the CIB Minimum Standard and receive CIB Payments related to CIB Extra Proposals (if applicable), a generator must obtain a CIB Implementation Statement from the Secretary of State confirming they have delivered on their commitments. To obtain this, generators must submit a CIB Implementation Statement application. If the application is not submitted by the CfD Start Date (or if applicable, by the end of any extension period granted by the Secretary of State), then the generator will face Performance Related Adjustments and will not receive CIB Payments, even if their commitments have been met. If the Secretary of State is satisfied that the CIB Minimum Standard and, if applicable, the CIB Extra Proposals have been implemented, they will issue a CIB Implementation Statement to the generator. If the CIB Minimum Standard has not been implemented, the Secretary of State may issue a CIB Refusal statement.

The LCCC must be aware of the status of a generator's CIB Statement and CIB Implementation Statement in order to carry out its duties related to payments, including when they should start, their total value, and whether any Performance Related Adjustments should be applied. As such, the consultation proposed additions to the CfD contract to require generators to update the LCCC as to the status of their CIB Statement, CIB Implementation Statement application, and their CIB Implementation statement or CIB Refusal statement.

Summary of responses

The majority of respondents (5 out of 7) agreed that the notice requirements outlined above captured a sufficient number of scenarios in which it would be necessary to inform the LCCC of updates to CIB Statements and CIB Implementation Statements. The remaining responses were mixed, with one proposing to extend the period from 5 to at least 20 business days to allow generators sufficient time to prepare and receive clearance for their notice.

Policy response

The proposals outlined in the consultation will be taken forward. The government considered the alternative proposal on notice period extension but notes other respondents did not raise a concern about this and considers the current proposal to be necessary for the LCCC to be kept up to date.

Consequences of not fulfilling the CIB Minimum Standard

Proposals

The consultation proposed provisions on Performance Related Adjustments linked to the non-delivery of the CIB Minimum Standard.

Performance Related Adjustments may be applied if a generator has not made their full CIB Minimum Standard investment by their CfD Start Date (or the final date of their extension period, if applicable). This will be signalled to the LCCC by the Secretary of State issuing CIB Refusal notice in response to the generator's CIB Implementation Statement application. In line with previously published Guidance, if a generator fails to submit evidence of delivering the CIB Minimum Standard of investment, the Department for Energy Security and Net Zero will assume that no investments have been made towards meeting the CIB Minimum Standard.

Performance Related Adjustments will be applied to CfD payments until the full adjustment has been made. They will be proportionate to the level of non-delivery, that is, the adjustment will be equal to the difference between the actual and required spend by the generator against the CIB Minimum Standard.

The methodology used for applying Performance Related Adjustments is set out in paragraph 5 of Schedule 2. Each Performance Related Adjustment payment shall be a Reconciliation Amount in respect of a Billing Period nominated by the LCCC. 'Reconciliation Amounts' in a Billing period are any revisions to the Net Payable Amount of any preceding Billing Periods.

The amounts will be indexed using the Consumer Price Index (CPI) and using the year the CIB Statement was issued as the base year. This will apply until the last Performance Related Adjustment has been made (see section on indexation in this government response for details). The Contract sets deadlines for the LCCC to notify the generator of the instalments owed.

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Performance Related Adjustments will not exceed the value of the strike price multiplied by the metered output, over a given period. They will not apply if the CfD contract is terminated before the Start Date. However, if a project is terminated after the Start Date, the generator would be liable to pay to the LCCC either the balance of any remaining Performance Related Adjustment amount or the amount of payment they have received for generation of electricity under their CfD from LCCC (whichever is lowest).

Performance Related Adjustments will not be applied if the Secretary of State agrees with a generator's claim that non-delivery was outside of their control and that alternative commitments were not feasible, as per the process set out in the CIB Guidance.

Summary of responses

There was a total of 7 responses to this question and the majority found the Performance Related Adjustment provisions unclear, 1 agreed it was clear and 2 disagreed with the provisions.

The respondents who had disagreed asked for a clearer understanding of how the Performance Related Adjustments would be calculated and their timing, so they could prepare for any potential impact on their financing. They suggested that the LCCC provide a spending profile so that they can plan ahead and allow for an agreed-upon payment schedule, with a longstop date by which all payments must be recouped. The respondents also wanted more clarity on when the investment needed to be made by and how the CIB Refusal is used. Some respondents also stated that they were unclear about the provisions relating to the payments in relation to generation.

Some respondents suggested that the Performance Related Adjustments should be spread over a longer period, similar to those payments made by the LCCC to the generator. Some respondents disagreed with a lump sum payment in case of termination after the CfD start date, arguing that a generator would not have started generating electricity and therefore this would not be fair. One suggested that the Performance Related Adjustment should be proportionate to the size of the project and with additional flexibility and with a force majeure option.

Policy response

Consultation proposals will be taken forward, but the government recognises the need for more clarity.

Respondents wanted clarity on the proportionality of the Performance Related Adjustment in relation to the size of the project. As outlined in the CIB Guidance and Allocation Framework, Performance Related Adjustments will be applied to CfD Payments for the partial or non-delivery of the CIB Minimum Standard, until the full value of the Performance Adjustment has been applied. These adjustments will be equal to the difference between the total CIB Minimum Standard required and the actual spend of the generator against that CIB Minimum Standard. As such, this penalty is both proportional to the size of the project (as the CIB Minimum Standard is expressed in £/per GW) and the level of non-delivery.

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Respondents requested further clarity on how and when the Performance Related Adjustments will be applied. Government cannot confirm the timescale at this stage as to when the Performance Related Adjustments will be applied, as this will vary based on the project, the level of Performance Related Adjustments applied, whether generation has begun, amongst other matters. However, government can confirm that Performance Related Adjustments would start from the earliest practical CfD payment date, or once a CIB Refusal statement has been issued.

Respondents also queried how the cap on each Performance Related Adjustment payment based on 'net payment for generation' over the same period will operate. To clarify, Performance Related Adjustments will be payable in instalments, except following termination. Those instalments will be set by LCCC, but the size of the instalment LCCC set for a period may not exceed an amount equal to the strike price multiplied by expected metered output for that period, with the intention that the instalment is not greater than expected electricity revenue from output in the period, if Metered Output is sold at the Market Reference Price. Though each instalment may vary in size, the total Performance Related Adjustment liability must be met.

The detail of the timetable for application of Performance Related Adjustments for an individual project (if applicable) will be outlined by the Secretary of State in a CIB Refusal Statement, issued in response to a generator's CIB Implementation Statement application. The Department will also notify the LCCC. As outlined in the CIB Allocation Framework, CIB investments need to be made by the Investments Final Date, which is the CfD unit's Start Date or the last day of the extension period (if applicable). To note, if non-delivery is due to circumstances outside of a generator's control, and alternatives explored were deemed non-feasible, the Secretary of State may still release a CIB Implementation Statement.

Performance related adjustments will be treated as a Reconciliation Amount in respect of a Billing Period nominated by the LCCC. This means that they will be one of the payments taken into account by the LCCC when calculating the amounts payable between the generator and the LCCC, and will be included in the generator's overall billing statement. For a worked example, see Annex 1.

Some respondents suggested spreading Performance Related Adjustments over a period longer than the four years allocated in the Contract. Our current policy is to apply Performance Related Adjustments for a maximum period of 4 years from the point of CfD payments starting. Spreading out the Performance Related Adjustment over a longer period than four years would weaken the incentive for generators to avoid Performance Related Adjustments by delivering promptly, given that the level of income adjustment would be more diluted over time.

Payment for fulfilling CIB Extra Proposals

Proposals

The consultation proposed provisions related to payments for fulfilling CIB Extra Proposals. If a generator has obtained funding for CIB Extra Proposals and successfully delivers them, their CIB Implementation Statement will outline the payments they are due from the LCCC. If a generator does not deliver on their commitments, they will not be entitled to CIB Payments. If they only partially deliver on their commitments, they will receive payments proportionate to the level of delivery. Payments for CIB Extra Proposals will only be released if the generator has met their CIB Minimum Standard.

The LCCC will be liable to make the payments in lump sum instalments. Each instalment will be a Reconciliation Amount in respect of a billing period as determined by the LCCC. Payment amount and frequency will be determined by the LCCC to ensure that generators receive the full amount owed for their CIB Extra Proposals by the end of the fourth year after either their Start Date (or of their extension if applicable) or the date at which the LCCC is satisfied that it is aware of the Secretary of State's determination that CIB Extra Proposals have been met. The Contract sets deadlines for the LCCC to notify the generator of the instalments owed.

If a generator's CfD contract is terminated before their CfD Start Date, no payments will be issued in relation to CIB Extra Proposals. If the contract is terminated on or after the CfD Start Date, the LCCC will be liable to pay the remaining balance of CIB Payments within 30 business days from termination.

Summary of responses

There were 7 responses to this question, of which the majority (four) disagreed that the provisions on CIB Payments are clear and capture all reasonable payment scenarios. One respondent agreed with the question and a couple offered neutral answers where it was unclear whether they agreed or disagreed.

The most common reasons for disagreement were lack of clarity around when CIB Payments will be made, which respondents considered was important information for planning and managing project financing, and lack of clarity in the references made to other parts of the contract. Four respondents put forward alternative proposals for provisions on CIB Payments. These included, in no particular order:

1. Payments being made over a 2-year period, pro-rated evenly across 8 quarters.
2. Payments being made either as a one-off lump sum soon after the Start Date or spread out over the first year thereafter.
3. An option to pay the adjustment for not meeting the CIB Minimum Standard and then receive the additional bonus if this is delivered.

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4. An option for eligible generators to shift some of their CIB extra investment value towards delivering CIB Minimum Standard if they are on track to fail to meet the CIB minimum standard. Rather than failing to meet the CIB Minimum Standard, the outcome would be under-delivery of the CIB extra investment. Rather than a proportional fine for failing to meet the CIB Minimum Standard and no payment for the CIB Extra Investment, the consequence would be a proportional CIB Extra Investment Reward Amount.

Policy response

The proposals set out in the consultation will be taken forward.

If a generator has fully delivered the CIB Minimum Standard, and has delivered CIB Extra Proposals as set out in the CIB Statement in full or in part by the Investment Final Date, they will receive a CIB Payment proportionate to the level of delivery. This will be outlined in a CIB Implementation Statement issued by the Secretary of State in response to a generator's CIB Implementation Statement application.

Respondents asked for clarity on CIB Payment profile and timeline. We can confirm that payments will start after a CIB Implementation Statement has been released by the Secretary of State, from the earliest practical CfD payment date. Each instalment of the CIB Payment will be a Reconciliation Amount in respect of a Billing Period as nominated by the LCCC and will figure in the generator's overall billing statement. CIB Payments will have been fully paid to the generator by no later than the end of the 4th year after the Start Date (or final day of the extension period, if applicable) or the date at which the LCCC has been made aware that the CIB Extra Proposals have been fulfilled. Government can confirm that the CIB Payments will be remitted quarterly within the allocated four-year period.

The payments will be indexed using the CPI measure, like other CfD payments. We are unable to confirm the specific amounts or their distribution, as this will be project-dependent and cannot be predicted before funds have been allocated. However, the detail of the timetable of CIB Payments will be outlined by the Secretary of State in a CIB Implementation Statement.

The government has considered alternative proposals, such as making payments within a year of the CfD Start Date or over two years instead of four. However, these proposals have been rejected as they would increase impact on consumer bills, whereas spreading payments over a longer period of time reduces the yearly impact on consumer bills.

One respondent also proposed that, should a generator fail to deliver against their CIB Minimum Standard but successfully met their commitments related to CIB Extra Proposals, any investment made towards a CIB Extra Proposal count towards delivering the CIB Minimum Standard instead. We can confirm that this is already a possibility, and generators are expected to propose one or several alternative Minimum Standard investments to cover a shortfall (see paragraph 5.2 of the CIB Guidance). In this example, whilst a generator may be deemed to have met their CIB Minimum Standard if they use their CIB Extra Proposal as an alternative to their CIB Minimum Standard proposal, they may consequently not receive CIB Payments.

Nature and conclusiveness of Secretary of State determinations

Proposals

The consultation proposed to add provisions to the CfD contract stating that any decisions by the Secretary of State to issue a CIB Implementation Statement or a CIB Refusal is conclusive as to whether a CIB Minimum Standard and/or any CIB Extra Proposals have been delivered upon. This means that only the Secretary of State's statement can determine whether CIB Payments or Performance Related Adjustments are due.

Summary of responses

The majority of responses (3 out of 5) agreed that the provision on the conclusiveness of Secretary of State determinations is sufficiently clear and captures all reasonable scenarios. One response disagreed and argued that a mechanism through which to appeal a Refusal by the Secretary of State would be helpful. One respondent remained neutral.

Policy response

The consultation proposal will be taken forward. Whilst there is no distinct appeal process in place, the government would like to provide reassurance that generators will be continually engaged with through the monitoring process. This will be a two-way process: generators will be aware of any ongoing assessment, will be able to provide further evidence, and engage with officials to raise any concerns by providing evidence to support what are perceived to be factual errors or omissions by DESNZ officials.

Payment adjustments after a new Secretary of State determination

Proposals

The consultation proposed to add a provision enabling for payment adjustments following a new decision from the Secretary of State on a generator's CIB Implementation Statement. A new determination could arise due to a generator providing new information or new facts arising that affect the accuracy of the original statement. Should this happen after CIB Payments have been issued or after Performance Related Adjustment have been applied, the new provision would allow for a rectification in payment (either to the generator or the LCCC).

Summary of responses

Out of six responses received, 3 agreed that this provision is sufficiently clear and captures all reasonable scenarios, though one requested more information about the process for a generator querying a new decision to be issued. Two respondents disagreed with this provision, raising concerns that this increased uncertainty and risk for generators, as it gives

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the Secretary of State significant scope to change a decision on a generator's application. These responses asked for clear, transparent, and limited grounds for the Secretary of State to be able to issue a new determination affecting previous and future payments to a generator. To reduce uncertainty, a response suggested implementing a backstop on when payment adjustments could be sought (i.e. a time-limit).

Policy response

This consultation proposal will be taken forward. In response to the concerns raised by respondents, the government wishes to reiterate that the Secretary of State would only issue a new determination if new material information has been provided or if a material error needs to be corrected. This is provided for in regulations, which state that the Secretary of State may only revise (or withdraw) a CIB Implementation Statement and reissue a new statement (or a CIB Refusal) if the original statement contains a material error or the information provided in the CIB Implementation Statement application was materially incorrect.¹ The Secretary of State would not be able to change a determination if no new facts have emerged. A re-assessment process would also not occur without the generator's knowledge.

A respondent suggested a 'backstop' provision on when payment adjustment can be sought, to minimise uncertainty and risk for generators. The government does not consider this proposal appropriate; the proposed provision is an important mechanism to protect bill payers and retrieve any payments that were issued erroneously, regardless of when new information may come to light.

A respondent also wanted clarity on the process for addressing over or under-payments in the instance of a change in the Secretary of State's CIB Implementation Statement determination. The LCCC will redetermine any amounts in the case a new determination is issued by the Secretary of State, if applicable. In the case that the new determination means that the generator has now overpaid (e.g. because the Performance Related Adjustments applied following the first determination were greater compared to the second), the LCCC will pay back the difference. Conversely, if the generator's new determination means that they have underpaid what is owed (e.g. the Performance Related Adjustments applied following the second determination are greater compared to the first), the generator will be required to pay the LCCC. The LCCC will calculate the amounts and notify the generator. These amendments will not occur unless new facts are presented to the Secretary of State, triggering a new determination, and with full knowledge of the generator.

Indexation of CIB amounts

Proposals

The consultation proposed to index CIB Payments to the year in which the payment is made, starting with the year the CIB Statement was issued. The measure used will be the CPI.

¹ Regulations 12F(2) & (3) of the Electricity Market Reform (General) Regulations 2014.

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Conversely, any Performance Related Adjustments will be indexed, with the base value being the CIB Minimum Standard value set out in the original CIB Statement.

Summary of responses

Out of 6 responses to this question, 4 respondents agreed with the proposed indexation provisions. One response commented that the text in paragraph 9.1-9.3 of Schedule 2 providing the indexation formulas was not visible. One response disagreed with the proposals, suggesting that the reference year should be the same as that used to index CfD payments (2012) to avoid confusion and overcomplication. As part of another question, a respondent agreed with indexation of CIB Payments but argued that indexing Performance Related Adjustments would be disproportionate, as the penalty would become greater than the minimum standard requirement itself.

Policy response

The government will implement the proposed policy, noting that the text of Schedule 2 Paragraph 9.1-9.3 has been updated to ensure the formula used is visible. In response to the alternative proposal to indexation, the government has reviewed the option to index CIB Payments using 2012 as a base year, and rejects it on the grounds it would be burdensome to ask for supply chain investment decisions to be converted into 2012 prices, only for them to be indexed from a historic base. This could make the process more difficult for both applicants and supply chain companies. The government rejects the argument that indexing Performance Related Adjustments would be disproportionate, as payments (rewards) are indexed in the same way as the performance adjustments (i.e. rewards and adjustments are treated equally).

Interest

Proposals

The consultation proposed to apply default interest to CIB Performance Related Adjustment pays and CIB Payments, to protect both parties against delayed payments. Compensatory interest was not included in this proposal, as they are designed to compensate for loss of commercial revenue. As CIB Payments compensate for additional costs incurred by the generator during the Capital Expenditure phase of a project, a delayed or missed payment (subject to default interest) should not affect a generator's revenue stream.

Summary of responses

There were 6 responses to question 7, of which half agreed that the proposed application of default interest but not compensatory interest is reasonable. All of these respondents simply stated their agreement. A couple of respondents provided neutral answers, where it was unclear whether they agreed or disagreed. One respondent disagreed, stating that CIB Payments are factored into project financials and therefore any delayed payments would impact balance sheets. An alternative proposal was put forward, which would be an agreement

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to pay compensatory interest at the prevailing SONIA (Sterling Overnight Index Average) Bank of England interest rate across the period when CIB Payments are delayed.

Policy response

The government has considered the objections and alternative proposals to this consultation question but maintains the argument that CIB Payments should not be subject to compensatory interest. This is because CIB Payments effectively reimburse an incurred cost, so a delay would not result in a loss of commercial revenue. A delay would impact balance sheets, which is compensated for by applying default interest.

Phased Units

Stakeholders have highlighted potential complications related to applications containing phased CfD units. This government response provides clarity on how phased units will be treated, and appropriate changes have been made to Schedule 2.

A CfD unit, defined in the Contracts for Difference (Allocation) Regulations 2014 and the CfD Allocation Framework as 'whole or part of a generating station', should submit one CIB application. For the purposes of the regulatory requirement to obtain a CIB Statement, we consider a phased CfD unit to be one CfD unit. If a generator is building one CfD unit in phases, they can submit one CIB application for all three phases and will receive one CIB Statement. This is to avoid fragmentation of units into phased units, which would create unnecessary complexity.

However, because each phase has its own contract, amendments to the draft contract have been made to enable the following:

- The final phase of the project (assumed here to be Phase 3 but will be Phase 2 for projects built in two phases) will carry all contractual liabilities relating to CIBs including delivery of CIB Minimum Standard, CIB Extra Proposals, receipt of CIB Payments, and payment of Performance Related Adjustments. Generators will have until the Start Date of their Phase 3 contract (or the end of any extension granted by the Secretary of State) to meet their CIB obligations. The government considers that this gives phased developers an equal opportunity to meet their obligations, as compared with developers of non-phased projects.
- However, provisions have been added to ensure that the eligible generator(s) who has/have entered into contracts for each phase are jointly and severally liable for the obligations set out in the CIB Statement. The joint and several liability provisions are supplemented by "creditor protection" drafting.
- Any Performance Related Adjustments which impact CfD Payments will be calculated on the basis of the three (or if applicable, two) phases, not just one phase (including the maximum liability over a given period).

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- Should Phase 3 not be built, or be terminated, the CIB obligations will survive termination of that contract and continue to apply to the other phase(s), provided those contracts have not been terminated. Obligations will transfer initially to Phase 2 and then to Phase 1, if the Phase 2 CfD is terminated.
- The deadline for submitting a CIB Implementation Statement shall be (i) the end of any extension period granted by the Secretary of State, or (ii) if no extension period has been granted, the later of:
 - The Phase 3 Start Date;
 - If the Phase 3 contract is terminated before the Start Date, the Phase 2 Start Date (as the CIB obligations will transfer to Phase 2);
 - If the Phase 3 contract and the Phase 2 contracts have terminated before their Start Dates, the Phase 1 Start Date (as the CIB obligations will transfer to Phase 2);
 - The date on which the Phase 3 contract is terminated, if the obligations have transferred to the Phase 2 contract and the Start Date of that contract and the Phase 1 contract has occurred;
 - The date on which the Phase 2 contract is terminated if the Phase 3 contract has terminated before its Start Date, the Phase 2 contract has terminated before its Start Date and the Phase 1 Start Date has occurred.
- If the contracts for all phases are terminated before their respective Start Dates, no CIB Performance Related Adjustment payments will be due from the generator(s) to LCCC and similarly, no CIB Extra Reward payments will be due from LCCC to the generator. If the contracts for all phases are terminated but not all before their respective Start Dates, the generator would be liable to pay to the LCCC either the balance of any remaining Performance Related Adjustment amount or the amount of payment they have received for generation of electricity under each of their CfDs from LCCC (whichever is lowest). Equally, the LCCC will be liable to pay the remaining balance of any CIB Payments within 30 business days from termination.
- For phased projects, Condition 54.1 has been amended to allow the rights and obligations of parties pursuant to Schedule 2 to survive termination of the contract. This is to allow the CIB obligations to survive termination of a contract for one phase of a project and continue to apply to other phases. For non-phased projects, only the provisions in Schedule 2 which concern outstanding payments due between LCCC and developers following termination will survive termination.

Section 2 – Contract changes outside of Schedule 2

Amendments to the Initial Conditions Precedent

The consultation proposed to add a provision related to the CIB to the initial conditions precedents (ICPs). This would require a generator to supply to the LCCC their CIB Statement and a director's certificate (setting out any details on whether the statement was withdrawn or amended) within 20 business days of the CfD Agreement Date.

ICPs are designed to demonstrate that generators awarded with a CfD can legally enter into, and perform their obligations under, the CfD. Including this condition ensures the LCCC is able to verify the generator's compliance with the CIB process. The government confirms that this proposal will be taken forward.

Provisions have also been added to include Schedule 2, which contains the majority of the additional contract terms for CIBs, in the definition of "Initial CP Provisions". This is a minor technical change to bring Schedule 2 into effect once a developer has met their ICPs (and before their Start Date) to reflect the fact that some of the obligations set out in Schedule 2 must be met before the Start Date.

Amendments to the Reconciliation Amounts to include CIB

Proposals

The consultation included proposals to amend the definition of Reconciliation Amounts to ensure that the LCCC's final payment calculations include, where relevant: any payments owed to the generator in relation to their CIB Extra Proposals and any Performance Related Adjustments related to the generator's failure to meet CIB Minimum Standard.

Summary of responses

Half of those who responded to this question (3 out of 6) agreed that the amendments to the reconciliation amounts are sufficiently clear and fit for purpose. Some respondents provided neutral answers, where it was unclear whether they agreed or disagreed. Of these, one respondent requested government make clear how the amendments would work in practice by providing more information and a worked example. A few respondents disagreed, pointing to perceived errors in language, referencing and typography at Paragraph 22.5 Section M(ii) and Section M(iii) and the title at Paragraph 7 of Schedule 2 respectively.

Policy response

The government will implement these proposals, in line with CfD methodology. A worked example has been provided in Annex 1. Some changes have been made to the drafting to improve clarity.

Amendments to the conditions of CfD payment suspensions

Proposals

The CfD contract specifies instances where a generator may face suspension of CfD payments due to non-compliance with contract conditions, such as failure to provide requested information to the LCCC. The consultation proposed to exclude CIB Payments from certain provisions related to the suspension of CfD payments, as that suspension could occur for a reason which has no link to CIB Payments. The consultation proposed to exclude the suspension of CIB Payments in instances where CfD payments were suspended under:

- condition 30.2 – suspension of payment where the generator has failed to comply with the undertaking to ensure that the generation technology deployed by the CfD Facility is the Facility Generation Technology.
- condition 31.11 – suspension of payment for breach of the Electrical Schematic Obligation.
- condition 31.17 – suspension of payment for breach of obligation to provide Metering Access Right.
- condition 32.17 – suspension of payment for failure to provide Know Your Customer information, accompanied by Director’s Certificate.

Summary of responses

Only five respondents answered this question, with the majority agreeing with the proposals. Only one respondent disagreed, asking for the term ‘Aggregate Facility CIB Extra Investment Reward Amount’ to be clearly defined and applied consistently.

Policy response

The government confirms that the policy proposal will be taken forward, with a minor drafting change to respond to concerns around clarity raised by respondents.

Amendments to exclude CIB from the CfD’s provisions on force majeure

The consultation outlined that CIB obligations will be excluded from the force majeure provisions in the CfD contract. The consultation did not ask a specific question about force majeure, but some general comments from the consultation response were concerned about

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the exclusion of force majeure from the contract. To clarify, the exclusion of force majeure relief from contract terms is because the CIB scheme has its own provisions for relief from obligations when events beyond the generator's control affect the delivery of CIB commitments. These provisions are detailed in the CIB Guidance as part of the process for obtaining a CIB Implementation Statement. This is more appropriate because the contract is between the LCCC and the generator, whereas a decision related to force majeure in relation to CIB commitments rests with the Secretary of State.

The government will implement this consultation proposal.

Annex 1: Clean Industry Bonus Payments – Worked Examples

Facility CIB Minimum Standard Performance Amount Process

Timeline	Action	Action Description	Worked Example
Start Date + 5 Business Days	Generator notifies LCCC of CIB Refusal and Facility CIB Minimum Standard Performance Amount.	The Generator must notify LCCC within 5 Business Days of the Start Date of their CIB Refusal and the Facility CIB Minimum Standard Performance Amount that is to be paid.	The Generator notifies LCCC on 1 February 20XX of their CIB Refusal that states the Generator must remit £10,000,000.
Within 30 Business Days of Receipt of Notice	LCCC notifies Generator of CIB Minimum Standard Performance Amount Instalments (MSPAs) and the payment period.	<p>Within 30 Business Days of receiving a CIB Refusal, LCCC will issue a notification of the CIB MSPAs.</p> <p>The quantum and periodicity of these Instalments will be determined by LCCC and deducted from payments due to the CfD Generator.</p> <p>The frequency of Instalments could, for example, be on a daily, monthly, or quarterly basis.</p> <p>The Instalments will not exceed the formula: $MAX = \text{Strike Price} \times \text{Metered Output}$, and is at the discretion of what LCCC believes reasonable to meet the Minimum Standard Performance Amount.</p>	<p>LCCC notifies the Generator on 1 February 20XX (+up to 30 Business Days) that their MSPAs should be remitted over a year, with payments starting on the date specified eg. 1st March 20XX.</p> <p>The £10,000,000 will be divided equally between each settlement day of the next year and deducted from Net CfD Payments.</p> <p>LCCC nominates that this amount will be invoiced eg. quarterly, as per the Billing Period.</p>

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Upon complete payment of MSPAI	LCCC notifies Generator that the obligation has been met.		LCCC notifies the Generator after the last Instalment has been paid, totalling £10,000,000, 1 year after payments began.
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CIB Extra Investment Reward Amount Process

Timeline	Action	Action Description	Worked Example
Start Date + 5 Business Days	Generator notifies LCCC of their CIB Implementation Statement	The Generator must notify LCCC of their CIB Implementation Statement within 5 Business Days of the Start Date.	The Generator notifies LCCC on 1 February 20XX of the CIB Implementation Statement.
Within 30 Business Days of: the Investment Final Date; LCCC receiving the Generator's notice; the date on which LCCC is satisfied the Generator is aware of the Instalments the date that CPI for January of the year in which the notice is being given has been published; or from time to time thereafter.	LCCC notifies the Generator of the CIB Extra Investment Reward Amount Instalments (EIRAs)	E.g., within 30 Business Days of receiving a Facility CIB Implementation Statement that confirms that the Facility CIB Extra Investment has been made in full or in part, LCCC will issue a notification of the EIRAs equal to the Payable Share of the Facility CIB Extra Investment Reward Amount. The quantum and periodicity of these Instalments will be determined by LCCC.	LCCC notifies the Generator that their EIRAs will be paid over a year in four equal quarterly payments, starting 28 days after the end of the next quarter. If the EIRAs are valued at £10m, payments of £2.5m will begin 28 days after the end of the next quarter. LCCC notifies the Generator on 1 February 20XX (+up to 30 BDs) that their EIRAs should be remitted over a year, with payments starting on the 1st July 20XX and on the 1st of each quarter thereafter.
No later than the end of the 4th year after the Start Date			LCCC notifies the Generator after the last Instalment has been paid.

This publication is available from: www.gov.uk/government/consultations/additions-to-the-cfd-contract-arising-from-the-introduction-of-the-clean-industry-bonus

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