



Department  
of Energy &  
Climate Change

# **Electricity Market Reform: Consultation on Regulations for Contracts for Difference (Standard Terms and Modifications)**

December 2013



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

Telephone: 0300 068 4000  
Website: [www.decc.gov.uk](http://www.decc.gov.uk)

© Crown Copyright 2013

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

For further information on this consultation, contact:  
EMR Programme Team  
Department of Energy and Climate Change  
3 Whitehall Place  
London  
SW1A 2AW

The consultation can be found on DECC's website:  
<https://econsultation.decc.gov.uk/decc-policy/regulations-contracts-for-difference>

Published by the Department of Energy and Climate Change

# Contents

<b>Contents</b> .....	<b>3</b>
<b>General information</b> .....	<b>4</b>
<b>Executive Summary</b> .....	<b>6</b>
Standard Terms for the Contract for Difference.....	6
Modifications to Standard Terms.....	6
CfD Notification and Contract Offer.....	7
Technologies to be assigned the Baseload or Intermittent Reference Prices .....	7
<b>Glossary</b> .....	<b>8</b>
<b>Introduction</b> .....	<b>9</b>
<b>Chapter 1: Standard Terms of the CfD</b> .....	<b>10</b>
Overview of Standard Terms .....	10
Issue and Revision of Standard Terms .....	10
Required Provision within Standard Terms .....	11
Consultation on Revision of Standard Terms .....	13
Publication of Standard Terms.....	14
Notice Periods for Revised Standard Terms .....	14
Consultation Questions – Standard Terms.....	15
<b>Chapter 2: Modification of Standard Terms</b> .....	<b>16</b>
Overview of Modification to Standard Terms.....	16
Modification Process.....	17
Definitions of ‘Minor’ and ‘Necessary’ .....	19
Requesting a Modification.....	19
Publication of Agreements .....	20
Consultation Questions – Modification of Terms .....	21
<b>Chapter 3: Notification and Offer of Contract</b> .....	<b>22</b>
Overview of the Notification and Contract Offer Process.....	22
Offer to Contract .....	22
Consultation Questions – Notification and Offer to Contract.....	22
<b>Chapter 4: Baseload and Intermittent Reference Prices</b> .....	<b>23</b>
Technologies to be Assigned Baseload and Intermittent Reference Prices.....	23
Consultation Questions – Intermittent and Baseload Reference Prices.....	24

# General information

## Purpose of this consultation

This consultation seeks to inform the public and interested stakeholders of the current proposed policy and regulatory framework underpinning the functioning of the contracts issued under the Contracts for Difference regime, itself the subject of [a prior consultation](#). Further, it seeks views and specific feedback on a number of aspects of the implementation and design of the policies described, in order to aid the Department in subsequent drafting.

**Issued:** 19/12/2013

**Respond by:** 07/02/2014

## Enquiries to:

EMR Programme Team,  
Department of Energy & Climate Change,  
4th Floor Area D,  
3 Whitehall Place,  
London, SW1A 2AW

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

Consultation reference: URN 13D/324 – Electricity Market Reform: Consultation on Regulations for Contracts for Difference (Standard Terms and Modifications)

## Territorial extent:

This consultation applies to England, Scotland, Wales and Northern Ireland.

## How to respond:

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

Responses should be made **either** through the online form found alongside this document at <https://econsultation.decc.gov.uk/decc-policy/regulations-cfd-standard-terms-modifications/consultation> or via e-mail to the above address.

## Additional copies:

You may make copies of this document without seeking permission.

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

## Confidentiality and data protection:

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

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

We will summarise all responses and place this summary on our website at [www.decc.gov.uk/en/content/cms/consultations/](http://www.decc.gov.uk/en/content/cms/consultations/). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

**Quality assurance:**

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

<http://www.bis.gov.uk/files/file47158.pdf>

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

DECC Consultation Co-ordinator

3 Whitehall Place

London SW1A 2AW

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

# Executive Summary

This document describes the regulations that will give the CfD contract legal effect, following the amendments to the Energy Bill, which were agreed in the House of Lords on 28 October and which received Royal Assent on Wednesday 18 December, becoming the Energy Act 2013. In particular, these regulations:

- *Establish a means to create “Standard Terms”*: The CfD regime will be implemented through a power for the Secretary of State to issue Standard Terms of the CfD, and revise them from time to time, subject to consultation requirements. This change establishes a clear set of common, Standard Terms, but also allows for them to evolve in light of experience, ensuring that they continue to deliver low-cost investment and minimise costs to consumers.
- *Define the nature of project-specific changes to the Standard Terms*: A new power will allow the CfD Counterparty to agree ‘minor and necessary’ modifications to the Standard Terms, pre-application, on a case by case basis. This is to ensure that the CfD is open to a broader range of eligible generators who would otherwise be excluded from participating because of their particular company structure.

Notably, this document does not address regulations relating to allocation or to transitional measures needed to give effect to other parts of the CfD regime. These will each feature in the coming months, but do not form a part of this document, which focuses upon the mechanisms enabling a contract to be published, altered and entered into.

The following pages set out the Government’s intended policy positions for four areas of the Contracts for Difference regime. Some of these will eventually be enshrined in regulations, the policy positions for which form the bulk of this document. Others form supporting positions which will sit outwith regulation while providing necessary detail. The areas are:

## Standard Terms for the Contract for Difference

1. [Regulations setting out that the Standard Terms must contain certain provisions \(paragraphs 17-18\)](#)
2. [Consultation on Revisions to Standard Terms \(paragraphs 19-26\)](#)
3. [Publication of Standard Terms \(paragraphs 28-29\)](#)
4. [Notice periods for revised Standard Terms \(paragraph 30\)](#)

## Modifications to Standard Terms

5. [Regulations concerning the process to be followed and the systems which apply when a generator seeks a ‘minor’ and ‘necessary’ modification of the Standard Terms from the CfD counterparty \(paragraphs 37- 48\)](#)
6. [Regulations concerning the definitions of ‘minor’ and ‘necessary’ \(paragraph 49\)](#)

7. [Regulations requiring the CfD Counterparty to specify how to request a modification \(paragraphs 50 - 52\)](#)
8. [Regulations requiring the publication of modifications \(paragraphs 53 - 55\)](#)

#### **CfD Notification and Contract Offer**

9. [The ability for the CfD Counterparty to advise the Secretary of State of the need for certain additional information required from the Delivery Body regarding generators \(included as part of their CfD applications\) \(paragraph 56\).](#)
10. [Regulations will require the CfD Counterparty to respond to a notification by offering a contract \(paragraph 58 - 59\)](#)
11. [Regulations will specify the deadline for the generator to sign a CfD in response to an offer from the CfD Counterparty \(paragraph 60\)](#)

#### **Technologies to be assigned the Baseload or Intermittent Reference Prices**

12. [Lists of technologies to be assigned the baseload and intermittent reference prices, providing an example of variance of clauses within the Standard Terms \(paragraphs 61 - 64\)](#)

# Glossary

<b>Category</b>	A distinct set of Standard Terms containing provisions tailored for particular circumstances beyond those unique to a single project. Examples may include categories for radically different technologies or projects, or for different electricity markets.
<b>CfD</b>	The Contract for Difference: The combination of the Standard Terms and a CfD Agreement (detailing any modifications to the Standard Terms), which when signed by the CfD Counterparty and an eligible generator comprise a single legally binding contract. These two elements are published together, forming the totality of the “Standard Terms and conditions” that the Energy Act empowers the Secretary of State to publish.
<b>CfD Agreement</b>	The front section of a CfD which details the project-specific information relating to that particular contract, such as the eligible generator’s name and the location of the facility that is the subject of the CfD. The CfD Agreement is comparable to the cover sheet which accompanies many commercial contracts.
<b>CfD Counterparty</b>	The Government owned company that will be the counterparty for CfDs, which will be the CFD Counterparty Company Limited.
<b>Delivery Body</b>	The body responsible for processing applications for allocation of a CfD and issuing notifications of allocation to the CfD Counterparty. In the first instance this will be the national System Operator, though the Act provides for this function to be transferred by the Secretary of State to another body.
<b>Eligible Generator</b>	An electricity generator meeting the definition of “eligible generator” set out in regulations <sup>1</sup> made under the Energy Act 2013.
<b>Energy Act</b>	The Energy Act 2013.
<b>Modification Agreement</b>	A change to the Standard Terms agreed by the CfD Counterparty and a generator before that generator applies for a CfD (see chapter 2).
<b>Standard Terms</b>	The Standard Terms of the CfD, as published by the Secretary of State.

---

<sup>1</sup> Only eligible generators may be allocated a CFD. An eligible generator will have to satisfy qualification requirements set out in allocation regulations in order to be part of a process leading to the allocation of CfDs.

# Introduction

1. On 10 October 2013 we published *Electricity Market Reform: Consultation on Proposals for Implementation*<sup>2</sup>, providing an overview of plans for the implementation of EMR and draft secondary legislation. That consultation will close on 24 December 2013.
2. This publication builds on the information published in *Electricity Market Reform: Consultation on Proposals for Implementation*, in particular in paragraphs 177 to 191, and sets out the Government's intended policy for how the CfD will be given legal effect. The consultation for this publication will close on Friday 7 February 2014, and will inform the finalisation of the regulations which will be laid before Parliament in order to come into force in summer 2014.
3. We are providing this update as the drafting of regulations required a number of amendments to the Energy Bill, which were passed on 28 October 2013. These amendments were agreed by both Houses of Parliament prior to the Bill gaining Royal Assent and we are therefore able to describe in detail how they will work in practice.
4. A draft CfD was published on 7 August 2013<sup>3</sup>, and the next version is being published alongside this document (but does not form part of this consultation).<sup>4</sup> More information, including an overview, of the CfD regime can be found in the EMR documents published in June 2013<sup>5</sup>, November 2012<sup>6</sup> and May 2012<sup>7</sup>.
5. The following four sections describe the policy proposals for (i) Standard Terms of the CfD, (ii) modification of Standard Terms, (iii) the notification and offer of a CfD contract, and (iv) the technologies that will receive the baseload or intermittent references prices, illustrating one instance of the elements which cause the Standard Terms to differ in application. Sections i – iii result from the amendments made to the Energy Bill in October 2013<sup>8</sup>.
6. The policy described in this document, and in *Electricity Market Reform: Consultation on Proposals for Implementation*, will principally be of concern to electricity generators, suppliers, investors and consumers.

---

<sup>2</sup> <https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform>

<sup>3</sup> <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

<sup>4</sup> <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/209276/EMR\\_Spending\\_Review\\_Announcement\\_-\\_FINAL\\_PDF.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209276/EMR_Spending_Review_Announcement_-_FINAL_PDF.pdf)

<sup>6</sup> <https://www.gov.uk/government/publications/electricity-market-reform-policy-overview--2>

<sup>7</sup> <https://www.gov.uk/government/publications/electricity-market-reform-policy-overview>

<sup>8</sup> <http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0048/amend/am048-d.htm>

# Chapter 1: Standard Terms of the CfD

## Overview of Standard Terms

7. A CfD will consist of two parts: Standard Terms and a CfD Agreement. The Standard Terms of the CfD will be a full set of contractual terms that will apply across all comparable CfDs (though in some cases, where necessary, it may be possible to make minor modifications that do not affect the value of the contract – see Chapter 2). The CfD Agreement will list project-specific information, such as the generator's name, technology type, strike price, Target Commissioning Date etc. Some of these details will affect how the Standard Terms apply to the project e.g. whether the CfD makes use of the intermittent or baseload market reference price. Together these two documents make up the CfD, which will be signed by the two parties to the agreement – the generator and the CfD Counterparty.
8. As well as making provision for the arrangement set out above, a recent addition to the newly enacted Energy Act regarding Standard Terms (section 11) makes provision for there to be different categories of Standard Terms. This allows for different sets of Standard Terms for specific categories of generators, for example those using particular generation technologies, or those in Northern Ireland, where we are working with DETI and stakeholders to develop a set of Standard Terms that account for the characteristics of their distinct electricity market.

## Issue and Revision of Standard Terms

9. Section 11 of the Energy Act gives the Secretary of State the power to issue, and from time to time revise, Standard Terms. The power to revise Standard Terms is required because it is impossible to predict absolutely the potential form the electricity market, generation technologies and the prevailing commercial reality will take. The flexibility for the Secretary of State to revise Standard Terms is therefore essential.
10. There are a range of possible triggers for the Secretary of State to revise Standard Terms. The general principle is to ensure that the Standard Terms best achieve the objectives listed in section 5(2) of the Energy Act. To this end, triggers for a revision to the Standard Terms may include:
  - a. Changes in technology, such as developments in metering, or the introduction of new technologies;
  - b. Changes in energy markets, such as the integration of energy markets across the EU;
  - c. Should a manifest error be found in a version of the Standard Terms.

11. Any revisions to the Standard Terms will apply only to CfDs not yet signed. Revisions will not apply retroactively. Once a CfD is signed it can only be changed in accordance with the provisions in the contract<sup>9</sup>.
12. In issuing or revising the Standard Terms the Secretary of State must have regard to the matters listed in section 5(2) of the Act. These matters include the decarbonisation targets in the Climate Change Act (2008), ensuring security of supply, minimising the likely cost to consumers, and complying with the EU's renewables directive.
13. In addition the Secretary of State must issue (and revise) Standard Terms in accordance with provision made in regulations. The regulations will require provision to cover certain matters in every version of the Standard Terms.
14. The methodology for distinguishing different categories and different versions of the Standard Terms (i.e. what each version and category will be called) will be determined in advance, ensuring that all parties can have confidence that they are referring to a common set of terms.
15. In support of transparency and in order to aid eligible generators in understanding existing arrangements, regulations will require that the CfD Counterparty will maintain a register of signed CfDs, including the identities of generators and the nature of their contracts (i.e. their category and relevant details contained within their CfD Agreements). As a consequence, terminations of CfDs will also be reflected within this register. Note also the publication of modification requests and determinations (see paragraphs 58-60).

## Required Provision within Standard Terms

16. Regulations will set out the minimum provision that must be made in every version of every category of the Standard Terms. These are the areas that go to the core of what a CfD must describe in order to fulfil its functions, and it is proposed to set them out in regulations in order to provide certainty to potential developers and investors that the basic elements of the Standard Terms will be retained as they are revised and differentiated over time.
17. Currently the Act defines a CfD as “a contract – (a) certain payments under which are to be funded by electricity suppliers... and (b) which a CfD Counterparty is required to enter into by virtue of sections 10 or 14”. By listing this minimum provision in regulations, in order to help define the nature of a CfD over the long term, regulations will provide substantial additional clarity on what a CfD is, and will continue to be.
18. The key areas that must be in every version of the Standard Terms are listed below.
  - a. Term – the duration for price support under the CfD.
  - b. Calculation of Metered Output, Market Reference Price and Strike Price – the metering requirements for CfD recipients; process and formulae used to calculate

---

<sup>9</sup> See Annex 2 in the latest version of the Standard Terms, available at <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

the market price (currently there is one formula for the baseload reference price and one formula for the intermittent reference price); and details of the strike price.

- c. Changes in law – for certain changes in law to result in compensation for a party.
- d. Installed capacity adjustment – the process and amount by which a CfD recipient may reduce their project capacity.
- e. Conditions precedent – the requirements that a CfD recipient must fulfil within a specific period after contract signature in order for payments to commence.
- f. General provisions regarding liabilities, remedies and waivers – including clauses such as force majeure – the situations in which specific actions undertaken or not undertaken by the CfD recipient, which would otherwise be deemed breaches of their contract, would be considered to be sufficiently outside of their control to warrant no sanction – and limited recourse – which sets out that the liability of the CfD Counterparty shall not exceed the amount received and held by the CfD Counterparty from suppliers, alongside other general provisions associated with representations, waivers and warranties.
- g. Dispute resolution – the processes by which disputes between the CfD Counterparty and the generator are resolved.
- h. Termination – the reasons for and processes by which the CfD Counterparty may terminate a CfD and any associated payments.
- i. Change control procedure – how the CfD can be amended, transferred or assigned after contract execution.

## Consultation on Revision of Standard Terms

19. The Secretary of State will consult before issuing or revising Standard Terms. The policy intention is that the process of consultation will differ according to whether the revision is technical or material in nature, defined according to its estimated economic impact on generators. Although at this stage a commitment is not made in either case to specific periods of consultation on revisions, a material consultation is expected to be held for a longer period than that for a purely technical revision.
21. Technical revisions will be defined as revisions that do not have a material effect on the economics of a project for an eligible generator, compared to the status quo (i.e. the currently applicable version of the Standard Terms), as determined by the Secretary of State. Technical Revisions are envisioned to be necessary to make the CfD regime function as intended following a change in circumstance. This might result from technological progress, such as if metering systems develop to a point where they are no longer covered under the metering clauses of the current Standard Terms, or other immaterial matters, such as an improvement to the way a certain clause is drafted to improve clarity.
22. The consultation process for Technical Revisions is envisioned as follows:
  - a. The Secretary of State will publish the proposed revision, explaining why it is necessary;
  - b. An adequate period of consultation will follow;
  - c. Subsequently, the Secretary of State will confirm his/her position by issuing revised Standard Terms.
23. Material Revisions will be defined as revisions that do have a material effect on the economics of a project for an eligible generator, compared to the status quo (i.e. the current version of the Standard Terms).
24. Material Revisions may also include the addition or removal of clauses to respond to new areas impacting upon the contract's ability to carry out the original policy intent of the CfD regime, such as substantial changes to the structure of industry codes or documents, or changes to the ways in which investors finance low carbon electricity generation. In addition Material Revisions may include new schedules to the contract, or new categories of Standard Terms, such as may be issued to enable the CfD to apply to Northern Ireland.
25. The consultation period and process for Material Revisions is envisioned as follows:
  - a. The Secretary of State will publish the proposed revision, explaining why it is necessary;
  - b. An adequate period of consultation will follow;
  - c. The Secretary of State must subsequently publish a summary of and response to the written input;

- d. The Secretary of State will then confirm his/her position by issuing revised Standard Terms.
26. Consultation on the first set of CfD terms is being undertaken by way of the iterative process through which stakeholders have been involved in the development of the Standard Terms. This process has seen extensive stakeholder input after the publication of each successive draft of the Standard Terms, beginning with the publication of the Heads of Terms in November 2012, followed by the August 2013 publication, and to be continued with the updated draft CfD Contract published alongside this document.<sup>10</sup>
  27. The final version of the Standard Terms, which will be published in the spring of 2014, will have undergone three successive rounds of stakeholder input over a period of roughly 15 months.

## Publication of Standard Terms

28. Section 11 of the Energy Act requires the Secretary of State to publish Standard Terms, as issued or revised. This requirement will provide a comprehensive and up to date record of every version of the Standard Terms, ensuring maximum transparency.
29. The Secretary of State will publish copies of different categories and versions of the Standard Terms alongside the following information:
  - a. When the Standard Terms (including any subsequent revised sets of Standard Terms) are expected to come into force (see paragraph 30);
  - b. The changes made to the previous version(s) of the same category of Standard Terms;
  - c. An explanation of why those changes were made.

## Notice Periods for Revised Standard Terms

30. The Standard Terms to apply to generators applying for a CfD at any point will be made clear prior to the time of their application, at present this is expected to form a part of the guidance published alongside each set of Standard Terms. In addition, revised Standard Terms will not be applied immediately. Notice periods will be observed to recognise that generators preparing their applications for a CfD may require time to adapt to any revisions to the Standard Terms. Revised Standard Terms are expected to be used by the CfD Counterparty for all generators who apply:

---

<sup>10</sup> <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference>

- a. In the context of first come first served allocation – a reasonable time after the revised Standard Terms have been published by the Secretary of State. We would expect this notice to sit at around 12 weeks, though no fixed period is intended.
- b. In the context of constrained allocation – the Standard Terms to apply to a specific allocation round will be specified in advance of that round.

## Consultation Questions – Standard Terms

Consultation Questions	
1.	The use of required provisions seeks to promote certainty regarding the content of the Standard Terms over time and throughout multiple revisions while retaining necessary flexibility for the Secretary of State. What are your views on this rationale?
2.	The definitions and processes for technical and material revisions to the Standard Terms by the Secretary of State seek to provide a process that is both fair to stakeholders and appropriately responsive – do you think the balance is right? If not, why, and how could the proposals be improved?
3.	Are the periods of notice in advance of new terms entering into use appropriate, in your view?
4.	Do you have any other concerns regarding the areas of proposed regulation and policy described?

# Chapter 2: Modification of Standard Terms

## Overview of Modification to Standard Terms

31. The Standard Terms are being drafted in order to apply to a range of eligible generators; however, there may be situations in which modifications are required. For example, modifications may be necessary for particular forms of corporate structure or for private wire installations.
32. The Energy Act contains provision, within section 15, allowing the modification of Standard Terms. The modification process allows modifications to the Standard Terms to be agreed between the generator and the CfD Counterparty, on a case by case basis. Any modifications to the Standard Terms must be agreed between the generator and the CfD Counterparty prior to the generator applying for a CfD.
33. It is important that the process be tightly constrained, limited only to changes that do not have a material effect, and not used by generators merely to secure commercial advantage. Therefore, the draft regulations seek to balance a flexible procedure with one that will enable only tightly defined modifications to take place.
34. Section 15 of the Energy Act gives the CfD Counterparty the power to agree modifications with generators if the following three conditions are met:
  - a. The CfD Counterparty is satisfied that the effect of the modification is minor;
  - b. The CfD Counterparty is satisfied that the modification is necessary;
  - c. The terms to be modified have not been designated as terms that may not be modified (see paragraph 48).
35. The modification process will provide necessary flexibility in the early stages of the CfD regime, however we expect that the process itself will evolve as the CfD regime matures and the CfD Counterparty builds on its expertise. For example what may start out as common modifications (such as for private wire projects) may in due course no longer be needed because the Secretary of State is able to issue a new category of Standard Terms to provide for that particular type of eligible generator.
36. Section 11 of the Energy Act gives the Secretary of State the power to designate certain terms as those which that may not be modified when revising the Standard Terms. This will provide clarity to investors, generators and the CfD Counterparty.

## Modification Process

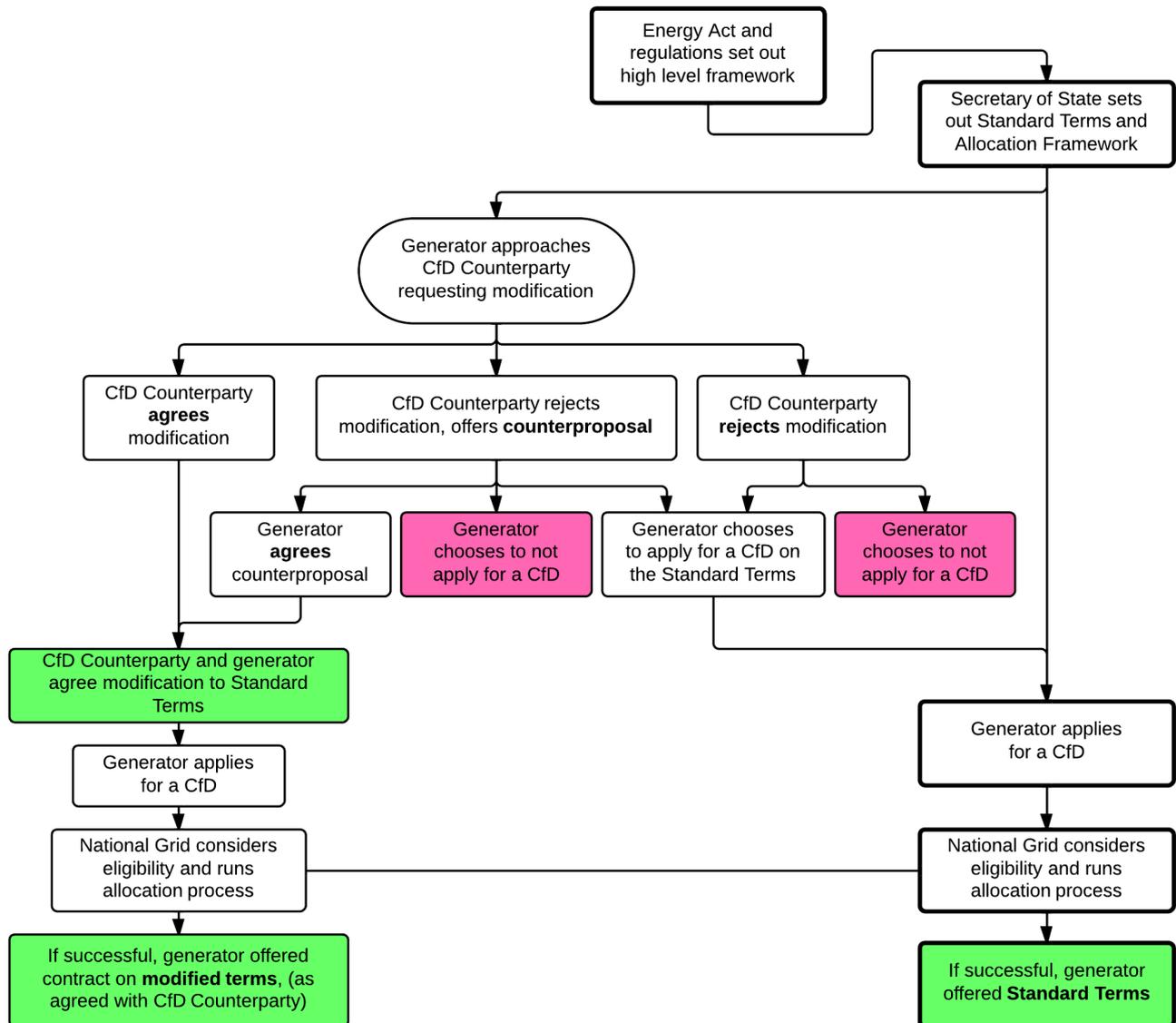


Figure 1

37. The modification process will consist of the following steps (as depicted in figure 1, above):
- The generator requests the modification from the CfD Counterparty, supplying the information required (paragraph 51);
  - The CfD Counterparty assesses the request, aiming to comply with a published indicative timetable (see paragraph 46), however the draft regulations will only oblige the CfD Counterparty to complete this task within a reasonable time;
  - The CfD Counterparty informs the generator of their determination, which can be to agree the request, reject it, or to make a counterproposal;

- d. If the applicant's modification request is agreed they may then apply for a CfD, and if they are successful they will be offered a contract on the Standard Terms as modified.
38. The generator that has requested a modification may apply for a CfD on the Standard Terms at any time, though doing so may result in the refusal of their modification application due to a demonstrable lack of necessity.
39. The CfD Counterparty will be required to provide, as part of the detail regarding the modification process, estimates for how long generators should expect to wait before receiving a determination on their request.
40. Regulations will set out that, in response to a modification application, the CfD Counterparty can respond in one of three ways:
  - a. Agree the application, if in the reasonable opinion of the CfD Counterparty the modification would be 'minor and necessary';
  - b. Reject the application, if the modification would not, in the reasonable opinion of the CfD Counterparty, be 'minor and necessary';
  - c. Offer a counterproposal, if in the reasonable opinion of the CfD Counterparty such a counterproposal achieves the intent of the modification application in a way that is more clearly 'minor and necessary' than the proposal contained in the application, and which meets the threshold of certainty required to approve a request.
41. If the CfD Counterparty agrees the modification request they will inform the generator at the earliest opportunity, and the generator may then apply for a CfD as modified in their request.
42. If the CfD Counterparty offers the generator a counterproposal they will inform the generator of both the decision and the text of the counterproposal, and the generator may then apply for a CfD either on the Standard Terms or as modified by the CfD Counterparty's counterproposal.
43. If the CfD Counterparty rejects the modification application they will inform the generator at the earliest opportunity. The generator may then apply for a CfD on the Standard Terms.
44. Generators will need certainty that any modifications agreed with the CfD Counterparty will be valid long enough for them to apply for and receive a CfD. To this end we propose that a modification agreement will remain valid, subject to the exceptions below, for as long as it remains possible for the CfD Counterparty to make use of the agreed modifications within the same bounds. To this end, when terms are revised the CfD Counterparty will have the ability, though not the obligation, to extinguish existing agreements.
45. Regulations will specify that, if the request results in either a counterproposal or a rejection, the CfD Counterparty will provide the generator with an explanation of the decision.
46. During periods of First Come First Served allocation the CfD Counterparty will publish a reasonable estimate of how long it will take them to assess a modification request. We expect this to be roughly 20 working days. When the Secretary of State publishes a new or revised set of Standard Terms, this will be accompanied by guidance intended to aid

generators in timing their applications such that a modification may be sought within sufficient time. Gaining a modification agreement before the closure of the application window within a particular allocation round is the responsibility of the generator, and no guarantee can be given on entering in to an application for modification that entry into the relevant allocation round will be possible.

47. The generator will specify which of the Standard Terms they wish to modify. Should there be a revision to those terms in the period between their modification request and the offer to contract, and the request is agreed, the CfD Counterparty will endeavour to apply the modification to the new version of Standard Terms. Where that is not possible, as outlined above, the CfD Counterparty may terminate the agreement.
48. Sections 11 and 15(3)(b) give the Secretary of State the power to create or add to a list of Standard Terms that may not be modified. This list will be publicly available, affecting all open and future modification requests (until the list is updated), but not those already determined. The terms designated as terms which may not be modified are likely to be those that go to the value of a CfD (i.e. those for which modification is never 'minor'), such as those with formulae.

## Definitions of 'Minor' and 'Necessary'

49. The definitions of 'minor' and 'necessary' will be central to the modification process. The draft definitions, to be included in the regulations, will reflect the following understanding, though transposed into appropriate regulatory language:

Minor – the risk-reward levels of the modified CfD are no more favourable than those represented by the Standard Terms, all things being equal, in the reasonable opinion of the CfD Counterparty.

Necessary – the applicant is unable to sign the Standard Terms having, in the reasonable opinion of the CfD Counterparty, taken all steps which a reasonable and prudent generator could take, were a modification to the contract not possible.

## Requesting a Modification

50. Regulations will specify that the CfD Counterparty is to provide details of the information required for a modification request, and the process that will be followed in assessing such requests.
51. By way of illustration, the information required from a generator when submitting a modification request may include the following:
  - a. Their details (e.g. company's name and address);

- b. The Standard Term(s) that they wish to modify (and the category of Standard Terms);
  - c. Why they believe that they would be unable to sign a CfD using the Standard Terms, and why the modification is considered necessary;
  - d. How they wish to modify the Standard Terms (i.e. the wording that they wish to remove and/or add);
  - e. Any supporting evidence in relation to parts (c) and (d) above, as required by the CfD Counterparty, and as the generator considers appropriate;
  - f. A director's certificate attesting to the modification request's compliance with all requirements, including confirmation that, in their view, the modification(s) would be 'minor' and 'necessary'.
52. The guidance for modification requests published by the CfD Counterparty will include information about those forms of evidence that may be required, or encouraged, as part of a modification request. This may include:
- a. References to previous modification determinations (see paragraph 53);
  - b. Financial or economic modelling or analysis;
  - c. The generator's founding documents or evidence of other legal constraints;
  - d. Details of any agreements upon which the planned project relies.

## Publication of Agreements

53. Regulations will require that the CfD Counterparty will publish every agreement it makes following a modification request, alongside reasoning used to reach this agreement. This will enable stakeholders to see what modifications have been requested and received, and help generators to plan their own modification requests.
54. In their detailed guidance the CfD Counterparty will make clear to generators requesting modifications that any resulting agreement will be published, alongside the reasoning employed by the CfD Counterparty in reaching that decision. Although there is not expected to be anything within an agreement or reasoning that will be commercially sensitive, excluding as it does much of the potentially confidential information provided by the generator within its application, there may be scope to agree the redaction of certain information with the consent of the CfD Counterparty, subject to the limitations described below.
55. The generator and the CfD Counterparty must agree on any redactions prior to their informing the generator of its decision, though generators should be aware that such requests must be balanced against the requirements of the Freedom of Information Act (2000) and the Environmental Information Regulations (2004). Should the generator and

the CfD Counterparty fail to agree on the material that would be redacted following a determination, the generator may choose to withdraw their modification request.

## Consultation Questions – Modification of Terms

Consultation Questions	
1.	The proposed process for requesting modifications seeks to balance flexibility whilst maintaining the balance of risk in the Standard Terms. On this basis, how do you view the proposed process?
2.	The definitions of 'minor' and 'necessary' aim to ensure that only minor reasonable requests can be accommodated. In light of this, how do you view the definitions?
3.	These proposals aim to ensure open and public access to as much of the modification process as is commercially practicable. What are your views on the publication of modification requests and decisions, and the redaction of commercially sensitive information?
4.	How might these processes be altered to enhance access for smaller or independent generators?
5.	Are there any ways in which the proposals under this section be improved while still achieving the goals outlined?

# Chapter 3: Notification and Offer of Contract

## Overview of the Notification and Contract Offer Process

56. The information that the CfD Counterparty will require in order to offer a contract, and which will be contained in the notification provided by the Delivery Body to the CfD Counterparty, will be that used to complete the CfD Agreement. Therefore, when the Secretary of State revises the Standard Terms in a way which affects the CfD and alters these information requirements, corresponding steps will be taken to ensure that the information required on CfD applications is listed.
57. Allocation Regulations, beyond the scope of this consultation, will specify how the Delivery Body will notify the CfD Counterparty of an allocation decision, while the means by which the CfD Counterparty is then to act upon that notification and offer the specified generator a contract features below.

## Offer to Contract

58. Regulations under section 14 of the Energy Act will require that the CfD Counterparty, upon receiving a notification from the Delivery Body, must offer the specified generator a contract within a reasonable time. The Standard Terms to apply for each contract offer will be those that the applicant applied for, as specified in advance of the relevant allocation round, likely within the Allocation Framework although other means are being actively explored.
59. A balance of published direction and regulation will outline the process to be employed by the CfD Counterparty in completing the contract. It is expected that the offer to contract will involve the CfD Counterparty inserting the correct information into the CfD Agreement, deleting inapplicable clauses, and then sending the generator two unsigned copies of the complete CfD.
60. Regulations will specify that the generator will have 15 working days to return two signed copies of the CfD to the CfD Counterparty. If they do not do so within 15 working days the CfD Counterparty will have the right to withdraw the offer of a CfD.

## Consultation Questions – Notification and Offer to Contract

Consultation Questions	
1.	<b>In your view, will the proposed mechanisms for notification and offer to contract function effectively? How might they be improved?</b>

## Chapter 4: Baseload and Intermittent Reference Prices

### Technologies to be Assigned Baseload and Intermittent Reference Prices

61. One of the key areas where the CfD Agreement will specify which of the clauses within the Standard Terms apply, and which do not, is the reference price assigned. It is essential that the CfD Counterparty, the Delivery Body and the Generator each understand and have clarity on which of the two reference prices are to be used for a given project. The proposed position is as follows.
62. Technologies to receive the baseload reference price will be:
  - a. Advanced conversion technology;
  - b. AD;
  - c. CCS;
  - d. Dedicated biomass with CHP;
  - e. electricity generated from a biomass conversion station;
  - f. electricity generated from landfill gas;
  - g. electricity generated from sewage gas;
  - h. Energy from qualifying waste with CHP;
  - i. Geothermal;
  - j. Hydroelectric;
  - k. Electricity generated from nuclear energy.
63. Technologies to receive the intermittent reference price will be:
  - a. Electricity generated from offshore wind;
  - b. Electricity generated from onshore wind;
  - c. Solar photovoltaic;
  - d. Tidal range;
  - e. Tidal stream;

f. Wave.

64. Concerns have been raised as to whether smaller, independent baseload generators would be able to achieve the Baseload Reference Price. In response to these concerns a number of measures are being considered which might reduce the reference price risks faced by smaller baseload generators (in particular those less than 5MW). To inform our assessment we would welcome evidence of the impact that the baseload reference price would have on such generators. We will continue to engage with stakeholders on the potential need for and design of any measures in Q1 2014.

## Consultation Questions – Intermittent and Baseload Reference Prices

Consultation Questions	
1.	What are your views on the proposals for the technologies to receive the baseload and intermittent reference prices?
2.	What are your views on the potential need to make alternate arrangements for smaller generators (supported, where possible, by evidence)?

© Crown Copyright 2013

Department of Energy & Climate Change  
3 Whitehall Place  
London SW1A © Crown Copyright 2013

Department of Energy & Climate Change  
3 Whitehall Place  
London SW1A 2HD  
[www.decc.gov.uk](http://www.decc.gov.uk)

**URN 13D/324**