



Department
of Energy &
Climate Change

EMR: Contracts for Difference (Allocation) Regulations

Consultation on Non-Delivery Disincentive
Exemptions

September 2014

URN: 14D/359

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The consultation can be found on DECC's website:

<https://www.gov.uk/government/consultations/emr-contracts-for-difference-allocation-regulations-consultation-on-non-delivery-disincentive-exemptions>

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General information

Purpose of this consultation:

The Government is seeking views on further details of the policy that will introduce incentives to prevent early drop out and encourage contract signature and delivery of a CFD.

We intend for the changes to be introduced via amendments to *The Contracts for Difference (Allocation) Regulations 2014*.

This consultation is particularly relevant to: low carbon generators (or those intending to be) in Great Britain – i.e. potential CFD applicants; persons with legal interests in land e.g. freehold owners, leaseholders and any other persons with property interests that may be relevant to potential CFD applications; the operator of the National Electricity Transmission System for Great Britain; and other stakeholders with an interest in the energy sector. DECC invites interested parties to submit comments and evidence.

Issued: 25 September 2014

Respond by: 5 November 2014

Enquiries to:

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Consultation reference: URN: 14D/359 - Consultation on Non-Delivery Disincentive Exemptions

Territorial extent:

This consultation applies to England, Scotland and Wales.

How to respond:

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation and, where applicable, how the views of members were assembled.

Electronic responses can be emailed to: CFDconsultation@decc.gsi.gov.uk

Hard copy responses can be sent to the address above.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at: <https://www.gov.uk/government/consultations/emr-contracts-for-difference-allocation-regulations-consultation-on-non-delivery-disincentive-exemptions>

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us at 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 include this in the Government Response. This 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

Introduction

1. This document sets out proposals for the Non-Delivery Disincentive (NDD) for Contracts for Difference (CFDs). This policy is intended to incentivise successful CFD applicants to deliver their projects and to minimise the risk of CFD contracts being awarded to projects which are unable to deliver¹.
2. This consultation covers proposed amendments to *The Contracts for Difference (Allocation) Regulations 2014* (the 'Allocation Regulations') and is published alongside separate EMR consultations on changes to the CFD supplier obligation and supplementary design proposals on the Capacity Market. Following the consultation we will consider responses. Final decisions will be set out in the Government responses to these consultations, which will be published to coincide with the laying of any secondary legislation required to implement the decisions. We intend to lay amending implementing secondary legislation before Parliament in early 2015. Subject to approval of the draft regulations by Parliament, the changes are intended to be in force for the second CFD allocation round.
3. It should be noted that we intend for the Non-Delivery Disincentive policy as set out in this document to apply from the first allocation round, such that any excluded applicants will be checked in the second allocation round - subject to changes to the policy and its implementation made as a result of this consultation. Whilst the details of the policy approach described by this consultation are subject to further refinement, applicants for the first allocation round should note that the policy as described below is intended to take effect in respect of applications made for a CFD in that round.

Overview of Electricity Market Reform (EMR)

Objectives and challenges

4. Our electricity market faces major challenges throughout the next decade and beyond. Electricity Market Reform (EMR) creates a framework to transform the UK electricity market to meet these challenges, and will:
 - Maintain a secure supply of electricity, as the UK faces very rapid closure of existing capacity as older, more polluting plant go offline.

¹ For further detail see page 14.

- Enable the UK to meet its ambitious climate and renewable targets to build a cleaner energy future for Britain and the world; and
 - Power an increasing electricity demand over the next 40 years as we increasingly turn to electricity for heat and transport.
5. EMR is aimed at incentivising increased investment in secure, low-carbon electricity generation; not only to meet these challenges, but to improve affordability for consumers. We estimate up to £110 billion of investment is needed in the sector by the end of the decade to achieve our objectives.
 6. EMR will support a range of forms of low carbon generation and thus diversify our domestic energy supply, helping to improve our energy security and reduce reliance on energy imports. This will help to avoid blackouts, while also protecting consumers against global spikes in fossil fuel prices.
 7. Therefore, EMR is a set of arrangements to take us through this transition, working with the existing market to address market failures. It will ensure that the UK remains a leading destination for investment in low carbon electricity – boosting our economy and generating skills, expertise and hundreds of thousands of jobs in this sector.
 8. Further information on the objectives and benefits of EMR can be found on the DECC website².

The EMR framework

9. This section provides an overview of the framework which has been put in place to allow the new arrangements of EMR to operate. This includes:
 - The legal framework: The Energy Act 2013 provides the Secretary of State with the powers needed to implement the reforms. The Secretary of State has exercised powers through secondary legislation (statutory instruments known as regulations), in rules, in an Allocation Framework and also through licence modifications. Therefore, the suite of EMR implementing legislation contains various instruments which often must be considered together in order to get a complete picture of how the reforms operate.
 - The Levy Control Framework (LCF): The LCF sets annual limits on the overall costs of all DECC's low carbon electricity levy-funded policies to control public expenditure paid for through consumer energy bills. The LCF was extended to 2020/21 specifically for low carbon electricity policies to inform decisions on new mechanisms, and has been

² <https://www.gov.uk/government/policies/maintaining-uk-energy-security--2/supporting-pages/electricity-market-reform>

set at a level which will enable us to cost-effectively meet our low carbon and renewables ambitions.

- The institutional framework: As well as the Government, the organisations involved in the delivery of CFDs and the Capacity Market include existing bodies such as Ofgem; the System Operator, National Grid; ELEXON, as well as a new institution: the Low Carbon Contracts Company (LCCC).
- EMR supporting measures: The reforms will work alongside other Government energy market measures, including an Emissions Performance Standard to limit emissions from newly built fossil fuel power stations, the Carbon Price Floor, and a package of reforms to encourage market liquidity and new entrants.

Each of these areas is discussed in more detail in the *Implementing EMR* publication, published June 2014³.

Contracts for Difference (CFDs)

10. EMR will create a new mechanism to provide long-term price stabilisation to incentivise investment in low-carbon generation – Contracts for Difference (CFDs). CFDs will help to ensure that we secure the necessary investment in low carbon electricity generation.
11. A CFD is a private law contract between a low carbon electricity generator and the Low Carbon Contracts Company (LCCC), a Government-owned company. A CFD holder is paid the difference between the ‘strike price’, a price for electricity reflecting the cost of investing in a particular low carbon technology, and the ‘reference price’, a measure of the average market price for electricity in the GB market. It gives greater price stability to electricity generators by reducing their exposure to volatile wholesale prices, whilst protecting consumers from paying for higher support costs when electricity prices are high. In this way, CFDs provide efficient long-term support for all forms of low carbon generation. Full background and details on how CFDs are intended to operate, including the detail of contract terms and conditions can be found on the Government website⁴.
12. The cost of CFDs will be met by electricity consumers via the supplier obligation, a levy on electricity suppliers.
13. The process for allocating CFDs will be overseen by the EMR Delivery Body, National Grid, who will notify the LCCC of the projects that have been successful in an allocation round. The LCCC will then offer a CFD based on a set of standard terms, with some limited scope to make minor and technical modifications to these terms. The Government retains a power to direct the LCCC to enter into CFDs outside of these procedures.

³ See pages 16-23 at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324176/Implementing_Electricity_Market_Reform.pdf

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

14. Further detail on the allocation process are provided in the *Implementing EMR* publication⁵.

Eligibility to apply for a CFD

15. The Delivery Body will determine whether or not an application made by an eligible generator meets the various eligibility criteria so that eligible applicants may take part in the CFD allocation process. A complete set of detailed requirements are outlined in the Allocation Regulations⁶ and the Allocation Framework⁷.

16. Examples of some key eligibility criteria are described below:

- The generating station must not be an excluded application as defined by Regulation 14 in the Allocation Regulations (e.g. the station is not already in receipt of funds from other Government support schemes except in the case of dual scheme facilities).
- Applicable planning consents have been given for the proposed generating station and other relevant works that enable electricity to be generated under the appropriate consenting regimes.
- All relevant supporting information has been included with the application. For example, name and contact details of applicant (or GB based agent if applicant is not based in GB), company registration and VAT numbers, project information (i.e. name, technology type, location, proposed capacity, phases and target dates), and description of the generating station – including the postcode, the geographic coordinates, and/or the Ordnance Survey Grid Reference for the location of the station.

17. *The Contracts for Difference (Definition of Eligible Generator) Regulations 2014*⁸ define a list of the renewable technologies and any associated fuels that are eligible for CFDs. The Allocation Framework further sets out the evidential requirements in relation to eligibility.

18. Applicants for CFDs will be required to provide the Delivery Body with evidence that the proposed project meets the eligibility criteria. Applicants will also be required to certify that all evidence provided with the application is true, complete and accurate.

19. Failure to meet any of these eligibility criteria and any additional information required with the application (as set out in the Allocation Regulations and Allocation Framework) will result in the Delivery Body rejecting the application.

Allocation of a CFD by the Delivery Body

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324176/Implementing_Electricity_Market_Reform.pdf

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249561/cfd_allocation_regulations_2014_si.pdf

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349370/Final_Allocation_Framework.pdf

⁸ <http://www.legislation.gov.uk/uksi/2014/2010/contents/made>

20. Once eligibility has been determined, the Delivery Body will compare the value of the applications with the applicable budgets (technology pots, minima and maxima). If all of the applications can be satisfied within the budget, under the constraints of any minima and maxima (i.e. the allocation round is 'unconstrained') then all of the applicants will be allocated a CFD.
21. If there is insufficient budget to satisfy all applications, or maximum constraints are exceeded, then an auction (constrained allocation) will apply to the applications. In the first allocation round the Delivery Body will invite sealed bids in respect of those applications. The rules for constrained allocation are set out within the Allocation Framework.
22. An applicant may withdraw its application during the application window: the ten day period in which applications are first submitted. In a scenario where constrained allocation is triggered (and only in that scenario), a second opportunity for withdrawal applies, as applicants may withdraw via notification to the Delivery Body during the period for submitting sealed bids to the Delivery Body⁹. No withdrawal after this point is permitted because of the potential to impact significantly on the effective functioning of the CFD allocation process.
23. Externally commissioned economic research on the CFD allocation process has supported DECC and stakeholder views that it is necessary to mitigate the risk of speculative behaviours and gaming (as set out below) via some form of non-delivery disincentive. In developing policy to combat these issues, the Government is concerned to ensure that such disincentives are sufficiently robust so as to discourage projects that are unlikely to perform, whilst not imposing unreasonable burdens or costs on innocent parties.
24. This document provides further detail on this 'Non-Delivery Disincentive' policy.

Previous consultation

25. On 10 October 2013 the Government published a detailed consultation¹⁰ on the proposed policy design of the Non-Delivery Disincentive, which will be implemented through secondary legislation. The consultation included an early draft of *The Contracts for Difference (Allocation) Regulations 2014* for stakeholder comment. The consultation closed on 24 December and a Government Response¹¹ was published on 23 June 2014.
26. On 13 May 2014 the Government published a further consultation on competitive allocation of CFDs that sought views on the Government's approach to the use of technology

⁹ It should be noted that failure to submit a sealed bid during the window is not considered a withdrawal. Where an applicant fails to submit a sealed bid, a bid will be entered for them at the level of the administrative strike price.

¹⁰ <https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform>

¹¹ <https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform>

groupings, minima and maxima¹². This consultation closed on 10 June 2014 and the Government response was published on 24 July 2014.

Purpose of this consultation

27. This consultation is focused on the Non-Delivery Disincentive (NDD). This policy is intended to incentivise successful CFD parties to deliver, and to minimise the risk of CFD contracts being awarded to projects which are not able to be delivered.
28. The NDD has been tested at several points with stakeholders. Industry was first introduced to the concept at a CFD Expert Group workshop on 24 February 2014, with slides being made publicly available. This was followed by a stakeholder event on 9 April 2014 to accompany the publication of the Draft Allocation Framework for consultation, which set out a high level description of the policy. Consultation responses were all broadly consistent in their support of the need to establish a disincentive system and comments fed into the policy design.
29. The policy intention was further outlined in the overview document which was published alongside the updated Draft Allocation Framework¹³ on 23 June.
30. This publication confirms that under the NDD, applications in respect of particular sites may be considered excluded applications, and that the NDD applies to the first allocation round (details below). This publication also seeks to consult on the details of a limited exemption to the exclusion, as well as the implementation design of the policy.

What happens next?

31. Following the close of the consultation, we will analyse responses and set out final decisions in a Government response. We intend to publish the Government response when the amending secondary legislation is laid in Parliament, which we expect will be in early 2015.
32. The response to the consultation will set out the decisions the Government has taken and provide a summary of the views expressed. This document will be published on the www.gov.uk website.

¹² <https://www.gov.uk/government/consultations/electricity-market-reform-further-consultation-on-allocation-of-contracts-for-difference>

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/321994/cfd_allocation_process_high_level_summary.pdf

Consultation questions

33. Consultees are invited to respond to the following questions by 5 November 2014 and can direct responses to CFDconsultation@decc.gsi.gov.uk.

34. Alternatively, responses may be submitted in hard copy to the address specified on p.4 of this document.

Consultation Question

- | | |
|----|---|
| 1. | Are there other property interests which need to be considered in respect of the exemption as set out in paragraph 49, such as Agreements for Lease as applicable to onshore sites? |
|----|---|

Consultation Question

- | | |
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| 2. | Are there any further scenarios which would warrant an exemption to the exclusion? |
|----|--|

Consultation Question

- | | |
|----|--|
| 3. | Do you envisage any reasons why the proposed timescale for determination of applications for exemptions might be insufficient? |
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Consultation Question

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|----|---|
| 4. | Do you envisage any difficulties with the proposed process for the determination of applications for exemption? |
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Proposal

Background

35. The Government is keen to minimise the effects of strategic behaviour and gaming that could undermine the efficiency of the CFD allocation process, and prevent other, more credible developers from accessing the CFD.

36. A number of measures are already in place that are intended to reduce that risk:

- Eligibility criteria to deter immature or speculative projects from trying to participate;
- A Milestone Delivery Date that requires developers to have made substantial progress with their project within 12 months of contract signature, or face contract termination;
- A Target Commissioning Window and Long Stop Date structure which requires developers to commission by a certain date or see the value of their support reduced in the first instance and terminated in the event of excessive delays in delivery.

37. Notwithstanding these measures, there is still a risk that some applicants will undertake gaming or speculative behaviour, thereby preventing other projects from accessing CFD budget.

Speculative behaviours and impacts of non-delivery

38. The Government has identified a number of behaviours which need to be addressed under the NDD. These behaviours include:

- Gaming (blocking budget): an applicant seeks to block budget from their competitors by submitting a project that they do not intend to ultimately deliver.
- Gaming (artificially inflating the clearing price): an applicant submits a small and marginally-priced project that they do not intend to deliver; this project raises the clearing price of an auction, accordingly benefiting another genuine project which they have submitted in the same auction.
- Speculative applications:
 - An applicant who is not committed to delivering on the project but participates in the auction on a speculative basis – i.e. they may or may not sign a CFD awarded, depending on factors such as the price at which the auction clears.

- An applicant with an insufficiently robust project plan or who bids too low and later finds they are unable to progress with the CFD.

39. The above behaviours may lead to a number of undesirable outcomes:

- a. Auction may clear at a higher price than it would otherwise, undermining the auction's objective of reducing the cost of decarbonisation. The pay-as-clear nature of the auction, making the clearing price applicable to all participants in the auction, magnifies the extent of this issue and creates the risk of a large reduction in value for money for the consumer over time;
- b. Poor value for money leading to higher costs for consumers;
- c. Budget under-programming leads to slower renewables deployment, as budget cannot be quickly recycled to credible developers. This creates the risk of failure to meet our binding EU renewable target;
- d. Discouraging participation in the market.

40. The Government is seeking to address the risk of the above behaviours occurring and prevent the consequences listed above through the introduction and implementation of the NDD.

Policy approach

41. Whilst the details of the policy approach described by this consultation are subject to further refinement, applicants for the first allocation round should note that the policy as described below is intended to take effect in respect of applications made for a CFD in that round.

42. An application for a CFD in respect of a generating station situated on a particular site will be subject to an exclusion in a future allocation round where:

- (i) an applicant failed to sign a CFD they were offered for a generating station on the same site in a previous allocation round; or
- (ii) a CFD for a generating station on materially the same site entered into further to a previous allocation round was terminated prior to the Milestone Delivery Date, unless the reason for that termination is found by the Low Carbon Contracts Company to be a Qualifying Change in Law or Relevant Construction Event.

43. Where an exclusion applies as stated above, the exclusion is for 13 months from the date on which the LCCC notified the offending applicant/generator of its success in the relevant auction, i.e. the date on which that applicant was offered a CFD.

44. Sites are defined and identified by reference to the geographic area information included in the CFD application (e.g. the postcode, geographic coordinates, and/or the Ordnance Survey Grid Reference for the proposed CFD unit specified in the applicable planning consents). Therefore, where an application (A1) is made in relation to a generating station located (or to be located) on a site and A1 does not define the site by materially the same coordinates or postcodes as those which apply to a site subject to an exclusion, A1 is not an excluded application. If A1 defines the site to which it applies as partly including the site subject to an exclusion, A1 is not an excluded application.
45. The Government has targeted the exclusion to the site of the CFD unit to strengthen the deterrent against speculative behaviours and to avoid the risk of applicants/generators simply on-selling the site or restructuring to avoid the exclusion in respect of an application in a subsequent allocation round. However, it should be noted that any 'sterilisation' of the site is both short-term and only applicable in respect to the CFD scheme.
46. We anticipate that the period of the exclusion is for long enough for the applicant or generator to face the risk that they might miss at least the next CFD allocation round for that site. The intended effect of this is to incentivise applicants to apply only when their project is mature enough and so be confident that they can sign the CFD and deliver in accordance with the contract.
47. The exclusion does not apply where a CFD is terminated due to a Qualifying Change in Law or Relevant Construction Event (as defined by the CFD Standard Terms and Conditions¹⁴), as the reasons for the termination can not be linked to gaming behaviour.

¹⁴ See Annex 1.

Proposal on exemption from the disincentive

48. Where there are persons, other than the applicant/generator (or a corporate associate of the applicant/generator) who caused the exclusion, who hold property interests in relation to a site that subject to the exclusion, the Government intends to ensure that such persons are not exposed to financial risk for decisions to involve themselves with a CFD project taken before our policy intent was clear. Therefore the Government has chosen to distinguish between property interests that were created before 14 October 2014 and those created after. The Government believes that this provides sufficient time for affected parties to have been made aware of and ensure they understand the policy explained in detail in this consultation document.
49. Exemptions will be granted where all of the following conditions are satisfied:
- (a) a new application is made in an allocation round subsequent to the first allocation round;
 - (b) that application is in relation to the same site¹⁵ as that which has been excluded;
 - (c) the application is made by a person who is not the applicant, nor a corporate associate¹⁶ of the applicant, that caused the site to be excluded (the “trigger applicant”¹⁷);
 - (d) a property interest (lease or, in relation to offshore only, an Agreement for Lease) existed in relation to the same site prior to 14 October 2014 (an “existing property interest”); and
 - (e) the applicant making the new application holds:
 - (i) an existing property interest, except where that interest has been acquired from a trigger applicant, or corporate associate of a trigger applicant; or
 - (ii) a new property interest¹⁸, except where that interest has been acquired from a trigger applicant, or corporate associate of a trigger applicant.
50. “Property interests” as used above is intended to cover interests that would entitle the holder to exclusive possession of the site which is the subject of the application, and which enable the holder or another person to comply with any CFD entered into further to the application. This will include leasehold interests, as applicable to both onshore and offshore sites, and Agreements for Lease as applicable to offshore sites only.

¹⁵ “Site” means a geographical site of materially the same full postcode, geographical coordinates and/or Ordnance Survey Grid reference.

¹⁶ For the purposes of this consultation, the meaning of “corporate association” is set out in Annex 2.

¹⁷ “Trigger applicant” means an applicant for a CFD that caused the relevant site to be excluded.

¹⁸ “New property interest” means a property interest created after 14 October 2014.

Consultation Question

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| 1. | Are there other property interests which need to be considered in respect of the exemption as set out in paragraph 49, such as Agreements for Lease as applicable to onshore sites? |
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Consultation Question

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| 2. | Are there any further scenarios which would warrant an exemption to the exclusion? |
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Proposals for Implementation

51. The following section sets out a summary of how applications for an exemption are proposed to operate, although final details of the implementation of the non-delivery disincentive policy will continue to be refined.
52. The LCCC will hold a list of sites that have been excluded as per the disincentive. Projects subject to the exclusion will be placed onto this list as soon as practicable following the date of exclusion, with a record of the date of exclusion and other relevant details.
53. The list will be maintained up to date and publically available in order for potential applicants to have visibility of barred sites. New entries to the list will be made public at the point at which the CFD Register is published. Applicants will be able to determine whether any exclusions apply to a site by checking this list prior to an allocation round. The Delivery Body will examine the list when determining applications in respect of CFDs in an allocation round.
54. When a potential applicant (P) for a CFD wishes to apply for an exemption in respect of an application P intends to make in relation to a site subject to an exclusion, P must provide to the Secretary of State the necessary evidence and, where required by the applicable allocation framework, provide declarations in relation to the satisfaction of the conditions set out in paragraph 49 which are necessary for the exemption to apply. The onus is on P to demonstrate that an exemption applies in respect of its intended application for a CFD.
55. The Secretary of State will then consider the application for exemption. If an exemption is made, the Secretary of State will advise the Delivery Body and LCCC to that effect.
56. Applicants seeking exemptions will be required to do so well in advance of submitting their application for a CFD, and at a minimum, 30 working days prior to the commencement of the CFD allocation round (e.g. if a second allocation round is in October 2015, applications for exemption should be submitted prior to September 2015). The Secretary of State will endeavour to assess applications for exemptions within 30 working days although borderline cases may take longer. Further guidance on these timings will be provided when future allocation round timings are known with greater certainty (when the indicative budget is announced), which will afford applicants sufficient time to complete the exemption process.

Consultation Question

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| 3. | Do you envisage any reasons why the proposed timescale for determination of applications for exemptions might be insufficient? |
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Consultation Question

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|----|---|
| 4. | Do you envisage any difficulties with the proposed process for the determination of applications for exemption? |
|----|---|

Applicability of policy

57. We are intending to implement this policy through amendments to *The Contracts for Difference (Allocation) Regulations 2014* and the CFD Allocation Framework, prior to the second allocation round. It should be noted that we intend for the Non-Delivery Disincentive policy as set out in this document to apply to applications in the first allocation round, whereby they become excluded sites for the second allocation round, subject to changes to the policy and its implementation made as a result of this consultation.

Annex 1 – CFD Definitions

As defined in the ‘FIT CONTRACT FOR DIFFERENCE STANDARD TERMS AND CONDITIONS’¹⁹:

“**Change in Law**” means:

- (A) the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to: (i) any Law or Directive; (ii) any Industry Document; or (iii) any Required Authorisation; or
- (B) a change in the interpretation or application of any Law, Directive, Industry Document or Required Authorisation by any Competent Authority,

in each case after the Agreement Date and save (in each case) to the extent that the Change in Law:

- (i) arises out of, or in connection with, a breach of or default under or with respect to, that Law, Directive, Industry Document or Required Authorisation by the Generator or any of its Representatives;
- (ii) arises out of, or in connection with, a failure by the Generator or any of its Representatives to act in accordance with a Reasonable and Prudent Standard; or
- (iii) represents no more than a continuous improvement or development of good practice which would be complied with in respect of a generating facility deploying the Facility Generation Technology by a generator acting in accordance with a Reasonable and Prudent Standard.

“**Relevant Construction Event**” means a Construction Event:

- (A) of which no generator acting to a Reasonable and Prudent Standard and having made all due and careful enquiries would have been aware, and of which the Generator was not aware, at the FiT CfD Application Date; and
- (B) which renders the development, completion, construction, conversion, installation or commission construction, conversion, installation or commissioning of the Facility to meet the Installed Capacity Estimate uneconomic.

¹⁹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/305536/generic_cfd_t_and_cs.pdf

Annex 2 – Definition of Corporate Association

“**Corporate Association**” means the association described in paragraph 37 of Schedule 2A of the Electricity Act 1989:

- (1) For the purposes of this Schedule, one body corporate is associated with another **if one of them controls the other or a third body corporate controls both of them**, and sub-paragraphs (2) to (6) set out the circumstances in which one body corporate (“A”) controls another (“B”).
- (2) Where B *is a company*, A controls B **if A possesses or is entitled to acquire—**
- (a) **one half or more of the issued share capital of B,**
 - (b) **such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,**
 - (c) **such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders,** or
 - (d) **such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.**
- (3) Where B *is a limited liability partnership*, A controls B if A—
- (a) holds a majority of the voting rights in B,
 - (b) is a member of B and has a right to appoint or remove a majority of other members,
- or
- (c) is a member of B and controls alone or pursuant to an agreement with other members, a majority of the voting rights in B.
- (4) In sub-paragraph (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) **In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A’s wishes.**
- (6) In determining whether, by virtue of sub-paragraphs (2) to (5), A controls B, A is to be taken to possess—
- (a) any rights and powers possessed by a person as nominee for it, and
 - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this sub-paragraph).”

(Emphasis added)

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