



Department  
of Energy &  
Climate Change

# Non-Delivery Disincentive for Contracts for Difference

Policy Update

28 January 2015

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URN 15D/044

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# Non Delivery Dis-Incentive Policy Update

## Introduction

1. This document sets out the policy in respect of the Non-Delivery Disincentive (NDD) for Contracts for Difference (CFD) which is intended to be implemented in amending legislation shortly.
2. The NDD policy is intended to incentivise applicants who have been successful in the allocation process to sign the CFD offered to them and to minimise the risk that those who enter into a CFD fail to deliver the project. This is intended to prevent an inefficient allocation of LCF budget and to deter speculative applications.
3. The policy will affect any excluded site, namely:
  - a. where the applicant failed to sign a CFD (“a non-signature case”), the generating area in respect of which the CFD application was made and,
  - b. where a CFD was entered into but the CFD was terminated before the milestone delivery date because the generator failed to deliver the project as required by the CFD terms (“a non-delivery case”), the generating area to which the CFD applied.

The policy includes a limited set of exemptions, as described below.

4. Applicants in the first allocation round – currently underway - should note that the policy is intended to apply to applications made in that round.
5. A full response to the recent consultation on this issue will be published in due course.

## Excluded Sites

6. The generating area means the area on which the generating station is (or was to be) situated as found from the CFD application, in particular any relevant map accompanying the application for planning consent submitted by the applicant with the CFD application. The generating area may therefore be smaller than the total area shown on the plan to the planning application
7. Subject to the exemptions described below, no new application may be made for a CFD where the site of the generating station described under the new application overlaps with the excluded site. This exclusion applies for a period of thirteen months from:

- a. In a non-signature case, for 13 months from the date on which National Grid notified the applicant of its success in the relevant auction or the date on which that applicant was offered a CFD by the Low Carbon Contracts Company (LCCC), whichever is earlier; or
- b. in a non-delivery case, for 13 months from the date the CFD was terminated or from the date the CFD was terminated to the Milestone Delivery Date, if this is earlier.

## Exemptions

8. This section sets out a summary of the exemptions that will apply to the exclusion set out above. Applicants are to note that there is no intention to give the Secretary of State a general discretion to award an exemption for other reasons. Where an exemption certificate is given, it applies only to the person who has applied for it.
9. A potential applicant may apply to the Secretary of State for an exemption in a non-signature or a non-delivery case where the potential applicant considers it can demonstrate to the satisfaction of the Secretary of State that the site of the generating station to be described under the new application (“the application site”) is not materially the same as the excluded site. An application site will be considered for the purposes of the exemption as materially the same as an excluded site where the area of the application site is 51% or more of the area of the excluded site or where the area of an excluded site makes up 51% or more of the application site.<sup>1</sup>
10. If an exemption certificate is not available by reason of paragraph 8, a potential applicant may also apply to the Secretary of State for an exemption certificate where:
  - a. In a non-delivery case, the CFD was terminated due to a Qualifying Change in Law or Relevant Construction Event (as defined by the CFD Standard Terms and Conditions)<sup>2</sup>; or,
  - b. In a non-signature case or in a non-delivery case the potential applicant who is not is the trigger applicant or a corporate associate of the trigger applicant<sup>3</sup> holds a relevant property interest<sup>4</sup> except where that interest has been acquired from a trigger applicant or corporate associate of a trigger applicant.

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<sup>1</sup> Taking an example of an excluded site of 100m<sup>2</sup> and an application site of 100m<sup>2</sup>. The application site will be materially the same as the excluded site where 51m<sup>2</sup> or more of the excluded site is the same as the application site or 51m<sup>2</sup> or more of the application site is the same as the excluded site.

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/358462/Consultation\\_on\\_Non-Delivery\\_Disincentive\\_Exemptions\\_-\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358462/Consultation_on_Non-Delivery_Disincentive_Exemptions_-_FINAL.pdf)

<sup>3</sup> Trigger applicant means an applicant for a CFD who caused the relevant site to become excluded

<sup>4</sup> Relevant property interest means Freehold, Leasehold, Agreements for Lease and Lease Options.

- c. In a non-signature case, relevant court proceedings were brought or concluded after the last date by which the trigger applicant was able to withdraw the CFD application and the fact that the proceedings were on-going, or the result of the proceedings, meant that the trigger applicant's ability to deliver under the terms of the CFD contract (had it been entered into) would have been materially affected.

11. Relevant court proceedings means:

- a. Court proceedings brought against the applicant; or
- b. a judicial review or statutory appeal in respect of any planning consent included in the trigger applicant's CFD application.

Where the potential applicant is not the same as the trigger applicant who was unable to sign the CFD, it will be for the potential applicant to obtain the necessary information about the relevant court proceedings.

## Implementation

12. This section sets out a summary of how the policy is to be implemented.

13. Once the regulations enter into force, the LCCC will be required to publish a list of excluded sites and the period for which the exclusion applies to each site on the list. The description of the excluded site will show its grid reference co-ordinates and such other matters which enable identification of the site. The list will be updated as soon as practicable following, in a non-signature case, the last date on which the CFD could be entered into, and in a non-delivery case, the date of termination of the CFD.

14. Potential applicants should ensure they keep up to date with the list of excluded sites in order that, should their intended application be subject to an exclusion, they are in a position to apply for an exemption in good time, if they consider that an exemption applies.

15. Where a potential applicant wishes to apply for an exemption from the Secretary of State, it will be required to submit all relevant supporting information. The Secretary of State will then consider the evidence supplied and then either issue an exemption certificate or a notice stating that the exemption applied for is refused. Where a new application is to be made in an allocation round in respect of an excluded site during the period of the exclusion, that application must include an exemption certificate or otherwise the application will fail. Copies of refusal notices will be provided to Grid.

16. The exemption determination processes will be completed no later than 10 working days before an allocation round opens for applications.

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URN 15D/044