



Department for
Business, Energy
& Industrial Strategy

**Energy Intensive Industries (EIs) –
Exemption from the indirect costs
of Contracts for Difference (CfD)**

Consultation Document

JULY 2016

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Ells – Exemption from the indirect costs of Contracts for Difference (CfD) and recovery of over-exemption from the indirect costs of the CfD, Renewables Obligation (RO) and Feed-In-Tariffs FIT) schemes

In his 2011 Autumn Statement, the Chancellor announced his intention to exempt certain Energy Intensive Industries from a proportion of the indirect costs of Contracts for Difference (CfD) as part of Electricity Market Reform. This was confirmed with the introduction of the Energy Bill in November 2012.

Three consultations relevant to the CfD exemption have already taken place. In December 2015 the Commission approved the CfD exemption as State aid in accordance with the terms of our notification. The terms of our approved notification requires us to make changes to the Regulations. This fourth consultation relates to substantive changes as well as some more minor technical changes to the Regulations which we are proposing in order to ensure State Aid compliance but also to clarify key elements of the exemption and improve the efficiency and accuracy of its administration.

We are also consulting on how to recover over-exemptions under the CfD exemption, as well as in respect of exemptions for the indirect policy costs of the Renewables Obligations and small-scale Feed-in-Tariffs.

Issued: 22 July 2016

Respond by: 26 August 2016

Enquiries to:

Energy Cost Competitiveness Team
Department for Business, Energy and Industrial Strategy
Orchard 2, 4th Floor
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 5000

Email: energyintensiveindustries@bis.gsi.gov.uk

This consultation is relevant to: legal and regulatory specialists, trade associations, EIs, energy suppliers and providers and others with an interest in UK energy infrastructure.

1. Executive summary

1. In his 2011 Autumn Statement, the Chancellor announced his intention to exempt certain Energy Intensive Industries (EIs) from a proportion of the indirect costs of Contracts for Difference (CfDs) as part of Electricity Market Reform. This was confirmed with the introduction of the Energy Bill in November 2012.
2. Three consultations relevant to the exemption for the indirect costs for CfDs have already taken place. A July 2012 consultation covered the scope of the exemption including eligibility criteria. In July 2014, a further consultation focused on the impact of the European Commission's new Guidelines on State aid for environmental protection and energy 2014-2020 which resulted in us deciding to change the scope of the proposed eligibility criteria.
3. The Government laid regulations in January 2015 which came into force in April that year: The Electricity Supplier Obligations (Amendment & Excluded Electricity Regulations 2015) (the Regulations). In December 2015 the Commission approved the CfD exemption as State aid.
4. The terms of our approved notification requires us to make changes to the Regulations, the majority of which are technical. We are also making a number of changes to the Regulations to clarify elements of them and improve the administration of the CfD exemption. There are a number of major points where we are seeking views.
5. We have put in place new detailed provisions for new businesses to allow them to benefit from the CfD exemption. However, we have had to impose limitations on just how 'new' a business can be and have proposed a definition of a new business for the purpose of the exemption.
6. In order to ensure that only those businesses eligible for compensation receive it, we are proposing that businesses are required to notify BEIS when there are changes that would affect their eligibility or the proportion of the electricity they use that is eligible for the exemption. Eligible businesses will also be required to provide quarterly notifications.
7. We are also proposing changes to the issuing and expiry of the certificates issued to eligible EIs. This is to prevent certificates lasting for 6 months or less, which is possible under the current regulations. Separate rules are proposed for new businesses to take account of the fact that they may have very limited data to prove that they are energy intensive.
8. Government is seeking separately to transition from an existing EI compensation programme to an exemption for a proportion of the costs of the Renewables Obligation and the small scale Feed in Tariffs starting in April 2017. To facilitate this, and also to allow businesses to use the same data to obtain exemption from both schemes, we are proposing an amendment to the Regulations to allow data sharing between the Low Carbon Contracts Company (LCCC) and Ofgem.

9. There is also a separate section in this consultation which considers the recovery of over exemption. This section considers the introduction of a mechanism to recover over-exemptions where it transpires that the energy intensive business was not entitled to the exemption, or was exempted at a higher level than it should have been. We are also seeking views on this.
10. As this is a largely technical consultation following on from three previous consultations, we are running the consultation over 5 weeks. The consultation period begins on 22 July and will end on 26 August, and will be of interest to legal and regulatory specialists, trade associations, EIs, energy suppliers and providers and others with an interest in UK energy infrastructure.
11. A summary of all consultation questions can be found at Chapter 11.

2. How to respond

12. 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 represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

13. The consultation response form is available electronically on the consultation page: www.gov.uk/government/consultations/energy-intensive-industries-exemption-from-indirect-costs-of-the-contracts-for-difference-scheme (until the consultation closes). The form can be submitted online/by email or by letter to:

Energy Cost Competitiveness Team
Department for Business, Energy and Industrial Strategy
Orchard 2, 4th Floor
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 5000

Email: energyintensiveindustries@bis.gsi.gov.uk

3. Confidentiality and data protection

14. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). There is also a statutory Code of Practice issued under section 45 of the FOIA with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
15. If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information 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 as binding on the department.

4. Help with queries

16. Questions about the policy issues raised in the document can be addressed to:

Energy Cost Competitiveness Team
Orchard 2, 4th Floor
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 5000

Email: energyintensiveindustries@bis.gsi.gov.uk

The consultation principles are in [Annex A](#).

5. Introduction

17. In his 2011 Autumn Statement, the Chancellor announced his intention to exempt certain Energy Intensive Industries (“EIs”) from a proportion of the indirect costs of Contracts for Difference (CfDs) as part of Electricity Market Reform (the “CfD exemption”). This was confirmed with the introduction of the Energy Bill in November 2012.
18. Three consultations relevant to the exemption for the indirect costs for CfDs have already taken place. The original consultation was in July 2012 and focused on the scope of the exemption including eligibility criteria. In July 2014, we carried out a further consultation following the publication of the European Commission’s new Guidelines on State aid for environmental protection and energy 2014-2020 which resulted in us changing the scope of the proposed eligibility criteria.¹⁾ The Government laid regulations in January 2015 which came into force in April that year (The Electricity Supplier Obligations (Amendment & Excluded Electricity Regulations 2015 (“the Regulations”)).
19. In December 2015 the Commission approved the CfD exemption as State aid in accordance with the terms of our notification. The terms of our approved notification requires us to make changes to the Regulations, the majority of which are technical, We are also making a number of changes to the Regulations to clarify elements of them and improve the administration of the CfD exemption
20. We also notified the European Commission in respect of our proposal to grant the CfD exemption to competitors of energy intensive businesses which are not in themselves energy intensive. The Commission is considering this, and has not approved it. While we remain committed to getting the Commission’s approval to exempt competitors from the indirect costs of the CfDs, we do not wish to delay the bringing in an exemption for the most electricity intensive businesses whose international competitiveness is most at risk and consider this a priority. We are therefore removing the provisions in the Regulations which allow competitors of energy intensive businesses which are not in themselves energy intensive to apply for the CfD exemption. If the Commission approves our notification the Regulations will be subject to further revision to allow for this.
21. This consultation is primarily focused on amendments to the Regulations regarding the CfD regime and the exemption for certain EIs from a proportion of these costs. However a separate section in this consultation considers recovery of over exemption and relates to the proposed exemptions from wider renewable policy costs².
22. Following the close of the consultation, responses will be analysed before final decisions are set out in a Government response. We intend to publish the

¹ www.gov.uk/government/consultations/emr-changes-to-the-cfd-supplier-obligation

² More detail on the proposed exemption from the renewable policy costs can be found at www.gov.uk/government/consultations/implementing-an-exemption-for-energy-intensive-industries-from-the-indirect-costs-of-the-ro-and-the-fits

Government response when the amending secondary legislation is laid in Parliament, which we expect will be in autumn this year (2016).

6. Context for this consultation

23. There are a number of substantive changes as well as some more minor technical changes to the Regulations which we are proposing in order to ensure State Aid compliance but also to clarify key elements of the exemption as well as to improve the efficiency and accuracy of its administration. These are spelled out below.
24. We are also consulting on the recovery of over exemptions in respect of the CfD exemption and also with regard to the proposed exemption for EIs from a proportion of the indirect costs of the Renewables Obligation (RO) and the Small scale Feed in Tariffs (FITs).
25. The proposed amendments have no impact on other consumers over and above the impact on consumers of the Regulations, but for completeness we have updated the Impact Assessment prepared in respect of the Regulations on the price and bills of other consumers and this is attached as Annex B.

7. Summary of CfD, RO and FIT supplier obligations and how they work

Contracts for Difference

26. The CFD supplier obligation is a compulsory levy on licensed electricity suppliers in Great Britain to meet the costs of CFDs. It is designed to minimise costs to suppliers and consumers by collecting the funds required to pay CFD generators and returning unspent sums back to electricity suppliers, so that there is no surplus retained by the CFD Counterparty (the Low Carbon Contracts Company Ltd, 'LCCC').

Renewables Obligation

27. The RO places an obligation on UK electricity suppliers to source a specified proportion of the electricity they supply to customers from renewable sources. This proportion – called the 'obligation level' – is set six months ahead of the start of the obligation year (which runs from 1 April to 31 March) and remains fixed throughout the course of the obligation period. This provides certainty for generators and suppliers and allows the latter to build in the policy costs of the scheme to customer bills in advance. The obligation level has increased annually since the RO was introduced in 2002.
28. The RO is administered by Ofgem, who issue Renewables Obligation Certificates (ROCs) to generators accredited under the scheme in relation to the renewable electricity they generate and the technology type. Generators can sell ROCs to suppliers or traders, with or without the electricity generated, as tradable commodities. Their value is a matter for negotiation between the generator and supplier/trader.

29. Suppliers present ROCs to Ofgem to demonstrate their compliance with the obligation by 1 September after Ofgem have completed their end of year compliance process which involves them verifying final supply volumes in relation to each supplier and then confirming the number of ROCs that each supplier must provide in order to discharge its obligation. Suppliers failing, or choosing not, to present enough ROCs to meet their obligation make a payment per ROC into a buy-out fund i.e. the support for renewable generation (ROCs) is paid for by suppliers through complying with the obligation.
30. The money collected by Ofgem in the buy-out fund is recycled on a pro-rata basis to suppliers who presented ROCs after Ofgem's administration costs have been deducted. There is no levelisation process within the scheme.
31. The RO works on the basis of three complementary obligations on suppliers, one covering England and Wales, and one each covering Scotland and Northern Ireland. The rules on calculating the obligation level for individual suppliers in respect of electricity supplied to customers in Scotland are set out in the Renewables Obligation (Scotland) Order 2009 ("RO Scotland") as amended. The rules on calculating the obligation level for individual suppliers in respect of electricity supplied to customers in Northern Ireland are set out in the Renewables Obligation Order (Northern Ireland) 2009 as amended.

The Feed in Tariff scheme

32. The FIT scheme requires Licenced Electricity Suppliers ("suppliers") to make payments to micro and small renewable and micro CHP generators for electricity generated and exported to the National Grid. The FIT scheme policy and tariff rates are set by DECC and the scheme is administered by FIT Licensees and Ofgem.
33. The costs of making payments to generators and administering the scheme are apportioned to suppliers in accordance with market share.
34. The market share of a supplier is determined by calculating the amount of electricity it supplied over a financial year to customers in Great Britain less the amount of electricity it sourced from renewable sources generated outside of the UK and supplied to customers in Great Britain ("overseas electricity"). This is then compared to, and expressed as a percentage of, the amount of electricity supplied by all suppliers to customers in Great Britain less the amount of overseas electricity ("overall supply").
35. The process for apportioning FIT scheme costs to suppliers in accordance with market share is known as levelisation. All suppliers are required to make payments into a levelisation fund and Ofgem is required to undertake the levelisation process on a periodic basis.
36. We assume that suppliers pass on the policy costs of all three schemes proportionately to their electricity customers.

Background to CfD exemption and consultation on exempting EIs from RO and FITs scheme costs

37. As explained earlier in this document, legislation establishing an exemption for EIs from 85% the indirect costs of CFDs was published in 2015. EIs are also currently compensated by BEIS for 85% of indirect costs of the RO and FIT schemes.
38. The Chancellor announced in 2015 Spending Review that we should move from compensation to an exemption for EIs from indirect costs of the RO and FIT schemes³.
39. On 1 April 2016 Government (DECC and BIS) published a consultation⁴ on the technical changes needed to implement the exemption including changes to the RO and FITs schemes. This proposed:
 - Making the RO and FIT scheme exemption available to the same EIs that are eligible for the existing RO and FIT compensation scheme and CfD exemption.
 - Changing each scheme's legislation so that a supplier's market share excludes up to 85% of its supply to each (if any) of its eligible EI customers.
 - Implementing the exemption in relation to the FIT scheme in Great Britain and in relation to the RO in England and Wales. The Scottish Government published a parallel consultation on implementing the exemption from indirect costs of the RO in Scotland on 19 May⁵. Northern Ireland does not intend to implement the exemption at this time (the FIT and CfD schemes do not operate in NI).
 - Bringing the exemption into force from 1 April 2017, subject to State aid and Parliamentary approval.
40. The DECC/BIS consultation closed on 27 May 2016 and received 69 responses. Government is currently reviewing the responses and intends to issue its response to the consultation setting out final decisions on how the exemption will be implemented under the RO in England and Wales and FITs scheme in Great Britain in early autumn.
41. The Scottish Government's consultation on implementing the exemption under the RO in Scotland closed on 30 June. We expect that the Scottish Government will publish its response on how the exemption will be implemented under the RO in Scotland in parallel with the UK Government's response.
42. In the consultations the UK and Scottish Governments propose that the EI eligibility criteria for the RO/ FITs exemption will be the same as for the CfD exemption (and the current RO and FIT compensation scheme). Where possible it is proposed to use

³ See : www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents

⁴ Consultation on implementing an exemption for Energy Intensive Industries from the indirect costs of the Renewables Obligation and Feed-in Tariff Schemes (April 2016) at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/513029/EI_condoc_20160401.pdf

⁵ See: www.gov.scot/Publications/2016/05/8327

the same processes to administer the exemptions for all three schemes. This will keep the costs and burden to a minimum for EIs, suppliers and Government.

8. Amendments to the Regulations

Business year and baseline period

43. In order to be eligible for the CfD exemption, businesses will need to provide certain data and information in respect of a period of trading. In part as a result of the terms of our approved State Aid notification there are number of amendments we are making to the regulations.
44. The baseline period used for assessing eligibility will be three years after 1st January 2012 (and these will be based on the financial year of the applicant, rather than 1 April-31 March). If a business provides the required data and information in respect of this period and meets the eligibility test, they will receive the CfD exemption for 5 years, before their eligibility needs to be reassessed, unless their circumstances change e.g. they stop carrying out the activity in respect of which they were granted an EI certificate.
45. If a business has one or two years of annual accounts they can still apply and providing they meet the eligibility test, receive the exemption, but their eligibility will be reassessed annually until they have three years of annual accounts.

Definition of new business

46. We are also putting in new detailed provisions to allow businesses with no annual accounts – “new businesses” – to benefit from the exemption. We want to allow these businesses to benefit from the exemption, but as they have so little data, we need special rules to apply to them – e.g. their EI certificates will last for a different period of time to the EI certificates of businesses which have been around for longer. We also have to impose limitations on just how “new” a new business can be to be considered eligible for the CfD exemption. For that reason we propose to define new businesses in the Regulations as a business which:
 - has no annual accounts,
 - has been trading for, and has financial data in respect of, two or more consecutive quarters in the 12 month period prior to making an EI application, and
 - has been trading for no more than 21 months.

Question 1. Do you agree with our proposed definition of a new business? If not, what alternatives should we be considering?

Required notifications

47. It is important to ensure that only businesses which are eligible for the CfD exemption receive it, and that they receive it at the correct level. In order to help ensure this, we propose to require businesses benefiting from the CfD exemption to notify BEIS

when there are changes that would affect their eligibility or the proportion of electricity they use that is eligible for the CfD exemption.

48. Specifically, we intend to amend the Regulations to provide that a business benefiting from the CfD exemption must notify us in the following situations:
- where any activity that is exempted under the terms of the CfD exemption stops for more than 4 weeks (e.g. if a business closes or mothballs a plant);
 - where a business becomes aware that there was an error in its application that means that it is ineligible or that it should be receiving a lower rate of exemption;
 - where a business starts sharing its electricity with a third party, or onward supplying it.
49. We are also proposing that successful applicants will be required to provide quarterly notifications to confirm that their business is still trading and that they are still carrying out the “specified activity” in respect of which they were granted their EII certificate.

Question 2. Do you agree with our proposed requirement that EIs notify us of changes that would affect their eligibility or the proportion of electricity they use that is eligible for the CfD exemption?

Issuing of certificates

50. Currently the Regulations state that EII certificates come into force either:
- where an EII certificate is already in force in respect of that business, at the start of the financial year following the financial year in which that certificate expires; or
 - the day after the date of issue.
51. The Regulations also provide that EII certificates expire at the end of the financial year in which the certificate comes into force.
52. Depending on when a certificate is granted to an applicant, it is possible under these provisions that it may be in force for a very short timescale. To address this, it is proposed that where, due to the date of issue, a certificate would expire after 6 months or less, it will instead last to the end of the subsequent financial year.
53. However, the rules applicable to new businesses that have been trading for less than four financial quarters will be different. In respect of these businesses, we are proposing that the certificate will expire 16 months after the first day of the “relevant period” for the purpose of the EII application. (The “relevant period” for a new business will be the period before their application when they were trading and in respect of which they have certain data and information required by the amended Regulations.) This means in practice that where a new business has been trading for 9 months at the time of its application for the CfD exemption, it is likely that the first certificate issued to that business will expire after 7 months. The aim is to ensure that businesses at the greatest risk of receiving the CfD exemption when they are not entitled to it – i.e. very new businesses, which have little data to prove that they are

energy intensive – have their eligibility reviewed more frequently than other businesses.

54. New businesses that have been trading for more than four financial quarters when they apply will be subject to the rules applicable to other businesses as regards the expiry of their EII certificates. However, all new businesses will be required to provide a copy of their first set of annual accounts to BEIS within 30 days of receipt.

Question 3. Do you agree with our proposed amendments to the issuing and expiry of EII certificates? If not, what alternatives should we be considering?

Data sharing

55. Government is seeking separately to transition from a system of compensation to EIIs for the costs of the Renewables Obligation and the small scale Feed in Tariffs to an exemption, commencing in April 2017. In order to support the exemption under these schemes, we are proposing an amendment to the Regulations to allow data sharing between LCCC and Ofgem E-Serve⁶.
56. We also propose to make provision for successful applicants under the RO / FiT compensation scheme to allow the data they provided for that scheme to be used in their applications for exemption for the indirect costs of the CfD which will save businesses having to provide the same data to Government twice.

9. Amendments to the Regulations (minor changes)

57. The Government is also proposing to make a number of relatively minor changes to the Regulations which are either required by the terms of the State Aid notification approved by The Commission or provide further clarity on and support the administration of the CfD exemption.

Schedule of specified activities

58. Following Government's decision on a common reference electricity price to determine eligibility which was covered in the Government response to the Consultation (www.gov.uk/government/uploads/system/uploads/attachment_data/file/503669/BIS-16-143-relief-from-the-costs-of-renewables-updated-government-response.pdf). The Government has now finalised the list of eligible sectors for CfD exemption. This updates a previous version.

⁶ DECC consulted on data sharing between Ofgem and LCCC in its consultation on an exemption for EIIs: see question 14 in the consultation, available here: www.gov.uk/government/uploads/system/uploads/attachment_data/file/513029/EII_condoc_20160401.pdf

Force Majeure

59. Recognising that issues beyond the control of a business can affect its eligibility (if it affects its electricity consumption or its GVA) the Government is proposing to provide that a business may obtain an EII certificate if the Secretary of State is satisfied its electricity consumption has been reduced by exceptional circumstances such as flood or fire which were beyond its control and not foreseeable (a force majeure). Applicants affected by a force majeure will need to provide evidence of the alleged force majeure and of its effect on electricity consumption.

Additional information required to support EII applications

60. In order to properly assess a business's eligibility and, if eligible, the proportion of electricity which should properly be subject to the CfD exemption the Government is proposing to ask applicants to:
- specify the financial year which the business operates to
 - include a statement setting out the accounting standards which were used in respect of its annual accounts
 - require businesses to tell us how much they paid for their electricity supply in the "relevant period" (to be redefined in the amended Regulations)
 - confirm whether the business shares the supply of electricity to the meter identified in the application with a third party

Question 4. Do you have any comments on our proposed changes to the additional amendments to the Regulations outlined above?

10. Recovery and redistribution of money from over-exempted EIs

61. The Commission approved the CfD exemption as State aid in accordance with the terms of our notification. Under the terms of our approved notification we are required to recover any over exemption of EIs. This may occur, for example, if an EII certificate is revoked, or where some of the EIs electricity has been incorrectly identified as EII excluded electricity.
62. It is not our intention that the mechanism proposed in this document will deal with circumstances where there has been an error in assessing the volume of electricity supplied to EIs. Such errors will be picked up through the existing processes for validating supplier data under the schemes⁷.

⁷ Details of how Ofgem validate supply data for the RO and FITs schemes is set out in Ofgem's 'Renewables Obligation: Guidance for suppliers' at : www.ofgem.gov.uk/sites/default/files/docs/ro_supplier_guidance_december_2015_finaldocx.pdf and Feed in

63. In these particular circumstances we propose to introduce mechanisms into the legislation to assist with the recovery and redistribution process. The mechanisms would allow us to recover any reduction in CfD, RO and FITs costs as a result of the exemption where it transpires that an energy intensive business was not entitled to the exemption, or was not entitled to the exemption at the level it received.
64. The recovery of an over-exemption could occur for example, where the energy intensive business benefiting from the CfD exemption:
- a. makes a genuine mistake in its EII application;
 - b. sells an asset;
 - c. changes its production profile , resulting in more non-eligible products being made
 - d. was a “new business” when it applied for the exemption, and based on its first set of annual accounts, it transpires that the business was never entitled to the exemption;
 - e. mothballs or closes a plant;
 - f. was issued with the EII certificate in error.
65. This section considers options for recovery and redistribution of any reduction in CfD, RO and FITs scheme costs passed onto an energy intensive business where it transpires that the business was not entitled to it. Our aim is to adjust supplier liabilities to account for the value of any over-exemption. We assume this reduction in supplier liabilities will be passed back to consumers through a reduction in their electricity bills.
66. We have developed two options for dealing with this type of over-payment of aid (i.e. over exemption):
- Option 1: Recovery and redistribution of over exemption by means of separate adjustments to supplier liability under each of the 3 schemes (CfD, RO and FIT).
 - Option 2: Recovery of over exemption from the EII, and redistribution of recovered funds through adjustments to supplier liability under the CFD scheme.
67. Each of these options is described below
68. In developing these proposals we have taken into account the proposed changes to the RO and FITs schemes that we consider are necessary to implement exemptions for EIs and which are described in the ‘Consultation on implementing an exemption for Energy Intensive Industries from the indirect costs of the Renewables Obligation and Feed-in Tariff Schemes’ and the equivalent consultation by the Scottish

Government on 'implementing an exemption for Energy Intensive Industries from the indirect costs of the Renewables Obligation Scotland'.

OPTION 1: Recovery and redistribution of over exemption by means of separate adjustments to supplier liability under each of the 3 schemes (CfD, RO and FIT)

69. Under this option separate mechanisms would be put in place under the CfD, FITs and RO schemes in Great Britain through which all suppliers' liabilities would be adjusted for the period that the energy intensive business was over-exempted, taking into account what the business's EII volumes should have been. It would be up to the supplier(s) of the over-exempted business for the relevant period of time to seek to recover the relevant amount from the business directly. Details of how these mechanisms would work in practice for each scheme are set out below. The mechanism under each scheme would be triggered by notice from the Secretary of State, to the scheme administrator, in the following way.

Notifying the scheme administrator of over-exemption

70. If BEIS forms the view that a business has been over-exempted we would inform the EII setting out the reasons in writing and require the EII to provide certain data within 4 weeks of the date of the letter to allow us to assess the consumption of electricity wrongly treated as exempt. The data to establish the level of over exemption will be taken from EIIs bills and / or the scheme administrator or through third parties that have access to meter data. This will provide an overall number of MWh for which the EII wrongly received the exemption.
71. There would be an appeals process allowing EIIs to make representations challenging both a decision that they had been over-exempted, and the level of over-exemption sought to be recovered.
72. If after an appeal, where BEIS remains of the view that a business has been over-exempted we would inform the EII setting out the reasons in writing. We would then inform the LCCC in the case of CfDs, Ofgem for RO and FIT of the amount of MWh of over exemption – and also inform them of the supplier(s) who provided electricity to the EII during the period of over-exemption.

Adjusting supplier liability for scheme policy costs

How would option 1 work under the CfD

73. Under this option, through the reconciliation process there would be a retrospective adjustment of the liabilities of all suppliers for CFD payments during the period in which the EII business was being over-exempted. For example, if BEIS determined in January that an EII business was incorrectly awarded an exemption certificate covering electricity consumed in the preceding calendar year, at the next quarterly reconciliation (in April), the LCCC would recalculate the liabilities of all suppliers for the preceding calendar year on the basis that the electricity supplied to the EII business was no longer treated as being exempt. This would result in an increase in the liability of the supplier(s) of the relevant EII business for CFD payments during that period, and a reduction in the liability of all other suppliers. The adjusted amounts would be factored into the calculation of the reconciliation amount, which

would then be netted off each supplier's reserve payment due at the start of the following quarter.

How would option 1 work under FITs

74. Under this option, through the levelisation process, there would be an adjustment of the liabilities of all suppliers for FiT payments during the period in which the EII business had been over-exempted due to error in assessment of eligibility. In some instances, the error in eligibility may come to light in sufficient time for Ofgem to use corrected supply data for the purpose of periodic levelisation at the end of each quarter. In other instances, the error in eligibility may come to light in sufficient time for Ofgem to use corrected supply data for the purpose of annual levelisation at the end of each obligation year. In the remaining cases where the error comes to light too late to be accounted for in either periodic or annual levelisation, Ofgem would account for the error using the levelisation correction mechanism at article 30C of the FIT Order 2012.

How would option 1 work under the RO

75. The RO scheme works in a fundamentally different way to the CfD and FITs schemes, in particular: suppliers bear the costs of the scheme by complying with the obligation rather than making cash payments on a quarterly and annual basis.⁸

76. Under this option, if the error in EII eligibility comes to light before the end of that obligation year we propose that:

- Ofgem would adjust the supply volumes used to calculate the total obligation (total number of ROCs to be supplied) of any supplier who has supplied an over-exempted EII to take account of supply volumes which had been incorrectly exempted due to an error in assessing EII eligibility. This would be carried out as part of the annual compliance process.
- The supplier would be required to meet its increased obligation through submitting ROCs or making buy-out payments as under the current system.
- Ofgem would then, through the buyout fund, redistribute the total value of any buy-out payments relating to supply volumes which had been incorrectly exempted due to an error in assessing EII eligibility to all licensed suppliers who supplied electricity during the obligation period - not just those who had presented ROCs⁹. One option for sharing the extra buy-out payments between suppliers would be to base it on market share.

⁸ See further the explanation of how the RO works in section [3] above.

⁹ We propose that the total value of buy-out payments relating to supply volumes which had been incorrectly exempted due to an error in assessing EII eligibility would not be used for paying Ofgem's administrative costs

- Assuming suppliers pass through this additional income, this would provide partial compensation to other consumers of electricity who would have been effectively overcharged as a result of the over exemption¹⁰.

77. Alternatively an error in EII eligibility may come to light after the compliance process for that obligation year has ended. In these circumstances:

- Ofgem would add the supply volumes which had been incorrectly exempted to the relevant suppliers' total obligation through the compliance process at the end of the then current obligation period.
- Ofgem would, through the buy-out fund, redistribute the total value of any buyout payments relating to supply volumes which had been incorrectly exempted due to an error in assessing EII eligibility to all suppliers.¹¹ As above, this could be done based on market share.

78. Incorporating the mechanism described above would require raise the following issues:

- The value of the over exemption will not be redistributed to all other suppliers where the supplier of the over exempt EII has chosen to comply with its increased total obligation by submitting ROCs rather than buy- out payments. To address this would require further changes to be made to the scheme to require suppliers of over exempted EIIs to always make payments into the buyout fund in respect of supply volumes that were incorrectly classed as EII excluded electricity. This could result in extra cost for some suppliers, for example those with extra ROCs they have 'banked' from the previous obligation year, that they could otherwise use to satisfy the increased total obligation. Therefore requiring a supplier to make buy-out payments in respect of supply volumes which had been incorrectly exempted due to an error in assessing EII eligibility could disadvantage such suppliers.
- There is a risk that it will not be possible to recover the correct value of the over exemption. For example, where the error in EII eligibility comes to light just after the end of the obligation year in which it occurred, the supply volume against which that EII's supplier would need to present ROCs would increase in the next obligation year. However, because the value of a ROC changes each obligation year, there is a risk that the value of the reduction in costs that were passed onto the EII in the previous obligation year would not correspond to the increased cost the supplier would face in the current obligation year.

¹⁰ This is because the obligation level would have been set at a higher level than strictly necessary at the start of the obligation year, because it assumed up to 85% of electricity supplied to the over-exempted EII would be eligible for the exemption and so suppliers would not be presenting ROCs against this electricity. However the value of the over exemption would not be redistributed to all other suppliers where the supplier of the over exempt EII has chosen to comply with its increased total obligation by submitting ROCs rather than buy out payments.

¹¹ See footnote 8 above.

- There could be a significant time lag between when the over exemption is identified and when it is recovered through the adjustment to the supplier's liability. For example if an over-exemption comes to light in October, in line with the current RO compliance time line, Ofgem would not adjust the relevant supplier's supply volumes and total obligation until the following June /July and the supplier would not need to discharge the increased total obligation until 1 September.

79. This option would also require significant changes to the way the RO scheme currently operates, in summary:

- To allow a supplier's liability in any obligation year to be adjusted to account for an over-exemption in previous obligation years,
- To how the buy-out fund operates and is re-distributed.

Option 2: Recovery of over exemption from the EII, and redistribution of recovered funds through adjustments to supplier liability under the CFD scheme

80. Under this option, there would be no adjustment of suppliers' liabilities through the separate schemes. Instead, BEIS would recover money from the over-exempted EII business - calculating the total to be recovered relating to the RO, FITs and CfD exemptions in Great Britain. The total recovered funds from the EII would be paid to the LCCC. The recovered funds would then be redistributed to suppliers through the CfD scheme. We anticipate that these savings will be passed on by suppliers to consumers.

Process of recovery

81. If BEIS forms the view that a business has been over-exempted we would inform the EII setting out the reasons in writing and require the EII to provide certain data within 4 weeks of the date of the letter to allow us to assess the consumption of electricity wrongly treated as exempt. The data to establish the level of over exemption will be taken from EIIs bills and / or the scheme administrator or through third parties that have access to meter data. This will provide an overall number of MWh for which the EII wrongly received the exemption.

82. We are considering three options for calculating the over exempted sum to be repaid:

- a. Multiplying the volume of ineligible electricity (that has been exempted) by a forecast of RO, FiT and CfD policy costs, on the basis that suppliers are likely to use forward looking policy costs estimates when setting tariffs;
- b. Multiplying the volume of ineligible electricity (that has been exempted) by actual policy costs (or forecast policy costs where actual costs are not available). We anticipate that actual FIT and CFD costs will be available within a short timeframe; however, actual policy costs for the RO may not be available until Ofgem set the recycle rate several months after the end of an actual obligation year; or

- c. Using information from an EI's electricity supplier to estimate the cost reductions actually passed onto the EIs.
83. We would then inform the EI in writing of the level of over exemption, setting out how this will be recovered and revoke or amend the certificate as appropriate. In the event that the over exemption was recovered as a direct payment the EI would be required to pay this within three months of the date of letter.
84. There would be an appeals process allowing EIs to make representations challenging both a decision that they had been over-exempted, and the level of over-exemption sought to be recovered.

Process of redistribution

85. The recovered funds would be paid to the LCCC. Where the recovered amounts are known in advance, the LCCC would take these recovered amounts into account when setting the interim levy rate and total reserve amount for the quarter in which the funds actually received are expected to be received (the rates are set at least 3 months in advance of the quarter in which they apply). The LCCC would factor the recovered funds into the calculation of reconciliation payments for the quarter in which they are received by the LCCC (rather than the period(s) in which the over-exemption took place) so these funds would reduce each supplier's liability for CfD payments in that quarter according to their market share over that quarter.

Analysis of options

	Option 1	Option 2
Advantages	<p>Consistent with overall approach of the exemption schemes, where the exemption is given to the supplier, who is responsible for the relationship with the energy intensive businesses.</p> <p>Compatible with existing reconciliation / levelisation mechanisms for CfD and FIT schemes with relatively limited changes required.</p>	<p>An energy intensive business which receives an over-exemption will be directly required to repay it.</p> <p>More transparent and simpler to administer, with consistent approach across all three schemes.</p> <p>Should have less of an impact on consumer bills, as less uncertainty.</p>
Disadvantages	<p>Exposes suppliers of an exempt EI to a 'credit risk', as the supplier would be liable if the EI is over-exempted and they cannot recover the funds. Suppliers could require credit cover from EIs against this risk or charge a risk premium to exempt EIs, increasing costs.</p>	<p>Recovered over-payments are redistributed to suppliers based on market share over a different time period, so arguably different suppliers / consumers are benefiting.</p> <p>Potential fiscal impact if the funds flow through the Consolidated Fund.</p>

Option 1	Option 2
	<p>Under the RO scheme:</p> <ul style="list-style-type: none"> • no guarantee that suppliers will be required to repay the correct amount. • value of the over-exemption will not be fully redistributed to other consumers. • requires significant changes to the way the RO operates.

Question 5. Which of the two options for recovering and redistributing over exemption do you prefer? Please set out your reasons. We welcome comment on how your preferred option could be improved.

Question 6. In paragraph 82 we propose three options for how we could calculate the over- exempted sum to be repaid. Which option do you prefer and why? What alternative approaches could we take? How do you believe the forecast or actual policy costs should be derived for options ‘a’ and ‘b’?

11. Consultation questions in full

Question 1. Do you agree with our proposed definition of a new business? If not, what alternatives should we be considering?

Question 2. Do you agree with our proposed requirement that EIs notify us of changes that would affect their eligibility or the proportion of electricity they use that is eligible for the CfD exemption?

Question 3. Do you agree with our proposed amendments to the issuing and expiry of EI certificates? If not, what alternatives should we be considering?

Question 4. Do you have any comments on our proposed changes to the additional amendments to the regulations outlined above?

Question 5. Which of the two options for recovering and redistributing over exemption do you prefer? Please set out your reasons. We welcome comment on how your preferred option could be improved.

Question 6. In paragraph 82 we propose three options for how we could calculate the over- exempted sum to be repaid. Which option do you prefer and why? What alternative approaches could we take? How do you believe the forecast or actual policy costs should be derived for options 'a' and 'b'?

12. What happens next?

86. We will aim to publish our decision as soon as possible after the consultation closes on 26 August, following careful consideration of consultation responses and the evidence received.
87. Subject to this consultation, and the relevant legislation into force, we intend to implement the exemption by no later than 28 February 2017.

Annex A: Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

www.gov.uk/government/publications/consultation-principles-guidance

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BEIS Consultation Co-ordinator
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 1661

Email: angela.rabess@bis.gsi.gov.uk

However if you wish to comment on the specific policy proposals you should contact the policy lead (see [section 4](#)).

Annex B: Revised Impact of an EI Exemption from Indirect CfD Costs on Electricity Bills

The consultation document outlines modifications to the CfD exemption scheme for EIs. These modifications do not change the background, rationale or objectives of the policy. There has also been no update to the overall value for money case of the policy¹² This annex updates the best estimate of the impact of the CfD exemption on electricity bills using the latest data available. Under the exemption, eligible businesses will receive an 85% exemption from the indirect cost of CfDs. Eligible businesses belong to a sector identified as energy intensive and pass a business level test which demonstrates their electricity costs exceed 20% of Gross Value Added.

The bill impact calculations use CfD strike prices (£/MWh) and wholesale prices consistent with the Environmental Levies published in the OBR Economic and Fiscal Outlook - March 2016, total electricity demand and illustrative electricity usage (MWh) by different consumer groups. BEIS's (2016) internal estimate of 19TWh per year of eligible electricity was used to calculate the total cost of the exemption which was then spread over all non-exempt electricity users. The counterfactual assumes no exemption so all electricity consumers would pay the same cost per MWh for CfD costs.

The exemption for EIs will increase bills for other consumers and is detailed in table 1 below.

¹² These can be found in an earlier impact assessment:
[www.gov.uk/government/uploads/system/uploads/attachment_data/file/358163/ANNEX_B -
_Impact Assessment - Eligibility for an exemption from the cost.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358163/ANNEX_B_-_Impact_Assessment_-_Eligibility_for_an_exemption_from_the_cost.pdf)

Table 1: Annual Impact of CfD Exemption on Electricity Bills (2016/17 prices)

Year	Households (excl VAT)	Medium Energy User (Business)	Non-exempt EII (Business) ¹³	Exempt EII (Business)
2016/17	£0	£524	£4,824	-£69,191
2017/18	£0	£1,238	£11,431	-£161,763
2018/19	£1	£2,681	£24,791	-£345,536
2019/20	£1	£4,439	£41,136	-£562,141
2020/21	£2	£5,793	£53,800	-£724,007
2021/22	£2	£6,171	£57,497	-£776,496
2022/23	£2	£6,558	£61,369	-£831,951
2023/24	£2	£6,294	£59,193	-£809,535
2024/25	£2	£5,867	£55,289	-£764,222
2025/26	£2	£7,290	£68,781	-£954,519
2026/27	£2	£6,982	£65,723	-£930,084

The actual cost in future years, of both CfD payments and the exemption, are dependent on a number of variables including: wholesale prices, the actual investment attracted into new generation capacity, electricity demand and the final scope of eligible businesses.

¹³ Bill impacts are for an illustrative EII which is assumed to consume 100,000 MWh of electricity per annum before any energy efficiency measures.

Annex C: Consultation Response

The consultation is available at: www.gov.uk/government/consultations/energy-intensive-industries-exemption-from-indirect-costs-of-the-contracts-for-difference-scheme.

The closing date for responses is 26 August 2016.

Please return completed forms to:

Energy Cost Competitiveness Team
Department for Business, Energy and Industrial Strategy
Orchard 2, 4th Floor
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 5000

Email: energyintensiveindustries@bis.gsi.gov.uk

Information provided in response to this consultation, including personal information may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes.

If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information 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 as binding on the department.

I want my response to be treated as confidential

Comments:

Questions

Name:

Organisation (if applicable):

Address:

	Respondent type
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

Question 1. Do you agree with our proposed definition of a new business? If not, what alternatives should we be considering?

Comments:

Question 2. Do you agree with our proposed requirement that EIs notify us of changes that would affect their eligibility or the proportion of electricity they use that is eligible for the CfD exemption?

Comments:

Question 3. Do you agree with our proposed amendments to the issuing and expiry of EII certificates? If not, what alternatives should we be considering?

Comments:

Question 4. Do you have any comments on our proposed changes to the additional amendments to the regulations outlined above?

Comments:

Question 5. Which of the two options for recovering and redistributing over exemption do you prefer? Please set out your reasons. We welcome comment on how your preferred option could be improved.

Comments:

Question 6. In paragraph 82 we propose three options for how we could calculate the over- exempted sum to be repaid. Which option do you prefer and why? What alternative approaches could we take? How do you believe the forecast or actual policy costs should be derived for options 'a' and 'b'?

Comments:

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No



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Department for Business, Energy and Industrial Strategy
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

Email: enquiries@bis.gsi.gov.uk

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