STATUTORY INSTRUMENTS

2017 No. 1051

ELECTRICITY

The Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017

Made - - - -	*30th October 2017*
Coming into force - -	*31st October 2017*

The Secretary of State has before making these Regulations—

(a) consulted the persons listed in section 24(1)(a) to (g) of the Energy Act 2013(**1**) and such other persons as the Secretary of State considered it appropriate to consult; and

(b) had regard to the matters in section 5(2) of that Act.

In accordance with section 6(8) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State, in exercise of the powers conferred by sections 6(1), (5) and (6), 9(1), (6) and (7), 19 and 21(1) of the Energy Act 2013, makes the following regulations:

Citation and Commencement

1.—(1) These Regulations may be cited as the Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017.

(2) They come into force on the day after the day on which they are made.

Amendments to the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015

2.—(1) The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 are amended in accordance with this regulation.

(2) Amend regulation 2(1) as follows—

(a) after the definition of "the Act" insert—

""annual accounts"—

(a) in the case of a company within the meaning of section 1(1) of the Companies Act 2006(**2**), has the meaning given in section 471 of that Act;

(**1**) 2013 c.32.
(**2**) 2006 c.46; section 471 was amended by S.I. 2012/2301, 2013/3008, 2013/1970.

(b) in the case of a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000(**3**), has the meaning given in section 471 of the Companies Act 2006 as applied with modifications by regulation 29 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008(**4**);

(c) in the case of a business carried on by any other person, means accounts which relate to that business which are prepared by that person—

(i) annually, and

(ii) in accordance with accounting standards which are, in the opinion of the Secretary of State, satisfactory;";

(b) after the definition of "BM Unit Identification Number" insert—

""business year"—

(a) in the case of a company within the meaning of section 1(1) of the Companies Act 2006, means the company's "financial year" as determined in accordance with section 390 of that Act;

(b) in the case of a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, means the limited liability partnership's financial year as determined in accordance with section 390 of the Companies Act 2006 as applied with modifications by regulation 7 of the Limited Liability Partnerships (Accounts and Audit) (Application of Companies Act 2006) Regulations 2008;

(c) in the case of a business carried on by any other person, means a period of one year commencing with 1st April;";

(c) at the end of the definition of "earnings" add ", excluding items which are extraordinary in the opinion of the Secretary of State";

(d) after the definition of "excluded electricity" insert—

""financial data" in relation to a person's business, means complete details of the earnings and staff costs of that business;

"financial quarter" means a period of three consecutive months in a business year;";

(e) after the definition of "financial year" insert—

""force majeure" means abnormal and unforeseeable circumstances, including natural events, outside the control of the person applying for an EII certificate, the consequences of which could not have been avoided by the exercise of all due care by that person;

"force majeure application" means an EII application which states that the person's business to which the application relates was affected by force majeure during the relevant period;";

(f) after the definition of "NACE Rev 2" insert—

""new business" means a person's business—

(a) in respect of which no annual accounts have been prepared by that person;

(**3**) 2000 c.12.
(**4**) S.I. 2008/1911 as amended by S.I. 2012/2301, 2016/575.

(b) in respect of which there is financial data for two or more consecutive financial quarters in the 12 month period immediately prior to the making of an EII application in relation to it; and

(c) in respect of which that person has been trading for no more than 21 months;".

(3) For regulations 8 to 13 (EII certificates—Validity and revocation of EII certificates) substitute —

"**EII certificates**

8.—(1) Subject to regulation 10(7), a person who uses electricity for a specified activity is entitled, on application to the Secretary of State under regulation 10, to be issued with a certificate by the Secretary of State (an "EII certificate") in respect of the electricity meter which measures the supply of that electricity where—

(a) the specified activity—

(i) is carried out in the course of the person's business, and

(ii) has been carried out in the course of the person's business for at least two consecutive financial quarters in the 12 month period immediately prior to the making of the EII application; and

(b) either—

(i) the test in paragraph (2) is met in relation to that business, or

(ii) paragraph (4) or (7) applies to that business.

(2) The test in this paragraph is met in relation to a person's business if the electricity cost impact of the business in the relevant period is equal to, or greater than, 0.2.

(3) For the purposes of paragraph (2), the electricity cost impact is the amount calculated in accordance with the formula—

$$\frac{BEP \times BEC}{BGVA}$$

where—

BEP is the price which, in the opinion of the Secretary of State, reflects the electricity price paid by businesses which carry out specified activities, in the most recent calendar year for which information is available, expressed in pounds per megawatt hour and adjusted for inflation in accordance with a measure of inflation determined by the Secretary of State so as to reflect prices in the year 2012;

BEC is the amount of electricity consumed in the United Kingdom by the person's business in the relevant period; and

BGVA is the sum of the staff costs and the earnings of the person's business in the relevant period, adjusted for inflation in accordance with a measure of inflation determined by the Secretary of State so as to reflect prices in the year 2012, except that—

(a) in the case of a new business, where the staff costs and the earnings of that business in any financial quarter during the relevant period together total less than £1 they are to be treated as £1; and

(b) in the case of any other business, where the staff costs and the earnings of that business in any business year during the relevant period together total less than £1 they are to be treated as £1.

(4) Subject to paragraph (6), this paragraph applies to a person's business where—

(a) an EII certificate has previously been issued to that person;

(b) that EII certificate is in force in respect of the meter that measures the supply of electricity to that business on the date of that person's EII application; and

(c) when that person applied for that EII certificate, the relevant period was the three most recent business years for which there are annual accounts in respect of that person's business.

(5) Where a notice has been issued in respect of an EII certificate pursuant to regulation 12(7)(a), and the person who is identified in that notice makes an EII application in respect of the meter identified in that certificate before that certificate ceases to be valid, paragraph (4) is to be treated as applying to that person's business in respect of that EII application if paragraph (4) applies to that person's business in respect of another EII certificate.

(6) If paragraph (4) applies to a person's business in respect of four consecutive EII applications, the test in paragraph (2) must be met in relation to that person's business in respect of an EII application identifying that meter before paragraph (4) will apply again.

(7) This paragraph applies to a person's business where—

(a) that person makes a force majeure application in relation to that business; and

(b) in the opinion of the Secretary of State, but for force majeure the test in paragraph (2) would have been met.

(8) An EII certificate must set out an address and an email address provided by the Secretary of State for correspondence about that certificate.

Relevant period for a business

9.—(1) The relevant period for a person's business for the purposes of an EII application is—

(a) in respect of a new business, the period of at least six months prior to the relevant date—

(i) throughout which the person was carrying out a specified activity in the course of business, and

(ii) in respect of which there is financial data in relation to that business;

(b) in respect of any other business, to be determined in accordance with paragraph (2).

(2) Where on the relevant date a person has, in respect of their business—

(a) annual accounts for three or more consecutive business years commencing after 1st January 2012, the relevant period is the three most recent consecutive business years for which there are annual accounts in respect of the business;

(b) annual accounts for two, but not three, consecutive business years commencing after 1st January 2012, the relevant period is those two business years; or

(c) annual accounts for one, but not two, business years commencing after 1st January 2012, the relevant period is that business year.

(3) For the purposes of this regulation the relevant date is the date on which a person applies for an EII certificate in respect of their business.

Applications for EII certificates

10.—(1) A person who uses electricity for a specified activity in the course of business may apply to the Secretary of State for an EII certificate in respect of the electricity meter which measures the supply of electricity used for that activity.

(2) The application must be made in writing and, subject to paragraphs (3) and (4), it must contain—

(a) evidence of the earnings and the staff costs of the person's business for which the electricity is used in the relevant period;

(b) evidence of the amount of electricity consumed in the United Kingdom by the person's business in the relevant period;

(c) where the meter which measures the supply of electricity used for a specified activity —

(i) is registered in SMRS, the MSID that relates to that meter,

(ii) is registered in CMRS, the BM Unit Identification Number and MSID that relates to that meter;

(d) a statement setting out the specified activity for which electricity supplied to that meter is used in the course of business by the person making the application;

(e) except where the person obtains electricity measured by that meter from a third party other than an electricity supplier, evidence of—

(i) the amount of electricity measured by that meter which was supplied during the entire calendar year which immediately preceded the calendar year in which the EII application is made, and

(ii) the sum paid to the electricity supplier supplying such electricity for such supply;

(f) a statement—

(i) confirming that all the electricity supplied to that meter is used in the course of business by the person applying for the EII certificate, or

(ii) identifying any third party with whom the person applying for the EII certificate shares, or to whom that person supplies, electricity supplied to that meter;

(g) if applicable, a statement identifying any third party, other than an electricity supplier, from whom the person applying for the EII certificate obtains electricity;

(h) evidence of—

(i) where the person was carrying out a specified activity in the course of business during the entire calendar year which immediately preceded the calendar year in which the EII application is made, the proportion of electricity measured by that meter which was used for a specified activity by that person's business in that year, or

(ii) where the person was not carrying out a specified activity in the course of business during the entire calendar year which immediately preceded the calendar year in which the EII application is made, the proportion of electricity measured by that meter which was used for a specified activity by that person's business in the relevant period;

(i) where sub-paragraph (h) cannot be complied with, sufficient evidence of the activities which are carried out using electricity measured by that meter to enable the Secretary of State to estimate the proportion of electricity measured by that meter