Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2015 No. 721

ELECTRICITY

The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015

Made - - - -	*14th March 2015*
Coming into force - -	*1st April 2015*

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 [F1] 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.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 6(1), (5) and (6), 9(1), (2), (4) to (8), and (10), 17, 19, 20, 21(1) and (3) and 22(1) of, and paragraph 16(2) of Schedule 2 to, the Energy Act 2013, makes the following Regulations:

F1 2013 c.32.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015.

(2) These Regulations come into force on 1st April 2015.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Energy Act 2013;

[[F2]"annual accounts"—

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

(b) in the case of a limited liability partnership incorporated under the Limited Liability Partnerships Act 2000, 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;

(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;**]**

"the Balancing and Settlement Code", "the BSCCo" and "BSC volume allocation run" have the meanings given in the ESO Regulations;

"BM Unit Identification Number", "CMRS", "MSID" and "SMRS" are to be construed in accordance with the Balancing and Settlement Code (see Sections X-1 and X-2 of that code);

[F3"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;**]**

"CFD period contribution" has the meaning given in the ESO Regulations;

[F4"continuing change" (and "commence" in relation to a continuing change) must be construed in accordance with regulation 2A;**]**

"earnings" in relation to a business, means the earnings of that business before interest, taxes, depreciation and amortisation **[**F5, excluding items which are extraordinary in the opinion of the Secretary of State**]** ;

"EII application" means an application under regulation 10;

"EII certificate" has the meaning given by regulation 8(1);

"EII excluded electricity" means any amount of electricity determined as such in accordance with regulation 6;

"electricity supplier" has the meaning given in the ESO Regulations;

"energy from renewable sources" is to be construed in accordance with Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC**[**F6;

"ESO Regulations" means the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014 **[**F7;

"excluded electricity" means EII excluded electricity and green excluded electricity;

[F8“financial data” in relation to a person’s business, means complete details of the earnings and staff costs of that business;**]**

[F8“financial quarter” means a period of three consecutive months in a business year;**]**

“financial year” means a period of 12 months commencing with 1st April and a reference to a financial year followed by the number of a calendar year is to be construed as a reference to the financial year commencing with 1st April of that year;

[F9“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;**]**

[F9“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;**]**

“green excluded electricity” means any amount of electricity determined as such in accordance with regulation 3;

“NACE Rev 2” is as set out in Annex I to Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 (relating to the statistical classification of economic activities) F10;

[F11“new business” means a person’s business—

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

(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;**]**

“proper address” means—

(a) in the case of a body corporate—

(i) the registered or principal office of that body, or

(ii) an email address provided (and not withdrawn) by that body;

(b) in the case of a partnership—

(i) the principal office of the partnership, or

(ii) an email address provided (and not withdrawn) by—

(aa) that partnership,

(bb) a partner, or

(cc) a person having control or management of the partnership business;

(c) in the case of any other person, that person's last known address, which includes an email address provided (and not withdrawn) by that person;

“quarterly obligation period” has the meaning given in the ESO Regulations;

“relevant arrangements” has the meaning given by regulation 7;

“relevant period” is to be construed in accordance with regulation 9;

“staff costs” in relation to a business, include any employers' pension and national insurance contributions which the business makes;

“specified activity” means an activity classified by a NACE Rev 2 class specified in column 2 of the table in the Schedule which corresponds with the description of that class in column 1 of the table;

"working day" means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 [F12].

(2) Any reference in these Regulations to a supply of electricity is a reference to its supply in Great Britain, and "supply" is to be construed in accordance with section 4(4) of the Electricity Act 1989 [F13].

(3) Any reference in these Regulations to an amount of electricity is a reference to that amount expressed in megawatt hours (MWh).

(4) Where more than one person is designated under section 7 of the Act as a CFD counterparty these Regulations have effect as if—

(a) in regulation 4—

(i) the references to "the CFD counterparty" in paragraphs (1), (3) and (6) were to "the CFD counterparty most recently designated under section 7 of the Act";

(ii) every other reference to "the CFD counterparty" in that regulation were to "a CFD counterparty"; and

(iii) the words "the CFD counterparty most recently designated under section 7 of the Act" appeared after the word "but" in paragraph (4);

(b) in regulation 5—

(i) the reference in paragraph (2) to "the CFD counterparty" were to "the CFD counterparty most recently designated under section 7 of the Act" and the reference in paragraph (4) were to "a CFD counterparty"; and

(ii) the words "the CFD counterparty most recently designated under section 7 of the Act" appeared after the word "but" in paragraph (4);

(c) in regulation 6—

(i) the first and second references to "the CFD counterparty" in that regulation were to "the CFD counterparty most recently designated under section 7 of the Act" and the other reference in that regulation were to "A CFD counterparty"; and

(ii) in paragraph (3) the words " to another CFD counterparty or" appeared after the word "except";

(d) in regulation 6(3), the reference to "the CFD counterparty" were to "a CFD counterparty"

(e) in regulation 7—

(i) the first reference in paragraph (1) to "the CFD counterparty" were to "a CFD counterparty" and the other reference were to "CFD counterparties";

(ii) the words "which on 31st September 2015 was the most recently designated under section 7 of the Act" appeared after "The CFD counterparty" in paragraph (2);

(iii) the words "most recently designated under section 7 of the Act" appeared after "The CFD counterparty" in paragraph (3);

(iv) the reference in paragraph (4) to "The CFD counterparty" were to "A CFD counterparty";

(v) the reference in paragraph (5) "the CFD counterparty" were to "a CFD counterparty";

(f) the references to "the CFD counterparty" in regulations **[**[F14]12A(7)**]** and 13(6) were to "every CFD counterparty";

(g) the reference to "the CFD counterparty" in regulation 13(8) were to "the CFD counterparty most recently designated under section 7 of the Act";

(h) the reference to "the CFD counterparty" in regulation 14 were to "a CFD counterparty".

[F15(5) A reference in these Regulations to a notice issued under regulation 12A includes a reference to a notice issued under regulation 11(3) (before its substitution by the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2020).**]**

F2 Words in reg. 2(1) inserted (31.10.2017) by The Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017 (S.I. 2017/1051), regs. 1(2), **2(2)(a)**
F3 Words in reg. 2(1) inserted (31.10.2017) by The Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017 (S.I. 2017/1051), regs. 1(2), **2(2)(b)**
F4 Words in reg. 2(1) inserted (2.3.2020) by The Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2020 (S.I. 2020/130), regs. 2(1), **4(2)**
F5 Words in reg. 2(1) added (31.10.2017) by The Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017 (S.I. 2017/1051), regs. 1(2), **2(2)(c)**
F6 L140 5.6.2009, p16-62.
F7 S.I. 2014/2014.
F8 Words in reg. 2(1) inserted (31.10.2017) by The Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017 (S.I. 2017/1051), regs. 1(2), **2(2)(d)**
F9 Words in reg. 2(1) inserted (31.10.2017) by The Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017 (S.I. 2017/1051), regs. 1(2), **2(2)(e)**
F10 L393 30.12.2006, p.1.
F11 Words in reg. 2(1) inserted (31.10.2017) by The Electricity Supplier Obligations (Amendment and Excluded Electricity) (Amendment) Regulations 2017 (S.I. 2017/1051), regs. 1(2), **2(2)(f)**
F12 1971 c.80.
F13 1989 c.29.
F14 Word in reg. 2(4)(f) substituted (2.3.2020) by The Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2020 (S.I. 2020/130), regs. 2(1), **4(3)**
F15 Reg. 2(5) inserted (2.3.2020) by The Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2020 (S.I. 2020/130), regs. 2(1), **4(4)**

[F16**Meaning of continuing change etc.**

2A.—(1) This regulation applies where a person—

(a) makes an EII application for an EII certificate in respect of an electricity meter that measures the supply of electricity used for a specified activity; or

(b) sends a report under regulation 12(4) in respect of such an EII certificate.

(2) For the purposes of these Regulations, there is a continuing change in relation to the meter at the relevant date (that is to say, the date of the application or the report) if any of paragraphs (3) to (6) applies.

(3) This paragraph applies if electricity measured by the meter—

(a) begins at any time after the start date to be shared with a person with whom it is not being shared; and

(b) at the relevant date—

(i) has been shared with that person for at least 3 months; and

(ii) continues to be shared with that person.

(4) This paragraph applies if electricity measured by the meter—

(a) ceases at any time after the start date to be shared with a person with whom it is being shared; and

(b) at the relevant date—