Draft Regulations laid before Parliament under section 6(8) of the Energy Act 2013, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

ELECTRICITY

The Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2019

Made - - - - ***

Coming into force in accordance with regulation 2

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 6(1) and (6), 9(1) and (2) and 19 of the Energy Act 2013(**1**).

Before making these Regulations, the Secretary of State—

(a) consulted the persons mentioned in section 24(1)(a) to (g) of that Act 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.

Citation

1. These Regulations may be cited as the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2019.

Commencement

2.—(1) Subject to paragraph (2), these Regulations come into force on the 21st day (the "commencement date") after the day on which they are made.

(2) Regulation 14 comes into force on the later of 1st April 2020 and the commencement date.

(**1**) 2013 c.32.

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

3. The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015(**2**) are amended in accordance with regulations 4 to 14.

Regulation 2 amended (interpretation)

4.—(1) Regulation 2 is amended as follows.

(2) In paragraph (1) after the definition of "CFD period contribution" insert—

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

(3) In paragraph (4)(f) for "11(3)" substitute "12A(7)".

(4) After paragraph (4) insert—

"(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 2019).".

New regulation 2A inserted

5. After regulation 2 insert—

"**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—

(i) has not been shared with that person for at least 3 months; and

(ii) continues not to be shared with that person.

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

(**2**) S.I. 2015/721, amended by S.I. 2017/1051; there are other amending instruments, but none is relevant.

(a) begins at any time after the start date to be used (other than by a person with whom the electricity is shared) for a non-specified activity for which it is not being used; and

(b) at the relevant date—

(i) has been used for that activity for at least 3 months; and

(ii) continues to be used for that activity.

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

(a) ceases at any time after the start date to be used (other than by a person with whom the electricity is shared) for a non-specified activity for which it is being used; and

(b) at the relevant date—

(i) has not been used for that activity for at least 3 months; and

(ii) continues not to be used for that activity.

(7) In paragraphs (3) to (6), a reference to electricity beginning or ceasing to be shared or used includes a reference to electricity beginning or ceasing to be shared or used before as well as after this regulation comes into force.

(8) For the purposes of these Regulations, the continuing change "commences" when electricity measured by the meter—

(a) begins to be shared or used as mentioned in paragraph (3)(a) or (5)(a); or

(b) ceases to be shared or used as mentioned in paragraph (4)(a) or (6)(a).

(9) In this regulation—

"non-specified activity" means the manufacture, production or processing of any product or substance, except where the manufacture, production or processing of the product or substance is a specified activity;

"start date" means—

(a) if the meter measured the supply of electricity used for a specified activity during the entire calendar year (the "previous year") immediately preceding the calendar year in which the EII application for the EII certificate mentioned in paragraph (1) is made, the beginning of the previous year;

(b) if the meter did not measure the supply of electricity used for a specified activity during the entire previous year, the date on which the supply of electricity began.".

Regulation 6 amended (determination of EII excluded electricity)

6.—(1) Regulation 6 is amended as follows.

(2) In paragraph (2)—

(a) in sub-paragraph (a) for "11(3)" substitute "12A";

(b) in sub-paragraph (b) for "11(3)" substitute "12A".

Regulation 8 amended (EII certificates)

7.—(1) Regulation 8 is amended as follows.

(2) In paragraph (1)—

(a) at the end of sub-paragraph (a)(ii) omit "and";

(b) at the end of sub-paragraph (b)(ii) insert "; and";

(c) after sub-paragraph (b) insert—

"(c) the EII application contains evidence under regulation 10(2)(h) of the proportion of electricity measured by the meter that was used for a specified activity in the course of the person's business in a period that is at least 3 months in length.".

(3) For paragraph (2) substitute—

"(2) The test in this paragraph is met in relation to a person's business if—

(a) the electricity cost impact of the business in the relevant period is equal to, or greater than, 0.2; and

(b) paragraph (9) applies to the person.".

(4) In paragraph (7)—

(a) at the end of sub-paragraph (a) omit "and";

(b) at the end of sub-paragraph (b) insert "; and";

(c) after sub-paragraph (b) insert—

"(c) paragraph (9) applies to that person.".

(5) After paragraph (8) insert—

"(9) This paragraph applies to a person if—

(a) the person is not in difficulty; and

(b) the person is not subject to an outstanding recovery order made by virtue of Article 108(2) of the Treaty on the Functioning of the European Union (Commission decision declaring aid illegal and incompatible with the common market).

(10) For the purposes of these Regulations, a person is "not in difficulty" if it is reasonable to assume that the person would not be regarded as an undertaking in difficulty for the purposes of the European Commission's Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01)(**3**).".

Regulation 10 amended (applications for EII certificates)

8.—(1) Regulation 10 is amended as follows.

(2) In paragraph (2)—

(a) for sub-paragraph (f)(ii) substitute—

"(ii) identifying any person with whom that electricity is shared;";

(b) for sub-paragraph (h) substitute—

"(h) evidence of the proportion of the electricity measured by that meter that was used for a specified activity in the course of the person's business—

(i) where at the date of the EII application there is a continuing change in relation to that meter, in the period—

(aa) beginning on the date (the "commencement date") on which the last-commencing continuing change commenced; and

(bb) ending on the earlier of 12 months after the commencement date and the last date for which (at the date of the application) the person has such evidence:

(**3**) O.J. C 249, 31.7.2014, p.1.

Provided that this paragraph does not apply unless that period is at least 3 months in length;

(ii) where paragraph (i) does not apply—

(aa) if that meter measured the supply of such electricity during the entire previous year, in the previous year; or

(bb) if that meter did not measure the supply of such electricity during the entire previous year, in the period beginning on the date (the "start date") on which the supply of such electricity began and ending on the earlier of 12 months after the start date and the last date for which (at the date of the EII application) the person has such evidence;

(ha) where at the date of the EII application there is a continuing change in relation to that meter, a statement setting out the date on which the last-commencing continuing change commenced;";

(c) omit sub-paragraph (i);

(d) at the end of sub-paragraph (n) omit "and";

(e) at the end of sub-paragraph (o) insert "; and";

(f) after sub-paragraph (o) insert—

"(p) a statement that the person is not in difficulty (see regulation 8(10)).".

(3) In paragraph (3) for "evidence described in paragraphs (2)(a) and (b)" substitute "evidence mentioned in paragraph (2)(a) and (b) or the statement mentioned in paragraph (2)(p)".

(4) After paragraph (4) insert—

"(4A) Where the EII application is required under paragraph (2)(p) to contain a statement that the person making the application is not in difficulty, the Secretary of State may request the person to provide such information or evidence as the Secretary of State thinks necessary to satisfy the Secretary of State that the person is not in difficulty.".

(5) Omit paragraphs (5) and (6).

(6) In paragraph (7) after "paragraph (2)" insert "or provided pursuant to a request under paragraph (4A)".

(7) After paragraph (9) insert—

"(10) In this regulation, "previous year", in relation to an EII application, means the calendar year immediately preceding the calendar year in which the EII application is made.

Regulation 11 substituted

9. For regulation 11 substitute—

"**Proportion to be specified in an EII certificate**

11.—(1) An EII certificate issued in respect of an electricity meter must specify—

(a) the proportion of electricity measured by the meter that constitutes EII excluded electricity, rounded to the nearest one-hundredth with 0.005 being rounded upwards; and

(b) the start and end dates of the period by reference to which the proportion is determined.