

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT CONTRACTS FOR DIFFERENCE
(ALLOCATION) (EXCLUDED SITES)
AMENDMENT REGULATIONS 2016

Monday 14 November 2016

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The Committee consisted of the following Members:

Chair: MRS MADELEINE MOON

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| † Allen, Heidi (<i>South Cambridgeshire</i>) (Con) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Benyon, Richard (<i>Newbury</i>) (Con) | † Norman, Jesse (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) |
| † Chalk, Alex (<i>Cheltenham</i>) (Con) | † Pincher, Christopher (<i>Tamworth</i>) (Con) |
| † Courts, Robert (<i>Witney</i>) (Con) | Sharma, Mr Virendra (<i>Ealing, Southall</i>) (Lab) |
| † Coyle, Neil (<i>Bermondsey and Old Southwark</i>) (Lab) | † Vaizey, Mr Edward (<i>Wantage</i>) (Con) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | † Whitehead, Dr Alan (<i>Southampton, Test</i>) (Lab) |
| De Piero, Gloria (<i>Ashfield</i>) (Lab) | |
| † Kennedy, Seema (<i>South Ribble</i>) (Con) | Jennifer Burch, <i>Committee Clerk</i> |
| † Kinnock, Stephen (<i>Aberavon</i>) (Lab) | |
| † Leslie, Charlotte (<i>Bristol North West</i>) (Con) | † attended the Committee |

Third Delegated Legislation Committee

Monday 14 November 2016

[MRS MADELEINE MOON *in the Chair*]

Draft Contracts for Difference (Allocation) (Excluded Sites) Amendment Regulations 2016

4.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Jesse Norman): I beg to move,

That the Committee has considered the draft Contracts for Difference (Allocation) (Excluded Sites) Amendment Regulations 2016.

It is a pleasure to serve under your chairmanship, Mrs Moon. The regulations amend a statutory instrument made under the Energy Act 2013. The instrument makes some technical amendments to the current regulations in respect of the so-called non-delivery disincentive, or NDD, mechanism—that is to say, the mechanism designed to disincentivise people who fail to deliver—found in those regulations.

As the Committee will be aware, last Wednesday, the Department for Business, Energy and Industrial Strategy announced the details of the second contracts for difference allocation round. The announcement reconfirmed our commitment to provide £730 million of support per year to new renewables projects and that we would be open for applications for the first auction, worth £290 million a year, in April next year. That should deliver enough new renewable energy to power around 1 million homes.

By making those announcements, the Government have given developers and the supply chain the certainty they need to move forward with bids. Continued investment in renewables drives forward our commitment to move to a low-carbon energy mix, help tackle climate change and meet our carbon budget requirements. It also shows that Britain is open for business, driving investment in green technology for decades ahead and bringing jobs and investment into communities up and down the country.

The draft instrument makes technical changes to support the flexible operation of future allocation rounds. I will outline those changes. The key change will extend the period of exclusion, by which I mean the period before which projects that have failed to fulfil their commitments having been awarded a contract in one round can apply for the next round. Currently, the exclusion period runs out 13 months after the notification date of the round when the exclusion was imposed. That is changed in the regulations to an exclusion from any round in the first 13 months after that notification date, plus the first of any rounds run in the following 11 months to a 24-month backstop date. That allows the flexibility to run rounds less frequently, while still having the protection that companies that fail to deliver on contracts awarded through the allocation process

cannot just enter a future round without penalty. That was supported by respondents to a consultation run in connection with the proposed rule change.

In addition, we propose some relatively minor changes. First, the regulations clarify the description of the site to which the exclusion will apply to make it clear that the site to be excluded is limited to that of the main generating structures of what is referred to as the contract for difference unit that failed to deliver its project. A CfD unit includes part of an eligible generating station, hence the NDD may be applied, for example, to a project for a wind farm extension, so that the site of the extension only—not the site of the entire wind farm, including the extension—would be excluded in the event of a failure to deliver the project.

Secondly, the changes will encompass an emendation of the non-delivery case to bring the point at which a site becomes excluded by reason of non-delivery into line with the point at which a site becomes excluded by reason of failure to sign the CfD contract. The failure to deliver is a separate matter from the failure to sign the CfD contract, to make it simpler to understand how the mechanism works.

Thirdly, following changes to the change in law termination events in the CfD terms and conditions, the regulations will extend the exemption of protection to projects that have terminated due to a sustainability change in law. That allows for important protection for developers and was supported in the consultation.

The instrument was publicly consulted on between 26 May and 22 June 2016. There were 21 responses from a range of stakeholders, including independent renewables generators, trade associations and large integrated energy suppliers, as well as from an environmental group. The vast majority of respondents agreed with the changes, although a couple called for still more stringent powers.

I welcome the views received as part of the consultation. We will continue to consider them as part of our wider work to evaluate and monitor the CfD scheme to ensure that the measures put in place remain effective and continue to represent value for money to the consumer. On that basis, I commend the draft regulations to the Committee.

4.35 pm

Dr Alan Whitehead (Southampton, Test) (Lab): I reflect the Minister's pleasure at serving under your chairmanship, Mrs Moon. He made a good job of attempting to explain what on earth the draft regulations are all about. To the extent that there can be clarity, he has provided it, so we should not be detained too long by this business.

Labour Members welcome the thrust of the statutory instrument and the greater clarity that has been achieved regarding the questions I asked in a previous statutory instrument Committee about the next allocation round and the future of CfD allocations, and in the light of the publication that arose last Thursday, which sets out in greater detail what allocations will consist of and the support for future allocation rounds over the next period. We still have several questions about that arrangement, particularly about how it is going to relate to the overall progress of the levy control framework, but that is not really a discussion for today.

I have two specific questions on how the changes to the 2014 regulations are going to work in practice. First, the changes will considerably widen what was in the excluded periods in the 2014 regulations, which could give rise to substantial greater questions of possible interpretation about what it means not to have delivered within 13 months or to have been excluded from a further auction round for two years, given the circumstances in which that exclusion might have taken place. For example, someone wishing to put in an application for an allocation at a subsequent auction round may consider themselves to have been unfairly treated in how they were excluded by the widening of the regulations. Are processes in place that can provide for a legally robust way to ensure that that exclusion can be properly managed and that we are not going to open ourselves up to a series of actions that could be debilitating for the auction round when it comes to pre-qualifying for a subsequent auction and the process of putting in an auction bid? I would be grateful if the Minister clarified that.

Secondly, under the circumstances outlined, the regulations are not just about exclusions from future bidding, or an excluded period if someone has not either signed a CfD or undertaken the milestones in a CfD agreement previously. They are also about the extent to which otherwise frozen CfDs may be unfrozen for future use as a result of those people who are not taking up their CfDs in a proper way having perhaps put in a bid that was never realistic in the first place. It is a matter of making sure that the CfDs freed up by the implementation of that process are available for future auction processes.

As there is no impact assessment with the report other than the general impact assessment relating to the process overall, I wonder whether the Minister has looked at the circumstances where that release of CfDs might apply; whether he has made any assessment of what level that is likely to run at; and, if he has, what arrangements he might have in hand for ensuring that the CfDs will be recycled in an orderly manner when future auctions come up. It may be that they could be so significant as to lead to the possibility of further sub-auctions as the process develops. How significant might that part of the process be in carrying out the whole auction process in the most efficient way?

4.41 pm

Jesse Norman: I thank the hon. Gentleman for his two questions and for the constructive spirit in which he has welcomed the changes we have announced today. He asked whether there is greater latitude for interpretation

or contestability within the CfD framework as a result of the changes. He also asked about the unfreezability of frozen CfDs.

To take the first question first, in general, the criteria and milestone arrangements that have been put in place are not affected by the regulations as regards length. The process remains, broadly speaking, as robust as before. There are exemptions available to the NDD and, indeed, there are five grounds on which exemptions can be provided and exclusions mitigated. The first is when an applicant can demonstrate that a new site for which an application is intended is not materially the same as an excluded site, and those limits are set out in legislation.

The second ground for exemption is where an applicant can demonstrate that it held a property interest in a site prior to 14 October 2014, that being the date on which stakeholders ought to have been aware of the detail of NDD policy. The third is where an applicant can demonstrate that it agreed a relevant property interest in a site prior to that date.

The fourth ground for exemption is in relation not to a non-delivery case, but to a non-signature case, where an applicant can demonstrate that relevant court proceedings as defined in the instrument were ongoing at the time of the CfD signature, and that an applicant's ability to comply with the terms of the CfD would have been materially adversely affected.

Finally, the fifth exemption ground is in a non-delivery case only, when the generator's CfD is terminated as a consequence of a qualifying change in law. That, in this case, has been extended to recognise a sustainability change in law—again, a relatively well defined concept in the relevant law. Those are the circumstances and they remain well defined.

On the second question, about unfrozen CfDs, in general, as the hon. Gentleman will know, exclusions are time-limited. That is not to say that it is not an open and interesting question whether there may be some scope to recycle budget from one side to another. It may be worth pointing out that so far, where there have been exclusions, some bids have clearly been pitched at levels so low that it would not be possible to use any benefit even if the CfD were unfrozen. One other case was turned down in a judicial review process. However, the point is a proper and sensible one for us to consider further, and I thank him for raising it.

Question put and agreed to.

4.45 pm

Committee rose.

