

**2020 No. 130**

**ELECTRICITY**

**The Electricity Supplier Obligations (Excluded Electricity)  
(Amendment) Regulations 2020**

*Made - - - - 10th February 2020*

*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<sup>(a)</sup>.

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 2020.

**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.

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

3. The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015<sup>(b)</sup> are amended in accordance with regulations 4 to 14.

**Regulation 2 amended (interpretation)**

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

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(a) 2013 c.32.

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

- (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)(a).”.

#### **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:

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—

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(a) O.J. C 249, 31.7.2014, p.1.

“(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.

(2) The proportion to be specified in an EII certificate under paragraph (1)(a) is 0.85 multiplied by the proportion of relevant electricity measured by the meter in the certificate period.

(3) The certificate period is—

- (a) where at the date of the application for the EII certificate there is a continuing change in relation to the meter, the period (beginning on the date on which the last-commencing continuing change commenced and not exceeding 12 months) for which evidence of the proportion of relevant electricity measured by the meter is contained in the application:

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

- (b) where sub-paragraph (a) does not apply—
  - (i) if the meter measured the supply of relevant electricity during the entire previous year, the previous year; or
  - (ii) if the meter did not measure the supply of relevant electricity during the entire previous year, the period (beginning on the date on which the supply of relevant electricity began and not exceeding 12 months) for which evidence of the proportion of relevant electricity measured by the meter is contained in the application.

(4) In this regulation—

“previous year” has the meaning given in regulation 10(10);

“relevant electricity” means electricity used for a specified activity in the course of the business of the person applying for the EII certificate.”.

### **Regulation 12 amended (notifications and reports)**

**10.—**(1) Regulation 12 is amended as follows.

(2) In paragraph (1)—

- (a) in sub-paragraph (a) for “a specified activity” substitute “every specified activity”;
  - (b) in sub-paragraph (b) for “8(2)” substitute “8(2)(a)”;
  - (c) omit sub-paragraph (d).
- (3) Omit paragraph (3).
- (4) For paragraph (4) substitute—
- “(4) Subject to paragraph (4A), where an EII certificate issued in respect of an electricity meter is in force on the first day of a quarter, the person who applied for the certificate or, where a notice under paragraph (7)(a) has been issued in respect of the certificate, the person identified in the notice must send a report (the “quarterly report”) in respect of the certificate to the Secretary of State during the quarter.
- (4A) Paragraph (4) does not apply if the EII certificate ceases to be valid before the last day of the quarter.
- (4B) The quarterly report must set out—
- (a) whether or not the electricity measured by the meter is still being used in the course of the person’s business for the specified activity set out in the EII application under regulation 10(2)(d);
  - (b) any other specified activity for which the electricity is being used in the course of the person’s business.
- (4C) This paragraph applies where the proportion of electricity constituting EII excluded electricity specified in the EII certificate mentioned in paragraph (4) or, if a notice under regulation 12A has effect in relation to the certificate, in the notice is determined by reference to—
- (a) a period of less than 12 months in length; or
  - (b) where at the date of the quarterly report there is a continuing change in relation to the meter (whether commencing before or after the date of the EII application), a period that does not begin on the date on which the last-commencing continuing change commenced.
- (4D) Subject to paragraph (4F), the quarterly report must include—
- (a) where paragraph (4C)(a) or (b) applies, the evidence mentioned in regulation 10(2)(h)(i) or, as the case may be, regulation 10(2)(h)(ii)(bb);
  - (b) where paragraph (4C)(b) applies—
    - (i) the date on which the last-commencing continuing change commenced;
    - (ii) where the last-commencing continuing change is a continuing change by virtue of regulation 2A(3), the identity of the person mentioned in that paragraph with whom electricity measured by the meter continues to be shared.
- (4E) For the purposes of paragraph (4D)(a)—
- (a) where a notice under paragraph (7)(a) has been issued in respect of the certificate, the reference in regulation 10(2)(h) to the business of the person applying for an EII certificate includes a reference to the business of the person identified in the notice;
  - (b) references in regulation 10(2)(h)(i) and (ii)(bb) to the date of the EII application must be treated as references to the date of the quarterly report.
- (4F) Paragraph (4D) does not require evidence or information to be included in the quarterly report if it was contained in the EII application for the certificate or included in a previous report under paragraph (4) in respect of the certificate.”.
- (5) After paragraph (8) insert—
- “(9) In this regulation, “quarter” means a period of 3 months beginning on 1st January, 1st April, 1st July or 1st October.”.