



Energy Act 2023

2023 CHAPTER 52

PART 2

CARBON DIOXIDE CAPTURE, STORAGE ETC AND HYDROGEN PRODUCTION, TRANSPORT AND STORAGE

CHAPTER 1

REVENUE SUPPORT CONTRACTS

Allocation of contracts

73 Power to appoint allocation bodies

- (1) The Secretary of State may by regulations appoint—
 - (a) a person to carry out functions in connection with the allocation of hydrogen production revenue support contracts;
 - (b) a person to carry out functions in connection with the allocation of carbon capture revenue support contracts.
- (2) The power under each paragraph of [subsection \(1\)](#) may be exercised so that more than one appointment has effect under that paragraph at the same time.
- (3) An appointment may be made only with the consent of the person appointed (except where that person is the Secretary of State).
- (4) An appointment ceases to have effect if—
 - (a) the Secretary of State by regulations revokes the appointment, or
 - (b) the person withdraws consent.
- (5) Regulations under [subsection \(1\)](#) may make provision with regard to the cessation of an appointment, including—

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- (a) provision requiring a person appointed under [subsection \(1\)](#) to give a period of notice no shorter than a period specified in the regulations when withdrawing their consent to appointment, or otherwise restricting or subjecting to conditions a person’s power under [subsection \(4\)](#) to withdraw consent;
 - (b) provision enabling a person who has ceased to be appointed under [subsection \(1\)](#) to continue to be treated as if they were so appointed, including provision about the purposes for which, the circumstances in which, and the period for which, such a person may be so treated.
- (6) In this Chapter—
- (a) a person appointed under [subsection \(1\)\(a\)](#) is called a “hydrogen production allocation body”;
 - (b) a person appointed under [subsection \(1\)\(b\)](#) is called a “carbon capture allocation body”;
 - (c) references to “allocating” a hydrogen production revenue support contract or carbon capture revenue support contract to a person are to specifying the person in a notification under [section 75\(1\)](#) or [\(2\)](#) (and references to the “allocation” of such a contract are to be interpreted accordingly);
 - (d) “allocation body” means a hydrogen production allocation body or a carbon capture allocation body.
- (7) Regulations under this section, other than regulations under [subsection \(4\)\(a\)](#), are subject to the negative procedure.

Commencement Information

II [S. 73](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

74 Standard terms of revenue support contracts

- (1) The Secretary of State may issue standard terms and conditions (“standard terms”) of—
 - (a) hydrogen production revenue support contracts;
 - (b) carbon capture revenue support contracts.
- (2) The Secretary of State may from time to time revise standard terms.
- (3) Standard terms issued or revised under this section must be in accordance with provision made in revenue support regulations.
- (4) The Secretary of State must publish standard terms as issued or revised under this section.
- (5) In publishing standard terms the Secretary of State may designate particular standard terms as terms that may not be modified under [section 78](#).
- (6) Different standard terms may be issued for different categories of hydrogen production revenue support contract or carbon capture revenue support contract.

Commencement Information

II [S. 74](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

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75 Allocation notifications

- (1) A hydrogen production allocation body may, in accordance with provision made by revenue support regulations, give a notification to a hydrogen production counterparty specifying—
 - (a) an eligible low carbon hydrogen producer, and
 - (b) such other information as may be required for the purpose of making an offer under [section 77](#) to contract with that low carbon hydrogen producer.
- (2) A carbon capture allocation body may, in accordance with provision made by revenue support regulations, give a notification to a carbon capture counterparty specifying—
 - (a) an eligible carbon capture entity, and
 - (b) such other information as may be required for the purpose of making an offer under [section 77](#) to contract with that carbon capture entity.
- (3) A notification given under [subsection \(1\)](#) or [\(2\)](#) is called an “allocation notification”.
- (4) Revenue support regulations may make further provision about allocation notifications and in particular provision about—
 - (a) the circumstances in which an allocation notification may or must be given;
 - (b) the kinds of information that must be specified in an allocation notification in accordance with [subsection \(1\)\(b\)](#) or [\(2\)\(b\)](#);
 - (c) appeals against decisions not to give allocation notifications.

Commencement Information

I3 [S. 75](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

76 Allocation of contracts

- (1) Provision that may be made in revenue support regulations for the purposes of [section 75\(1\)](#) and [\(2\)](#) includes provision about how determinations are to be made as regards—
 - (a) which eligible low carbon hydrogen producer a hydrogen production revenue support contract is to be allocated to;
 - (b) which eligible carbon capture entity a carbon capture revenue support contract is to be allocated to.
- (2) Provision made by revenue support regulations falling within [subsection \(1\)](#) may include—
 - (a) provision conferring power on the Secretary of State to make rules (an “allocation framework”) about the allocation of hydrogen production revenue support contracts or carbon capture revenue support contracts;
 - (b) provision for different periods within which hydrogen production revenue support contracts or carbon capture revenue support contracts are to be allocated (“allocation rounds”);
 - (c) provision for different allocation frameworks to apply in respect of different allocation rounds;
 - (d) provision for the publication of allocation frameworks;
 - (e) provision about matters in relation to which provision may or must be made in an allocation framework.

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- (3) Provision made by revenue support regulations falling within [subsection \(2\)](#) may impose requirements on the Secretary of State, including in particular—
- (a) requirements as to the giving of notice before an allocation round is commenced;
 - (b) restrictions on the circumstances in which amendments may be made during an allocation round to an allocation framework or to any other matter relevant to an allocation round (including any amount by reference to which a limit on the contracts allocated during the round is to be determined).
- (4) An allocation framework may—
- (a) confer functions on an allocation body with respect to the allocation of hydrogen production revenue support contracts or carbon capture revenue support contracts;
 - (b) specify targets to be met or taken into account by an allocation body in giving allocation notifications by virtue of [section 75](#), including targets relating to—
 - (i) the process used for producing hydrogen or for capturing carbon dioxide;
 - (ii) outputs or capacity (whether in respect of hydrogen production or capture of carbon dioxide);
 - (iii) the geographical location of an applicant’s activities;
 - (c) make provision by reference to standards or other published documents (as they have effect from time to time);
 - (d) make any provision that may be made by regulations by virtue of [subsection \(3\)](#).
- (5) An allocation framework may include provision for—
- (a) the determination of a matter on a competitive basis;
 - (b) calculations or determinations to be made under the framework, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the framework.
- (6) An allocation framework may—
- (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision and savings;
 - (c) make different provision for different cases or circumstances or for different purposes;
 - (d) make provision subject to exceptions.
- (7) Any power conferred by virtue of [subsection \(2\)](#) to make an allocation framework includes a power to amend, add to or remove an allocation framework.
- (8) Subsections [\(4\)](#) to [\(7\)](#) are subject to any provision contained in revenue support regulations.

Commencement Information

I4 [S. 76](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

77 Duty to offer to contract following allocation

- (1) Where an allocation notification is given to a hydrogen production counterparty under [section 75\(1\)](#), the counterparty must, in accordance with provision made by revenue support regulations, offer to contract with the eligible low carbon hydrogen producer specified in the notification on—
 - (a) standard terms, or
 - (b) standard terms as modified in accordance with any modification agreement entered into between the counterparty and the eligible low carbon hydrogen producer for the purposes of the allocation notification (see [section 78](#)).
- (2) Where an allocation notification is given to a carbon capture counterparty under [section 75\(2\)](#), the counterparty must, in accordance with provision made by revenue support regulations, offer to contract with the eligible carbon capture entity specified in the notification on—
 - (a) standard terms, or
 - (b) standard terms as modified in accordance with any modification agreement entered into between the counterparty and the eligible carbon capture entity for the purposes of the allocation notification (see [section 78](#)).
- (3) Revenue support regulations may make further provision about an offer to contract made under this section, including provision about—
 - (a) how a hydrogen production counterparty or carbon capture counterparty is to apply or complete standard terms in relation to the offer in accordance with information specified in an allocation notification;
 - (b) the time within which the offer must be made;
 - (c) how the eligible low carbon hydrogen producer or eligible carbon capture entity to whom the offer is made may enter into a hydrogen production revenue support contract or (as the case may be) carbon capture revenue support contract as a result of the offer;
 - (d) what is to happen if the eligible low carbon hydrogen producer or eligible carbon capture entity does not enter into such a contract as a result of the offer.
- (4) In this section, “standard terms”, in relation to an allocation notification, means standard terms published under [section 74](#), determined in accordance with revenue support regulations as the standard terms that are to apply in relation to the allocation notification.

Commencement Information

I5 [S. 77](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

78 Modification of standard terms

- (1) This section applies where a person wishes to be specified as an eligible low carbon hydrogen producer, or an eligible carbon capture entity, in an allocation notification (“the potential allocation notification”).
- (2) A hydrogen production counterparty or (as the case requires) carbon capture counterparty and the person may, in accordance with provision made by revenue support regulations, agree to modify standard terms for the purposes of any offer that

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- would be required under [section 77](#) if the potential allocation notification is given (a “modification agreement”).
- (3) A hydrogen production counterparty or carbon capture counterparty may enter into a modification agreement providing for the modification of any particular standard term only if—
- (a) the counterparty is satisfied that—
 - (i) the effect of the modification is minor, and
 - (ii) the modification is necessary; and
 - (b) the standard term has not been designated under [section 74\(5\)](#) as a term that may not be modified under this section.
- (4) Revenue support regulations may make further provision about modification agreements, including—
- (a) the circumstances in which a person may make an application for a modification agreement;
 - (b) the time by which an application must be made;
 - (c) the procedure to be followed, and the information to be given, by the person in making an application;
 - (d) how a hydrogen production counterparty or carbon capture counterparty is to determine an application (including how it is to determine whether the effect of a modification is minor and whether it is necessary);
 - (e) the time by which determinations must be made;
 - (f) the form of modification agreements.
- (5) Provision made by virtue of [subsection \(4\)\(d\)](#) may include provision under which the counterparty may make alternative proposals for modifications in response to an application.
- (6) In this section “modify” includes add to, alter or omit, and “modification” is to be read accordingly.

Commencement Information

I6 [S. 78](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

79 Sections 75 to 78: supplementary

Provision made by regulations by virtue of any of sections [75](#) to [78](#) may include provision for—

- (a) the determination of a matter on a competitive basis;
- (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

Commencement Information

I7 [S. 79](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

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80 Licence conditions regarding functions of certain allocation bodies

(1) In section 7B of the Gas Act 1986, after subsection (5) insert—

“(5ZA) Without prejudice to the generality of paragraph (a) of subsection (4), conditions for or in connection with the purpose set out in [subsection \(5ZB\)](#) may be included in a licence under section 7AA by virtue of that paragraph.

(5ZB) The purpose is to facilitate or ensure the effective performance (whether in relation to Northern Ireland or any other part of the United Kingdom), at relevant times, of functions of a hydrogen production allocation body under [Chapter 1](#) of [Part 2](#) of the Energy Act 2023.

(5ZC) In [subsection \(5ZB\)](#) “relevant times” means times when the hydrogen production allocation body holds a licence under section 7AA.”

(2) Where—

(a) the GEMA proposes by a modification under section 23 of the Gas Act 1986 of a licence under section 7AA of that Act to add, remove or alter a condition such as is mentioned in section 7B([5ZA](#)) of that Act, and

(b) that condition relates to functions of a hydrogen production allocation body that are exercisable in relation to Northern Ireland,

section 23 of that Act has effect as if the persons listed in subsection (4)(b) of that section included the Department for the Economy in Northern Ireland.

Commencement Information

18 [S. 80](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

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