

# 04 Energy Bill Update

## A step in the right direction?

Electricity Market Reform Briefing Paper  
December 2012

**On 29 November 2012 The Rt. Hon. Edward Davey, the Secretary of State for Energy and Climate Change, introduced the Energy Bill to Parliament. The Bill seeks to provide the legislative framework to encourage low-carbon generation and ensure security of supply by putting in place the building blocks of Electricity Market Reform (EMR).**

Security of supply is now a real concern, and the electricity industry needs massive investment if the lights are to be kept on in an environmentally clean way. There are real disagreements about whether the Bill will meet this objective.

The Energy Bill is a Bill and is not law. The Bill can be amended in Parliament. There is a potentially difficult legislative process to follow through Parliament. It will be essential to ensure that investor confidence is retained during the process.

The Bill requires careful review. It is not the 'final word'. Critical decisions still have to be taken: in particular the 'strike prices' for electricity from new nuclear and renewable power assets. The 'strike prices' are absolutely central to any decision to invest. Implementation must follow, and that will have its own difficulties, as an example getting enough people with the right skills for construction of the new plants.

It should also be noted that other aspects of Government policy are of particular importance here: in particular gas generation policy and policy to support shale gas.

There have been a number of significant changes from the May draft Bill. Here are some points of particular interest about the Bill.

Subject	What was expected	What we got
<b>Contracts for difference: parties</b>	Multiparty CfD. The draft Bill published in May proposed a "multiparty payment model". The CfD would be an instrument created by Statute with a generator on one side and all licensed suppliers on the other side.	Single counterparty. The multiparty CfD was not adopted. The proposal is now for a single counterparty CfD between each generator and a single, newly established Government-owned company. The new company will be able to collect the funds from suppliers to meet payment to generators. Suppliers will be compelled to pay in terms of their licenses.
<b>Contracts for difference: credit risk</b>	Measures taken to provide industry confidence and reduce financing costs regarding CfDs.	The new Energy Bill reduces supplier default risk by advance posting of credit and collateral to cover payment and the mutualisation of losses across suppliers. There will be a supplier of last resort regime and the Energy Company Administration Scheme.

Subject	What was expected	What we got
<b>Contracts for difference:</b> <a href="#">status</a>	The CfD was an “instrument” and not a contract.	The CfD will be a contract. This means that the general law of contract should apply to the CfD, and that some of the protections of contract law should apply, e.g. amendment. Enforcing the contract should be simpler: contractual methods of enforcement are well understood.
<b>Capacity market</b>	Provisions about electricity capacity auctions including a settlement body.	The electricity capacity regulations may include provisions allowing for appeals. The Bill provides clarification about the settlement body which will, amongst other things, determine collateral etc.
<b>Capacity market:</b> <a href="#">other comments</a>	Unlike CfDs capacity agreements are “instruments” and not contracts. This drafting has not been changed to mirror the CfD position. It would be preferable for the agreements to have contractual effect. The “novelty” of the instruments may cause a range of issues whereas contracts are well understood in the commercial world.	
<b>National Grid</b>	National Grid to be delivery body but risk of conflicts recognised. The potential for conflicts of interest has been a particular industry concern.	National Grid remains delivery body. The Bill includes further drafting allowing for a range of business/legal separation measures to be taken if it is thought desirable. The Bill also contemplates that the delivery function could be transferred to another body.
<b>Access to markets</b>	There is a longstanding concern on the part of some market participants that there are issues with liquidity: in particular in obtaining bankable PPAs.	The Bill contains provisions allowing the Secretary of State to make regulatory changes to promote liquidity.
<b>Renewables Obligation:</b> <a href="#">Transitional arrangements</a>	No further extension of the closing date for the Renewables Obligation beyond 2017. A number of industry participants have suggested extension as a hedge against delay to EMR.	No change to 2017 date. The impact of this decision falls to be assessed in light of the progress of the Bill and relevant related subordinate legislation.

If you require advice on any of the matters raised in this paper, please get in touch with any of our lawyers listed below, who have been focusing on keeping updated on EMR developments, or your usual Shepherd and Wedderburn contact.



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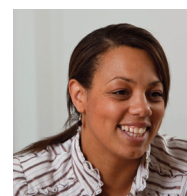
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