

# Energy contracts exempted from the Assignment of Receivables Regulations

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A party trading UK-linked energy derivatives or purchasing, or taking security over, receivables arising under UK-linked energy contracts may need to know whether the Business Contract Terms (Assignment of Receivables) Regulations 2018 (the **Regulations**) apply to its transaction. The key exemption from the Regulations is complex and of shifting application depending on when receivables are assigned. So, in this situation, it can be helpful to know whether one of the simpler energy-contract exemptions from the Regulations applies.

## Background

The Regulations (summarised in this [article](#)):

- affect certain contracts made on or after 31 December 2018; and
- are intended to boost receivables finance for (broadly) UK small or medium-sized enterprises (**SMEs**).

This is to be achieved by overriding contractual blocks:

- to assigning receivables generated by supplies by SMEs of goods, services or intangibles (including electricity) in the course of their UK businesses; and
- on an assignee's ability to determine such a receivable's validity, value or enforceability (e.g. by preventing it from obtaining details of invoices or set-offs).

The blocks must be in the contract generating the receivable or another contract between the parties to that contract.

## Key exemptions

The Regulation's key exemption is that they only apply where the potential assignor is a UK SME. Other main exemptions include where the:

- receivables arise for or in connection with a very wide range of UK financial services; or
- the would-be assignor of the receivables is an SPV – widely defined as an entity whose primary purpose relates to holding assets (apart from trading stock), or financing commercial transactions, and thereby incurs a liability of £10 million or more.

## Exempted energy contracts

In addition, the Regulations do not apply to the following contracts.

## Energy derivatives documented under market agreements providing for close-out netting

This exemption tends to promote the efficacy of close-out netting in energy trading transactions done under market-standard derivatives contracts providing for close-out netting. This is because, by preventing the Regulations from overriding blocks to assignment in those contracts, this exemption should assist parties in preserving the mutuality between claims and cross-claims under those contracts. Mutuality is one of the necessary conditions to close-out netting provisions operating in accordance with their terms in English insolvency proceedings.

The exemption applies to a wide variety of derivatives contracts:

- not entered into in connection with a very wide range of UK financial services;
- which may be settled physically or in cash;
- that relate (among other things) to energy, emission allowances or climatic variables, and

that are (for the purposes of MiFID) either: (i) traded on a regulated market, multilateral trading facility or organised trading facility; or (ii) if not so not traded, are entered into under a market agreement providing for close-out netting.

## Petroleum licences and contracts with petroleum licensees

A petroleum licence granted under section 2 of the Petroleum (Production) Act 1934 or section 3 of the Petroleum Act 1998 is outside the Regulations. These are licences to search and bore for and extract petroleum in or under Great Britain or beneath the territorial waters of the UK adjacent to Great Britain or on the continental shelf.

Also exempt from the Regulations is a contract where:

- at least one party is the licensee in respect of a petroleum licence; and
- the terms of that licence prohibit or restrict the assignment of receivables under that contract.

Here, "licensee" is defined as the person granted the petroleum licence, their personal representatives and anyone to whom the licensed rights may lawfully be assigned.

## Certain UK low-carbon energy generators

Also outside the Regulations is a contract with an entity that is the designated counterparty to a contract for difference (CFD) under section 7 of the Energy Act 2013 and who entered into that contract by virtue of that Act. These particular CFDs exist to encourage UK low-carbon electricity generation and are made between low-carbon electricity generators (as designated counterparties) and the UK government-owned Low Carbon Contracts Company.

## UK nuclear decommissioning

Broadly, on or after 6 April 2009, anyone applying for a nuclear site licence for a UK site on which the applicant intends to construct a nuclear installation will have statutory decommissioning obligations that will continue to bind it even after it ceases to be the statutory operator of that site. Contracts with these persons are outside the Regulations. Specifically, this will be where the contract is with a site operator (under the Energy Act 2008) who is to hold and accumulate assets under the terms of a funding arrangements plan that is part of a funded decommissioning programme submitted to the Secretary of State for approval under section 45 of that Act.

## Your Key Contacts



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