EXPLANATORY MEMORANDUM TO

THE ELECTRICITY CAPACITY (SUPPLIER PAYMENT ETC.) (AMENDMENT AND EXCLUDED ELECTRICITY) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Electricity Capacity (Supplier Payment etc.) Regulations 2014 (the "Supplier Payment Regulations"), to make provision for indirectly exempting eligible Energy Intensive Industries (EIIs) from the costs of funding the Capacity Market.

2.2 This instrument does so by recognising certificates issued pursuant to the Electricity Supplier Obligation (Amendment & Excluded Electricity) Regulations 2015 and by making technical amendments to the Supplier Payment Regulations, such as to the formulae and schedule used in the calculations for supplier payments to the Capacity Market to deduct electricity consumption of EIIs from such supplier payments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England, Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

5. European Convention on Human Rights

5.1 The Rt Hon Kemi Badenoch MP, Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Electricity Capacity (Supplier Payment etc.) (Amendment and Excluded Electricity) Regulations 2024 are compatible with the Convention rights."

6. Legislative Context

6.1 This amendment is being made through the powers conferred by sections 27(1) and (5), 28, 30, 32, 33 and 40(1) of the Energy Act 2013.

7. Policy background

What is being done and why?

7.1 The policy objective is to support the most electricity intensive industries with the highest cost of electricity. These businesses are disproportionately impacted by high electricity prices due to the volume of consumption and their inability to pass on costs to their customers as they operate within highly internationally traded sectors. International competitors face lower electricity costs than their GB equivalents, for example, because they operate in jurisdictions with less stringent environmental regulations leading to lower associated policy costs, or because they benefit from more generous subsidies for these costs than offered in GB.

7.2 These two factors put GB EIIs at an international competitive disadvantage and without intervention could lead to carbon leakage, hinder decarbonisation ambitions, and lead to disinvestment and subsequent job losses in key strategic sectors.

7.3 This instrument will mitigate this impact by spreading the social cost of emissions across all other energy users, where the price impact is minimal enough that we mitigate the risk of capital flight and carbon leakage.

Explanations

What did any law do before the changes to be made by this instrument?

7.4 The Supplier Payment Regulations made provisions about payments to be made by and to electricity suppliers in relation to the Capacity Market established by the Electricity Capacity Regulations 2014 ("the Principal Regulations"). In particular, they impose an obligation on electricity suppliers to pay a Capacity Market supplier charge to fund capacity payments payable to capacity providers under the Principal Regulations, and a settlement costs levy to fund the cost of administering those payments. The Supplier Payment Regulations confers functions on the Settlement Body appointed under the Principal Regulations in relation to the calculation, determination, and administration of such payments.

7.5 Prior to the changes to be made by this instrument, these calculations were based on demand supplied by a supplier during periods of high demand.

Why is it being changed?

7.6 The rationale for intervention is to support the most electricity intensive industries with the high cost of electricity and most at risk of carbon leakage. These Regulations will support eligible companies by deducting demand of EIIs from relevant calculations of charges and thereby enabling suppliers to pass on that deduction by removing policy costs associated with the Capacity Market from EII bills.

What will it now do?

7.7 This instrument will allow eligible companies to be indirectly exempted from the costs associated with the Capacity Market, including both the supplier charge to fund capacity payments and the settlements costs levy, by deducting demand of EIIs from relevant calculations of those charges. In practice we expect that suppliers will exempt eligible companies from total payments and will redistribute supplier charges and settlement cost levy amounts, as calculated by the Settlement Body across other non-eligible users.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to the withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 There are no plans to carry out a consolidation at present.

10. Consultation outcome

10.1 On 18th May 2023, The Department for Business and Trade launched a consultation to seek views on exempting EIIs from all costs associated with the GB Capacity Market. The consultation was in line with the statutory obligation to consult on any proposed changes to the Capacity Market. Through the consultation, DBT sought views from a wide range of audiences, including EIIs (whether currently benefiting from existing schemes or not), electricity suppliers, business representative organisations, trade bodies, capacity providers and other interested parties.

10.2 The Department for Business and Trade sought views on:

- The design of the proposed scheme and whether the existing EII Renewable Levy Exemption Scheme is an appropriate model to base this on;
- Evidence of any potential unintended consequences to the running of the Capacity Market; and
- Evidence of impact on suppliers, particularly on credit cover requirements.

10.3 Stakeholders were provided with an opportunity to provide their views and evidence to the questions posed.

10.4 The consultation was available on GOV.UK and was emailed directly to a number of stakeholders who had previously expressed an interest in this issue or could be perceived as an interested party.

10.5 The consultation ran for six weeks and closed on 29 June 2023. A total of 24 responses were received from stakeholders, including EII companies, business representative organisations, trade associations, energy suppliers, capacity providers and others. Overall, responses represented views of over 2,000 organisations, when considering bodies answered on behalf of multiple members.

10.6 A majority of respondents agreed with the proposed process outlined in the consultation and confirmed that it should have no impact on the running of the Capacity Market. Many EIIs and trade bodies provided supporting evidence of the substantial benefit the exemption would have on their sectors, including supporting future investment and avoiding the impact of carbon leakage.

10.7 A link to the full consultation summary can be found at https://www.gov.uk/government/consultations/british-industry-supercharger-capacity-market-consultation-and-eiis-government-response/outcome/government-consultation-response-for-british-industry-supercharger-package-for-strategic-energy-intensive-industries-eiis-capacity-market-exemption.

11. Guidance

11.1 Guidance will be published ahead of the draft legislation coming into force to explain the exemption and how it will affect recipients of the scheme.

12. Impact

12.1 The impact on business, charities or voluntary bodies is the anticipated small increase to electricity bills for non-eligible users, including private businesses and households.

12.2 The impact on the public sector is the anticipated small increase to electricity bills and will depend on the electricity consumption.

12.3 An impact assessment setting out the key impacts of this policy has been completed. The Impact Assessment is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk. A copy is also available by contacting: eii.correspondence@businessandtrade.gov.uk or the Department for Business and Trade at Old Admiralty Building, Admiralty Place, London, SW1A 2DY.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 There will be no additional administrative burden for small businesses that wish to benefit from the scheme.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause as it is exempt under section 28(3) of the Small Business, Enterprise and Employment Act 2015. However, we plan to undertake an evaluation and review of the Capacity Market exemption, within five years, as part of a review of the British Industry Supercharger, to assess whether the support continues to achieve the policy objective of reducing the risk of carbon leakage and supporting the competitiveness of energy intensive industries. This review will take account of market conditions, industrial electricity prices, effectiveness of the scheme for the first five years and any wider policies which will have been implemented which may have a material impact.

15. Contact

15.1 The Energy Intensive Industries team at the Department for Business and Trade email: eii.correspondence@businessandtrade.gov.uk or telephone: 07901243820 can be contacted with any queries regarding the instrument.

15.2 Neil Hodgson, Deputy Director for Energy Intensive Industries, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Kemi Badenoch MP, the Secretary of State at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.