

ENERGY ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Electricity Market Reform

Chapter 3: Capacity Market

Section 40: Regulations under Chapter 3

174. This section sets out how the Secretary of State can use the powers to make regulations under this Chapter and the process that must be followed.
175. *Subsection (1)* enables the Secretary of State to make different provisions in regulations for different cases or circumstances. For example, this power might be used to apply different eligibility criteria to capacity provided using different technologies. It also enables the Secretary of State to make regulations including provisions of an incidental, supplementary, consequential or transitional nature.
176. *Subsections (2) and (3)* require that the Secretary of State must consult the Authority, any person who is a holder of a licence to supply electricity under section 6(1)(d) of the Electricity Act 1989 and other persons that he or she considers it appropriate to consult before making any regulations under this Chapter and confirms that this requirement can be satisfied by consultation before the passing of the Act.
177. *Subsections (4) to (7)* provide that regulations must be made by statutory instrument and that, subject to two exceptions, any regulations made under Chapter 3 must be laid in draft before, and approved by affirmative resolution of, each House of Parliament.. Exceptions are made for electricity capacity regulations which only make provision about information and advice (other than the first regulations making such provision), and regulations under section 38 which do not amend primary legislation; these are subject to negative resolution.
178. *Subsection (8)* sets out that the regulations relating to the Capacity Market should not be treated as a hybrid instrument.