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## STATUTORY INSTRUMENTS

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# 2014 No. 2043

# ELECTRICITY

## The Electricity Capacity Regulations 2014

Made - - - - 31st July 2014

Coming into force in accordance with regulation 1

(a)

(b)

In accordance with section 40(5) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 27 to 33, 34(3) to (6), 36, 38(a), 40(1) and 63 of the Energy Act 2013, makes the following Regulations:

### Modifications etc. (not altering text)

- C1 Regulations applied (with modifications) (10.4.2019) by [The Electricity Capacity \(No. 1\) Regulations 2019](#) (S.I. 2019/862), **regs. 29-52** (with [reg. 28](#)) (as amended (18.7.2019) by S.I. 2019/1139, **regs. 1(2), 3(5)(6)**)
- C2 Regulations applied (with modifications) (10.4.2019) by [The Electricity Capacity \(No. 1\) Regulations 2019](#) (S.I. 2019/862), **regs. 12-23** (with [reg. 11](#)) (as amended (18.7.2019) by S.I. 2019/1139, **regs. 1(2), 3(4)(6)**)

## PART 1

### Introduction

#### Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Capacity Regulations 2014.

(2) These Regulations, apart from Part 11 (capacity market rules) and regulation 88 (repeal), come into force on the day after the day on which they are made.

(3) Part 11 comes into force on the day after the day on which the results of the first capacity auction held under Part 4, other than a DSR transitional auction, are published under regulation 25(1)(c).

(4) Regulation 88 comes into force on 1st January 2015.

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## Interpretation

### 2.—(1) In these Regulations—

“the Act” means the Energy Act 2013;

“EA 1989” means the Electricity Act 1989 <sup>M1</sup>;

“the Rules” means the Capacity Market Rules 2014 <sup>M2</sup>;

[<sup>F1</sup>“the Supplier Payment Regulations” means the Electricity Capacity (Supplier Payment etc.) Regulations 2014;]

“active energy” and “active power” have the meanings given in the Rules;

“administrative parties” means—

- (a) the Secretary of State;
- (b) the Authority;
- (c) the Delivery Body; and
- (d) the Settlement Body;

“affected person” is to be interpreted in accordance with regulation 68(2);

“annual penalty cap”, in relation to a capacity committed CMU and a delivery year, means the maximum amount of capacity provider penalty charges that the capacity provider may be liable to pay in respect of that CMU for that delivery year;

“applicant” means a person who, in accordance with capacity market rules, has submitted or is entitled to submit an application for prequalification to bid in a capacity auction in respect of a CMU;

“auction clearing price” means, in relation to a capacity auction, the price per MW which, subject to—

- (a) sub-paragraphs (b) and (c) of regulation 30(4); and
- (b) any provision for adjustment of capacity payments for inflation,

is determined by the capacity auction to be the price at which capacity payments are payable in respect of capacity committed CMUs awarded a capacity obligation in that capacity auction;

“auctioneer” has the meaning given in regulation 24(2);

“auction guidelines” has the meaning given in regulation 21;

“auction parameters” has the meaning given in regulation 11;

“auction window” means a period in which a capacity auction is to be held, being, subject to regulation 87(1)(a), a period starting on 1st September and ending on the following 31st July;

“auxiliary load” means, in relation to a generating CMU or a generating unit, the total amount of electricity used by that unit for purposes directly related to its operation (including for fuel handling, fuel preparation, maintenance and the pumping of water), whether or not that electricity is generated by the unit or used while the unit is generating electricity;

“the Balancing and Settlement Code” means the code for governance of electricity balancing and settlement in Great Britain which is maintained in accordance with the conditions of licences granted under section 6(1) of the Electricity Act 1989 <sup>M3</sup>;

“base period” means a period starting on 1st October and ending on the following 30th April, to be used in calculating capacity payments for the purpose of adjusting for inflation the capacity cleared price applying to a capacity committed CMU, where paragraph 3 of Schedule 1 provides for such an adjustment to be made;

“bidder” means a person bidding in a capacity auction for a capacity obligation in respect of a CMU;

“bidding round” means a round of bidding in a capacity auction;

“capacity” means an amount of electrical generating capacity [<sup>F2</sup>, interconnected capacity] or DSR capacity, expressed in MW unless specified otherwise;

“capacity agreement” has the meaning given in regulation 30(1);

“capacity agreement notice” means a notice issued by the Delivery Body to a capacity provider under capacity market rules, containing data about a capacity agreement;

“capacity auction” means an auction under Part 4;

“capacity cleared price” has the meaning given in regulation 30(3) and (4);

“capacity committed CMU”, in relation to a delivery year, means a CMU that is identified in the capacity market register as being subject to a capacity obligation for that delivery year;

“the capacity market” means the scheme established by these Regulations and capacity market rules;

[<sup>F3</sup>“capacity market notice” has the meaning given in the Rules;]

“capacity market register” means the register maintained by the Delivery Body in accordance with regulation 31;

<sup>F4</sup> ...

“capacity obligation” means an obligation awarded pursuant to a capacity auction, applying for one or more delivery years, to provide a determined amount of capacity when required to do so in accordance with capacity market rules [<sup>F5</sup>(and, unless the context otherwise requires, includes a part of a capacity obligation)];

“capacity payment” means a payment to a capacity provider under these Regulations for its commitment to meet a capacity obligation during a delivery year;

[<sup>F6</sup>“capacity provider” means the holder of—

- (a) a capacity agreement, or
- (b) a transferred part;]

“capacity provider penalty charge” means an amount payable by a capacity provider under regulation 41;

“capacity year” means a period of one year starting on 1st October and ending on the following 30th September;

“a CFD” means a contract for difference under Chapter 2 of Part 2 of the Act;

“CFD counterparty” means a person designated as such under section 7 of the Act;

“CMU” means—

- (a) a generating CMU; <sup>F7</sup> ...
- (b) a demand side response CMU; [<sup>F8</sup>or
- (c) an interconnector CMU;]

“commissioned”, in relation to a generating unit, means that—

- (a) such procedures and tests have been completed as constitute, at the time they are undertaken, industry standards and practices for commissioning a generating unit of that type such that it is capable of operation at its connection capacity; and
- (b) the unit has not subsequently been decommissioned;

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[<sup>F9</sup>“commissioned”, in relation to an electricity interconnector, means that—

- (a) such procedures and tests have been completed as constitute, at the time they are undertaken, industry standards and practices for commissioning an electricity interconnector of that type such that it is capable of operation at its connection capacity; and
- (b) the electricity interconnector has not subsequently been decommissioned;]

“the Connection and Use of System Code” means the code with that name for governance of connection to, and use of, the GB transmission system which is maintained in accordance with the conditions of licences granted under section 6(1) of EA 1989 <sup>M4</sup>;

“connection capacity”, in relation to [<sup>F10</sup>an interconnector CMU,] a generating CMU or a generating unit forming part of a CMU, means the amount which in accordance with capacity market rules is declared in an application for prequalification as the connection capacity of that [<sup>F10</sup>interconnector CMU,] generating CMU or generating unit;

“the court” has the meaning given in regulation 72(2);

“CPI” means the UK Consumer Prices Index (All Items) published monthly by the Office for National Statistics or, if such index ceases to be published, such other index as may replace it;

“credit cover” has the meaning given in regulation 53;

“customer” means a person to whom electrical power is provided (whether or not that is the same person as the person who provides the electrical power);

“decommissioned”, in relation to a generating unit, means that the generating unit has permanently been physically disconnected from the total system, or from equipment used to provide on-site supply;

[<sup>F11</sup>“decommissioned”, in relation to an electricity interconnector, means that the interconnector has permanently been physically disconnected from the GB transmission system;]

“Delivery Body” means—

- (a) subject to paragraph (b), the national system operator; or
- (b) if the national system operator's functions under Chapter 3 of Part 2 of the Act have been transferred to an alternative delivery body by an order under section 46 of the Act, [<sup>F12</sup>and to the extent of the functions that have been transferred,] that body;

“delivery year”—

- (a) in relation to a capacity auction, means the capacity year—
  - (i) for which each one year capacity obligation awarded as a result of that capacity auction has or will have effect; and
  - (ii) which is the first year of the period for which each multi-year capacity obligation awarded as a result of that capacity auction has effect;
- (b) in relation to a capacity obligation or a capacity agreement, means a capacity year in which that capacity obligation, or the capacity obligation imposed by that capacity agreement, has effect; and
- (c) otherwise, means any capacity year in which one or more capacity obligations has or will have effect;

“demand curve”, in relation to a capacity auction, means a specification (which may be in the form of a curve on a graph) of how the total amount of capacity for which capacity agreements are to be issued is to vary depending on the auction clearing price;

“demand side response” means the activity of reducing the metered volume of imported electricity of one or more customers below a baseline, by a means other than a permanent reduction in electricity use;

“demand side response CMU” has the meaning given in regulation 5;

“demand side response CMU component” means—

(a) a DSR customer's consumption of electricity as measured by a single half hourly meter;  
or

(b) a permitted on-site generating unit,

which forms part of the means by which a DSR provider commits to provide capacity as described in regulation 5(1);

“de-rated capacity” has the meaning given in the Rules;

“de-rating factor” has the meaning given in the Rules;

“distribution CMU” means a generating CMU consisting of one or more generating units which export electricity to a distribution network;

“distribution connection agreement” has the meaning given in the Rules;

“distribution network” means a distribution network in Great Britain operated under a licence granted pursuant to section 6(1)(c) of EA 1989 <sup>M5</sup>;

“distribution network operator” means a person who operates a distribution network;

<sup>F13</sup>  
...

“DSR capacity” means—

(a) in the case of a proven demand side response CMU, its proven DSR capacity; and

(b) in the case of an unproven demand side response CMU, its unproven DSR capacity,  
as determined in accordance with capacity market rules;

“DSR customer” has the meaning given in regulation 5(2);

“DSR provider” has the meaning given in regulation 5(1);

“DSR test” has the meaning given in the Rules;

“DSR test certificate” has the meaning given in the Rules;

“DSR transitional auction” [<sup>F14</sup>, subject to regulation 29A(2)(b)] has the meaning given in regulation 29(1);

“electricity capacity report” means a report by the Delivery Body under regulation 7;

“electricity interconnector” has the meaning given in section 4(3E) of EA 1989 <sup>M6</sup>;

“electricity supplier” has the meaning given in regulation 3(2);

“export” means the flow of electricity from a generating unit on to a distribution network or the GB transmission system, or to an on-site consumer;

“financial commitment milestone” has the meaning given in the Rules;

“GB transmission system” means the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 <sup>M7</sup>);

“general eligibility criteria” means the criteria in regulation 15;

“generating CMU” has the meaning given in regulation 4;

“generating technology class” has the meaning given in the Rules;

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“generating unit” means any equipment in which electrical conductors are used or supported or of which they form part which produces electricity, including such equipment which produces electricity from storage;

“the Grid Code” means the code with that name specifying technical requirements for connection to, and use of, the GB transmission system which is maintained in accordance with the conditions of licences granted under section 6(1) of EA 1989 <sup>M8</sup>;

“group of companies” means a company and all the subsidiaries of that company within the meaning of section 1159 of the Companies Act 2006 <sup>M9</sup>;

[<sup>F15</sup>“half hourly meter” means a meter which measures import or export of electricity (or, in the case of an electricity interconnector, measures net output)—

- (a) on a half hourly basis; or
- (b) on a basis which enables meter readings to be aligned with a settlement period;]

“import” means the flow of electricity from a distribution network or the GB transmission system or a permitted on-site generating unit to any building, facility, installation, plant or equipment which consumes electricity;

“industry code” means—

- (a) the Balancing and Settlement Code;
- (b) the Connection and Use of System Code; or
- (c) the Grid Code;

“insolvent”, in relation to a capacity provider, means that—

- (a) a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer (in Great Britain or in any other jurisdiction) has been appointed in respect of the capacity provider or any of its assets; or
- (b) a court in Great Britain has with respect to the capacity provider—
  - (i) made a judgment of insolvency or bankruptcy;
  - (ii) entered an order for relief; or
  - (iii) made an order for its winding-up or liquidation,
 or an analogous step has been taken by a court in any other jurisdiction, and such judgment, order or other analogous step has not been dismissed, stayed or discharged;

“interconnected capacity” means [<sup>F16</sup>electricity provided to the GB transmission system] through an electricity interconnector;

[<sup>F17</sup>“interconnector CMU” has the meaning given in regulation 5A;]

“metered volume” means, for a CMU, a generating unit or a demand side response CMU component and a settlement period, the net aggregate volume of active energy, measured by one or more meters, which flowed in that settlement period to or from that CMU, unit or component;

“minimum capacity threshold” [<sup>F18</sup>, subject to regulation 29A(2)(a)] has the meaning given in regulation 15;

“monthly penalty cap”, in relation to a capacity obligation and a month of a delivery year, means the maximum amount of capacity provider penalty charges which may be payable in respect of that capacity obligation for that month;

“MPAN” means a meter point administration number;

“multi-year capacity obligation” means a capacity obligation for a period of more than one delivery year;

“MW” means megawatts;

“MWh” means megawatt hours;

“net output”, in relation to a generating CMU or a generating unit, means the amount of electricity produced by the CMU or unit minus its auxiliary load;

[<sup>F19</sup>“net output”, in relation to an interconnector CMU, means the amount of electricity transmitted through the CMU into the GB transmission system;]

“the offshore area” means the areas comprising—

- (a) the sea adjacent to Great Britain from the low water mark to the landward baseline of the United Kingdom territorial sea;
- (b) the United Kingdom territorial sea, except that part of it which is adjacent to Northern Ireland and extends seaward for 3 miles from the landward baseline; and
- (c) the sea in any designated area within the meaning of section 1(7) of the Continental Shelf Act 1964 <sup>M10</sup>;

“on-site consumer” means a building, facility, installation, plant or equipment which—

- (a) is on the same site, or connected to a distribution network at the same point of connection, as a generating unit; and
- (b) consumes electricity from that generating unit;

“on-site supply” means the supply of electricity by a generating unit to an on-site consumer;

“permitted on-site generating unit” means a generating unit which—

- (a) is primarily used to provide on-site supply; and
- (b) does not supply electricity to a distribution network or the GB transmission system other than in settlement periods where—
  - (i) the electricity requirements of the on-site consumer are fully and exclusively met by on-site supply from the generating unit;
  - (ii) those requirements are less than the available capacity of the generating unit; and
  - (iii) neither the generating unit nor the on-site consumer imports any electricity;

“prequalification” means the process set out in the Rules for determining whether an applicant is eligible to bid in a capacity auction in respect of a CMU;

“prequalification decision” means a decision by the Delivery Body under the Rules as to whether a CMU has prequalified for a capacity auction;

“prequalification window” means the period specified in auction guidelines before a capacity auction during which a person wishing to apply for prequalification for the capacity auction in respect of a CMU must make an application to the Delivery Body;

“prequalified”, in relation to a CMU and a capacity auction, is to be interpreted in accordance with regulation 14;

“prequalify”, in relation to the Delivery Body, means to decide that a CMU has prequalified for a capacity auction;

“price cap” means, in respect of a capacity auction, the price to be used by the auctioneer in the first bidding round of the capacity auction;

<sup>F20</sup>  
...

“price-taker” means a prequalified CMU other than one which has, in accordance with capacity market rules, been registered as a price-maker on the capacity market register;

“price-taker threshold”, in relation to a capacity auction, means the maximum price at which a price-taker may withdraw from the capacity auction;

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“prospective generating CMU” means, subject to regulation 53(4), a generating CMU which consists of one or more prospective generating units;

“prospective generating unit” has the meaning given in regulation 4;

[<sup>F21</sup>“prospective interconnector CMU” means an interconnector CMU within regulation 5A(1)(b);]

“proven demand side response CMU” means a demand side response CMU in respect of which a DSR test has been carried out;

“proven DSR capacity” has the meaning given in the Rules;

“relevant settlement period” means a settlement period in respect of which—

- (a) there is a system stress event; and
- (b) a [<sup>F22</sup>capacity market notice] is in force;

“reliability standard” has the meaning given in regulation 6;

“ROC” has the same meaning as it has in the ROO;

“ROO” means—

- (a) in relation to England and Wales, the Renewables Obligation Order 2009 <sup>M11</sup>;
- (b) in relation to Scotland, the Renewables Obligation (Scotland) Order 2009 <sup>M12</sup>;

“Settlement Body” means the person appointed to that position under regulation 80;

“settlement period” means a period of 30 minutes beginning on an hour or half-hour;

“site” is to be interpreted in accordance with paragraph (2);

“storage facility” means a facility which consists of—

- (a) a means of converting imported electricity into a form of energy which can be stored, and of storing the energy which has been so converted; and
- (b) a generating unit which is wholly or mainly used to re-convert the stored energy into electrical energy;

[<sup>F23</sup>“supplementary auction” has the meaning given in regulation 10(1)(ba);]

“system stress event” has the meaning given in the Rules;

“T-1 auction” means a capacity auction, other than a DSR transitional auction, held during the auction window commencing not less than 1 year and not more than 2 years before the start of the delivery year for which the capacity auction is held;

[<sup>F24</sup>“T-3 auction” means a capacity auction held during the auction window commencing on 1st September 2019 for the delivery year commencing on 1st October 2022;]

“T-4 auction” means, subject to regulation 87(1) [<sup>F25</sup>and 87C(2)(a)], a capacity auction held during the auction window commencing not less than 4 years and not more than 5 years before the start of the delivery year for which the capacity auction is held;

“target capacity”, in relation to a capacity year, means the aggregate amount of de-rated capacity which the person determining or recommending the target capacity considers would be adequate in order to meet the reliability standard for that capacity year;

“termination fee” means a fee payable by a capacity provider under regulation 43 where a capacity agreement [<sup>F26</sup>or transferred part] is terminated;

[<sup>F27</sup>“TF<sub>x</sub>”, for any value of x from x = 1 to x = 5, means the corresponding termination fee payable under regulation 43(3);]



[<sup>F28</sup>“third T-4 auction” means a capacity auction held in the auction window starting on 1<sup>st</sup> September 2016 following a determination by the Secretary of State under regulation 10(1)(b);]

“total system” means the GB transmission system and each distribution network;

[<sup>F29</sup>“transferred part” has the meaning given in regulation 30A(3);]

“unproven demand side response CMU” means a demand side response CMU other than a proven demand side response CMU;

“unproven DSR capacity” has the meaning given in the Rules;

“volume” means a volume of electrical generating capacity or DSR capacity in a time period, expressed in MWh;

“winter” means a period starting on 1st October and ending on the following 30th April;

“working day” means any day other than a Saturday or Sunday or a day which is a bank holiday or public holiday in England and Wales.

(2) For the purposes of these Regulations, two or more installations are to be treated as being on the same site as each other if they are—

- (a) on the same premises;
- (b) on premises immediately adjoining each other, or separated from each other only by a road, railway or watercourse;
- (c) on premises which are separated from each other by other premises, where all the premises referred to are occupied by the same person or by companies which are in the same group of companies; or
- (d) connected by private wires.

(3) In paragraph (2)—

“installation” means—

- (a) a generating unit;
- (b) a demand side response CMU component; or
- (c) a building, facility or item of plant or equipment; and

“private wires” means electric lines connected to a generating station which are owned by—

- (a) the generator;
- (b) a consumer who receives a supply of electricity from the generator;
- (c) the owner, lessor or lessee of the generator or of one of the premises to which a supply of electricity is made by the generator; or
- (d) any of the persons described in paragraphs (a) to (c) jointly with any other of the persons described in those paragraphs,

provided that the owner of those wires is not the holder of a distribution licence under section 6(1)(c) of EA 1989 <sup>M13</sup>.

(4) Where anything is required or permitted by these Regulations to be done on or by a working day [<sup>F30</sup>, unless specified otherwise]—

- (a) such thing must be done by 5.00 p.m. on that day; and
- (b) if the thing is done—
  - (i) after 5.00 p.m. on a working day; or
  - (ii) on a day which is not a working day,it is to be treated as having been done on the next working day.

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## Textual Amendments

- F1** Words in reg. 2(1) inserted (18.12.2014) by The Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354), reg. 1(2), **Sch. 2 para. 2**
- F2** Words in reg. 2(1) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(a)**
- F3** Words in reg. 2(1) inserted (2.11.2017) by The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 1(a)**
- F4** Words in reg. 2(1) omitted (2.11.2017) by virtue of The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 1(b)**
- F5** Words in reg. 2(1) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 20(a)** (with reg. 1(4))
- F6** Words in reg. 2(1) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 20(b)** (with reg. 1(4))
- F7** Word in reg. 2(1) omitted (24.3.2015) by virtue of The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(b)**
- F8** Word in reg. 2(1) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(b)**
- F9** Words in reg. 2(1) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(c)**
- F10** Words in reg. 2(1) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(d)**
- F11** Words in reg. 2(1) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(e)**
- F12** Words in reg. 2(1) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(f)**
- F13** Words in reg. 2(1) omitted (2.11.2017) by virtue of The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 1(c)**
- F14** Words in reg. 2(1) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 37(a)**
- F15** Words in reg. 2(1) substituted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 12**
- F16** Words in reg. 2(1) substituted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(g)**
- F17** Words in reg. 2(1) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(h)**
- F18** Words in reg. 2(1) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 37(b)**
- F19** Words in reg. 2(1) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(i)**
- F20** Words in reg. 2(1) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 41(1)(a)**
- F21** Words in reg. 2(1) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 1(j)**
- F22** Words in reg. 2(1) substituted (2.11.2017) by The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 1(d)**
- F23** Words in reg. 2(1) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 1**
- F24** Words in reg. 2(1) inserted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(2)(a)**
- F25** Words in reg. 2(1) inserted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(2)(b)**

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- F26** Words in reg. 2(1) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 20(c)** (with reg. 1(4))
- F27** Words in reg. 2(1) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 8** (with reg. 1(3))
- F28** Words in reg. 2(1) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 41(1)(b)**
- F29** Words in reg. 2(1) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 20(d)** (with reg. 1(4))
- F30** Words in reg. 2(4) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 41(2)**

### Marginal Citations

- M1** 1989 c.29.
- M2** The Capacity Market Rules 2014 are at <https://www.gov.uk/government/publications/capacity-market-rules>. Copies are available from the Department of Energy and Climate Change, 3 Whitehall Place, London SW1A 2AW.
- M3** 1989 c.29. Section 6 was substituted by section 30 of the [Utilities Act 2000 \(c.27\)](#) and subsection (1) of section 6 was amended by sections 136(1), 145(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the [Energy Act 2004 \(c.20\)](#), and by [S.I. 2012/2400](#).
- M4** 1989 c.29. Section 6 was substituted by section 30 of the [Utilities Act 2000 \(c.27\)](#) and subsection (1) of section 6 was amended by sections 136(1), 145(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the [Energy Act 2004 \(c.20\)](#), and by [S.I. 2012/2400](#).
- M5** [Section 6\(1\)\(c\)](#) of EA 1989 was substituted by section 30 of the [Utilities Act 2000 \(c.27\)](#). Other amendments have been made to section 6 which are not relevant.
- M6** [Section 4\(3E\)](#) of EA 1989 was inserted by section 145(1) and (3) of the [Energy Act 2004 \(c.20\)](#). Other amendments have been made to section 4 which are not relevant.
- M7** See section 4(4) of EA 1989. The definition of “transmission system” in that subsection was substituted by section 135(1) and (4) of the [Energy Act 2004 \(c.20\)](#).
- M8** 1989 c.29. Section 6 was substituted by section 30 of the [Utilities Act 2000 \(c.27\)](#) and subsection (1) of section 6 was amended by sections 136(1), 145(1) and (5) and 197(9) of, and Part 1 of Schedule 23 to, the [Energy Act 2004 \(c.20\)](#), and by [S.I. 2012/2400](#).
- M9** 2006 c.46.
- M10** 1964 c.29. Section 1(7) was amended by section 37 of, and paragraph 1 of Schedule 3 to, the [Oil and Gas \(Enterprise\) Act 1982 \(c.23\)](#), and section 103 of the [Energy Act 2011 \(c.16\)](#). Other amendments have been made to section 1 which are not relevant.
- M11** [S.I. 2009/785](#), amended by [S.I. 2010/1107](#), [S.I. 2011/984](#), [S.I. 2011/988](#), [S.I. 2013/768](#) and [S.I. 2014/893](#).
- M12** [S.S.I. 2009/140](#), amended by [S.S.I. 2009/276](#), [S.S.I. 2010/147](#), [S.S.I. 2011/225](#), [S.S.I. 2011/226](#), [S.S.I. 2013/116](#) and [S.S.I. 2014/94](#).
- M13** [Section 6\(1\)\(c\)](#) of EA 1989 was substituted by section 30 of the [Utilities Act 2000 \(c.27\)](#). Other amendments have been made to section 6 which are not relevant.

### “Providing electricity”; “reducing demand for electricity”; “electricity supplier”

- 3.—(1) For the purposes of section 27 of the Act—
- (a) “providing electricity” means providing any metered electrical output by a generating unit [<sup>F31</sup>or through an electricity interconnector], and includes, in particular, providing such output by a generating unit which forms part of a storage facility; and
- (b) “reducing demand for electricity” means—
- (i) providing demand side response; or
  - (ii) permanent electricity demand reduction.

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(2) For the purposes of <sup>F32</sup>... these Regulations, “electricity supplier” means a person supplying electricity to [<sup>F33</sup>premises] in Great Britain under a licence granted or treated as granted under section 6(1)(d) of EA 1989 <sup>M14</sup>.

#### Textual Amendments

- F31** Words in [reg. 3\(1\)\(a\)](#) inserted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 3\(a\)](#)
- F32** Words in [reg. 3\(2\)](#) omitted (18.12.2014) by virtue of [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 3\(b\)\(i\)](#)
- F33** Word in [reg. 3\(2\)](#) substituted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 3\(b\)\(ii\)](#)

#### Marginal Citations

- M14** [Section 6\(1\)\(d\)](#) of EA 1989 was substituted by section 30 of the [Utilities Act 2000 \(c.27\)](#). Other amendments have been made to section 6 which are not relevant.

### “Generating CMU”

- 4.—(1) A “generating CMU” is—
- (a) an existing generating unit which meets the conditions in paragraph (2);
  - (b) a prospective generating unit which, when commissioned, will meet the conditions in paragraph (2);
  - (c) a combination of two or more existing generating units which meet the conditions in paragraph (3); or
  - (d) a combination of two or more prospective generating units which, when all of the generating units have been commissioned, will meet the conditions in paragraph (3).
- (2) The conditions referred to in paragraph (1)(a) and (b) are that—
- (a) the generating unit provides electricity;
  - (b) the generating unit is capable of being controlled independently from any other generating unit;
  - (c) the net output of the generating unit is measured by one or more half hourly meters in accordance with capacity market rules; and
  - (d) the generating unit has a connection capacity not less than the minimum capacity threshold.
- (3) The conditions referred to in paragraph (1)(c) and (d) are that—
- (a) the generating units meet at least one of Conditions 1 to 4 in paragraph (4);
  - (b) the generating units are all of the same type <sup>F34</sup>...;
- [<sup>F35</sup>(ba) subject to paragraph (4A), the generating units are all owned by the same person;]
- (c) subject to paragraph (5), each generating unit is capable of being controlled independently from any other generating unit not forming part of the generating CMU;
  - (d) the net output of all the generating units is measured by one or more half hourly meters in accordance with capacity market rules; and
  - (e) the aggregate connection capacity of all the generating units is not less than the minimum capacity threshold.
- (4) For the purposes of paragraph (3)(a)—

- (a) Condition 1 is that the generating units all form part of a single registered trading unit;
- (b) Condition 2 is that—
  - (i) the generating units are all connected to the total system at the same boundary point; and
  - (ii) none of the generating units form part of a registered trading unit;
- (c) Condition 3 is that—
  - (i) the generating units have an aggregate connection capacity not exceeding 50 MW; and
  - (ii) none of the generating units form part of a registered trading unit;
- (d) Condition 4 is that—
  - (i) the generating units are all hydro generating units which are registered as a single BM unit under the Balancing and Settlement Code; and
  - (ii) there are not more than 10 such generating units.

[<sup>F36</sup>(4A) The condition in paragraph (3)(ba) does not apply where the aggregate connection capacity of all the generating units is less than 50 MW.]

(5) The condition in paragraph (3)(c) does not apply where the generating units meet Condition 4 in paragraph (4).

(6) In paragraph (1)(b) and (d), references to a prospective generating unit being commissioned are to be treated, in the case of a unit falling within paragraph (b) of the definition of “prospective generating unit” in paragraph (8), as references to the unit being recommissioned following an improvements programme.

(7) For the purposes of paragraph (3)(b), generating units are of the same type if—

- (a) they are all CMRS distribution units;
- (b) they are all non-CMRS distribution units; or
- (c) they are all transmission units.

(8) In this regulation—

“boundary point” means any point at which any plant or apparatus not forming part of the total system is connected to the total system;

“CMRS distribution unit” means a generating unit which exports electricity to a distribution network, where the metering system of that generating unit is registered in the central meter registration service;

“existing generating unit” means a generating unit that has been commissioned;

“hydro generating unit” means a generating unit driven by water, other than one driven by tidal flows, waves, ocean currents or geothermal sources;

“non-CMRS distribution unit” means a generating unit which exports electricity to a distribution network, which is not a CMRS distribution unit;

“prospective generating unit” means a generating unit or proposed generating unit that—

- (a) has not been commissioned; or
- (b) is to be subject to an improvements programme and has not been recommissioned following that improvements programme;

“registered trading unit” means a trading unit, other than a base trading unit [<sup>F37</sup>or sole trading unit], registered in accordance with the Balancing and Settlement Code; and

“transmission unit” means a generating unit which exports electricity to the GB transmission system.

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(9) In this regulation the following expressions have the same meanings as in the Balancing and Settlement Code as it was in force on [<sup>F38</sup>8th September 2014]—

- “base trading unit”;
- “BM unit”;
- “central meter registration service”;
- “metering system”;
- <sup>F39</sup>...
- [<sup>F40</sup>“sole trading unit”];
- “trading unit”.

#### Textual Amendments

- F34** Words in [reg. 4\(3\)\(b\)](#) omitted (24.3.2015) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 13\(1\)\(a\)](#)
- F35** [Reg. 4\(3\)\(ba\)](#) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 13\(1\)\(b\)](#)
- F36** [Reg. 4\(4A\)](#) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 13\(2\)](#)
- F37** Words in [reg. 4\(8\)](#) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 13\(3\)](#)
- F38** Words in [reg. 4\(9\)](#) substituted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 4](#)
- F39** Word in [reg. 4\(9\)](#) omitted (24.3.2015) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 13\(4\)](#)
- F40** Words in [reg. 4\(9\)](#) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 13\(4\)](#)

#### “Demand side response CMU”

5.—(1) A “demand side response CMU” is a commitment by a person (“a DSR provider”) to provide an amount of capacity when required to do so under capacity market rules, by a method of demand side response which—

- (a) is specified in paragraph (2);
  - (b) in the case of a proven demand side response CMU, meets the conditions in paragraph (3); and
  - (c) in the case of an unproven demand side response CMU—
    - (i) meets the conditions in paragraph (3); or
    - (ii) will meet those conditions prior to the start of the delivery year for which the DSR provider has a capacity agreement.
- (2) The methods by which a DSR provider may provide DSR capacity are—
- (a) by causing one or more customers (a “DSR customer”) to do one or both of the following—
    - (i) [<sup>F41</sup>subject to paragraph (2A),] reduce the DSR customer's import of electricity as measured by one or more half hourly meters;
    - (ii) export electricity generated by one or more permitted on-site generating units;
  - (b) by the pre-determined variation of the demand of a DSR customer for active power at a site in response to changing system frequency under the terms of a contract with the national system operator.

[<sup>F42</sup>(2A) For the purposes of this regulation, the reference in regulation 5(2)(a)(i) to a “DSR customer’s import of electricity” does not include import of electricity primarily for the conversion of electricity into a form of energy which can be stored by a storage facility.]

(3) The conditions in this paragraph are that—

- (a) the DSR provider must, in relation to each demand side response CMU component—
  - (i) be the DSR customer;
  - (ii) own the DSR customer; or
  - (iii) have contractual DSR control over the DSR customer;
- (b) each demand side response CMU component must be connected to a half hourly meter that is capable of measuring the import or export of electricity to or from that demand side response CMU component;
- (c) the total amount of DSR capacity which the DSR provider commits to provide must exceed the minimum capacity threshold; and
- (d) if the demand side response CMU consists of demand side response CMU components on two or more different sites, the DSR capacity of the demand side response CMU must not exceed 50MW.

(4) In paragraph (3)(a), “contractual DSR control” means, in respect of any delivery year, having the right (whether by ownership or pursuant to contract notwithstanding that terms and conditions may apply to its exercise) exclusively to control all or part of the metered volume of any demand side response CMU component to provide demand side response when required to do so in that delivery year.

#### Textual Amendments

- F41** Words in reg. 5(2)(a)(i) inserted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 1(1)** (with reg. 1(3))
- F42** Reg. 5(2A) inserted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 1(2)** (with reg. 1(3))

#### [<sup>F43</sup>“Interconnector CMU”

**5A.—**(1) An “interconnector CMU” is—

- (a) an existing interconnector which meets the conditions in paragraph (3); or
- (b) a prospective interconnector which when commissioned (or, as the case may be, recommissioned) will meet the conditions in paragraph (3).

(2) In paragraph (1)—

“existing interconnector” means an electricity interconnector that has been commissioned;  
“prospective interconnector” means an electricity interconnector or proposed electricity interconnector that—

- (a) has not been commissioned; or
- (b) is to be subject to an improvements programme and has not been recommissioned following that improvements programme.

(3) The conditions referred to in paragraph (1) are that—

- (a) the electricity interconnector has a connection capacity not less than the minimum capacity threshold; and



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- (b) the net output of the electricity interconnector is measured by one or more half hourly meters in accordance with capacity market rules.]

#### Textual Amendments

**F43** Reg. 5A inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), reg. 1(2), [Sch. 1 para. 2](#)

## PART 2

### Reliability standard

#### Reliability standard

- 6.—(1) The reliability standard is 3 hours of expected loss of load per capacity year.
- (2) In paragraph (1), “the reliability standard” means the cumulative duration of periods in a capacity year in which it is to be presumed—
- (a) by the Secretary of State in—
    - (i) making any decision about whether a capacity auction (other than a DSR transitional auction) is to be held; and
    - (ii) setting auction parameters for such a capacity auction; and
  - (b) by the Delivery Body in making any recommendation in an electricity capacity report, that, on average over the long term, loss of load should occur.
- (3) For the purposes of this regulation, “loss of load” occurs if—
- (a) the national system operator instructs one or more distribution network operators to disconnect customers, or to reduce the voltage on all or part of their network;
  - (b) the national system operator takes emergency action to avoid disconnections or voltage reductions; or
  - (c) automatic low frequency demand disconnection takes place,
- but not if the action referred to in sub-paragraph (a), (b) or (c) takes place solely because of one or more faults in the GB transmission system or a distribution network.
- (4) In paragraph (3)(b), “emergency action” means—
- (a) instructing a generator to increase the generation of electricity by a generating unit to its maximum output, otherwise than in accordance with a bilateral contract between the national system operator and that generator; or
  - (b) securing the transmission of electricity to Great Britain through an electricity interconnector, where—
    - (i) the electricity would not have been so transmitted without the national system operator's action; and
    - (ii) the primary purpose of the action is to avoid disconnections or voltage reductions.
- (5) Where an event referred to in paragraph (3) occurs, the period of loss of load is the time—
- (a) from the national system operator issuing an instruction under paragraph (3)(a) or (4)
    - (a) <sup>F44</sup>... until it withdraws that instruction (or, if the national system operator issues two or more such instructions for overlapping periods, from it issuing the first of those instructions until it withdraws the last of them);



- (b) during which electricity is transmitted through an interconnector as mentioned in paragraph (4)(b); or
  - (c) where automatic low frequency demand disconnection takes place, from demand being disconnected until the national system operator issues an instruction to reconnect that demand.
- (6) In this regulation, “automatic low frequency demand disconnection” has the meaning given in the Grid Code as it was in force on 1st April 2014 (see section OC6.6 of that code).

#### Textual Amendments

- F44** Word in reg. 6(5)(a) omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 42](#)

## PART 3

### Electricity capacity reports

#### Annual electricity capacity report

- 7.—(1) The Delivery Body must, before 1st June in 2015 and each subsequent year—
- (a) prepare a report in accordance with this Part (an “electricity capacity report”); and
  - (b) send the report to the Secretary of State.
- (2) An electricity capacity report must include, for each forecast period specified in paragraph (3)
- (a) a forecast of the peak demand for electricity by customers in Great Britain during the forecast period;
  - (b) an estimate of the total amount of capacity needed to meet that demand, having regard to the reliability standard; and
  - (c) forecasts of how much of the demand for electricity, at times of peak demand, will be met by—
    - (i) interconnected capacity [<sup>F45</sup>, in relation to each electricity interconnector that has or is likely to have been commissioned before the end of the forecast period concerned];
    - (ii) capacity from generating units in Great Britain or the offshore area which do not meet the general eligibility criteria;
    - (iii) capacity from generating units which already have a capacity obligation for the forecast period;
    - (iv) capacity from generating units (other than generating units described in paragraph (ii) or (iii)) which are connected to a distribution network; and
    - (v) demand side response.
- (3) The forecast periods for the purposes of paragraph (2) are—
- (a) the capacity year starting on 1st October in the calendar year in which the electricity capacity report is sent to the Secretary of State; and
  - (b) each of the subsequent 14 capacity years.
- (4) An electricity capacity report must include recommendations as to—

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- (a) the portion of the target capacity that should be used in a T-4 auction in the following auction window (if such an auction is held);
- (b) in 2017 and each subsequent year, the portion of the target capacity that should be used in a T-1 auction in the following auction window (if such an auction is held); and
- (c) the de-rating factors that should apply to—
- F46(i) . . . . .
- F46(ii) . . . . .
- [F47(iii) interconnector CMUs],
- for the purposes of capacity auctions held in the following auction window.
- [F48(5) An electricity capacity report must include the de-rating factors that the Delivery Body estimates will apply to—
- (a) generating CMUs in each generating technology class; and
- (b) demand side response CMUs;
- for the purposes of capacity auctions held in the following auction window.]
- [F49(6) The Delivery Body must before 1<sup>st</sup> August 2016—
- (a) prepare an annex to the last electricity capacity report prepared before 1<sup>st</sup> June 2016; and
- (b) send that annex to the Secretary of State.
- (7) The annex prepared under paragraph (6) must include a recommendation as to the target capacity for any supplementary auction that may be held.]
- [F50(8) The Delivery Body must, as soon as reasonably practicable after the date on which the Electricity Capacity (No. 2) Regulations 2019 come into force—
- (a) prepare an annex to the last electricity capacity report prepared before 1st June 2019; and
- (b) send that annex to the Secretary of State.
- (9) The annex prepared under paragraph (8) must include a recommendation as to the target capacity that should be included in the T-3 auction (if this auction is held).]

#### Textual Amendments

- F45** Words in [reg. 7\(2\)\(c\)\(i\)](#) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 3\(1\)](#)
- F46** [Reg. 7\(4\)\(c\)\(i\)\(ii\)](#) omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 43\(a\)](#)
- F47** [Reg. 7\(4\)\(c\)\(iii\)](#) and word inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 3\(2\)](#)
- F48** [Reg. 7\(5\)](#) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 43\(b\)](#)
- F49** [Reg. 7\(6\)\(7\)](#) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 2](#)
- F50** [Reg. 7\(8\)\(9\)](#) inserted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), [regs. 1\(2\)](#), [2\(3\)](#)

#### Electricity capacity reports: supplementary

- 8.—(1) The Delivery Body must—

- (a) make any forecast, estimate or recommendation for the purposes of an electricity capacity report; and
  - (b) express the forecast, estimate or recommendation in the report,
- in accordance with any directions given by the Secretary of State under regulation 9(2).
- (2) The Delivery Body must set out in an electricity capacity report any assumptions upon which a forecast, estimate or recommendation in the report is based.
- (3) The Delivery Body must publish an electricity capacity report.

### **Information, directions, and assumptions**

- 9.—(1) The Secretary of State must give to the Delivery Body each year any data held by the Secretary of State which the Secretary of State considers should be made available to the Delivery Body for the purpose of preparing that year's electricity capacity report.
- (2) The Secretary of State may give directions to the Delivery Body as to—
- (a) any assumptions to be used by the Delivery Body in preparing an electricity capacity report; or
  - (b) the way in which any forecast, estimate or recommendation is to be expressed in the report.
- (3) The information referred to in paragraph (1), and any directions under paragraph (2), must be given to the Delivery Body no later than 22nd April in the year in which the electricity capacity report is to be provided.

## **PART 4**

### **Capacity auctions**

#### **CHAPTER 1**

##### **Determining whether capacity auction is to be held**

#### **Determining whether capacity auction is to be held**

- 10.—(1) The Secretary of State must determine—
- (a) within 4 months after this regulation comes into force, whether a capacity auction is to be held in accordance with regulation 87 for the delivery year starting on 1st October 2018;
  - (b) by 15th June in 2015 and 2016, whether a T-4 auction is to be held in the auction window starting on 1st September in that year; <sup>F51</sup>...
  - <sup>F52</sup>(ba) by 1<sup>st</sup> August 2016, whether a T-1 auction is to be held in the auction window starting on 1<sup>st</sup> September 2016 (a “supplementary auction”); <sup>F53</sup>...
  - <sup>F54</sup>(bb) as soon as reasonably practicable after the date on which the Electricity Capacity (No. 2) Regulations 2019 come into force, whether the T-3 auction is to be held; and]
  - (c) by 15th June in 2017 and each subsequent year—
    - (i) whether a T-4 auction is to be held; and
    - (ii) whether a T-1 auction is to be held,in the auction window starting on 1st September in that year.
- <sup>F55</sup>(1A) Paragraphs (2), (3) and (4) apply in relation to the determination required by regulation 10(1)(c)(ii).]

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(2) The Secretary of State must, under paragraph (1)(c)(ii), determine that a T-1 auction is to be held, except where paragraph (3) or (4) applies.

(3) The Secretary of State may determine that a T-1 auction is not to be held if the electricity capacity report for the year in which the determination is to be made contains a forecast that no DSR providers will apply to bid in such an auction.

(4) The Secretary of State must determine that a T-1 auction is not to be held for a delivery year if no T-4 auction was held for that delivery year.

(5) The Secretary of State must publish the determinations under paragraph (1) as soon as reasonably practicable after making them.

(6) A determination that a capacity auction is to be held is subject to regulation 26.

**Textual Amendments**

- F51** Word in reg. 10(1)(b) omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 3(1)**
- F52** Reg. 10(1)(ba) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 3(1)**
- F53** Word in reg. 10(1)(ba) omitted (18.7.2019) by virtue of [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), **2(4)(a)**
- F54** Reg. 10(1)(bb) inserted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), **2(4)(b)**
- F55** Reg. 10(1A) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 3(2)**

CHAPTER 2

Auction parameters

**Meaning of auction parameters**

**11.**—(1) “Auction parameters”, in relation to a capacity auction, means, subject to paragraph (2), such of the following as are determined by the Secretary of State for that capacity auction under regulation 12 or 29(8)—

- (a) the demand curve;
- (b) the [<sup>F56</sup>auction] target capacity;
- (c) the price cap;
- (d) the price-taker threshold;
- (e) the 15 year minimum £/kW threshold and 3 year minimum £/kW threshold;
- (f) the base period applicable for the purpose of calculation of capacity payments;

<sup>F57</sup>(g) .....

(h) in relation to a DSR transitional auction, the parameter specified in regulation 29(8).

(2) If any of the parameters referred to in paragraph (1) for a capacity auction have been adjusted in accordance with these Regulations or capacity market rules, references to the auction parameters for that capacity auction are to the parameters as so adjusted.

(3) In paragraph (1)—

“15 year minimum £/kW threshold” means the minimum amount of capital expenditure per kilowatt of de-rated capacity which a bidder must commit to spending on a generating CMU

[<sup>F58</sup>or an unproven demand side response CMU] to be eligible to bid for a capacity obligation for a period of more than 3 and up to 15 delivery years;

“3 year minimum £/kW threshold” means the minimum amount of capital expenditure per kilowatt of de-rated capacity which a bidder must commit to spending on a generating CMU

[<sup>F59</sup>or an unproven demand side response CMU] to be eligible to bid for a capacity obligation for a period of 2 or 3 delivery years;

[<sup>F60</sup>“auction target capacity” means, in respect of a capacity auction, the portion of the target capacity in relation to the capacity year corresponding to the delivery year for which the capacity auction is to be held which should be used for that capacity auction.]

<sup>F61</sup> ...

**Textual Amendments**

- F56** Word in reg. 11(1)(b) inserted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 2(1)**
- F57** Reg. 11(1)(g) omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 44(a)**
- F58** Words in reg. 11(3) inserted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 2(2)(a)**
- F59** Words in reg. 11(3) inserted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 2(2)(b)**
- F60** Words in reg. 11(3) inserted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 2(2)(c)**
- F61** Words in reg. 11(3) omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 44(b)**

**Determination of auction parameters by the Secretary of State**

12.—(1) For each capacity auction, the Secretary of State must determine each of the auction parameters referred to in sub-paragraphs (a) to (d) of regulation 11(1).

(2) For each T-4 auction, the Secretary of State must also—

- (a) determine the auction parameters referred to in sub-paragraphs (e) and (f) of regulation 11(1); and

<sup>F62</sup>(b) .....

[<sup>F63</sup>(2A) When determining under paragraph (1) the auction parameter referred to in regulation 11(1)(b) (auction target capacity) in respect of a T-4 auction and the delivery year for which that T-4 auction is to be held (“delivery year x”), the Secretary of State must—

- (a) determine the target capacity for the capacity year corresponding to delivery year x;
- (b) determine the target capacity for the capacity year corresponding to delivery year x that should be set aside for the T-1 auction for delivery year x (“the T-1 auction set aside”) in accordance with paragraph (2B); and
- (c) deduct the T-1 auction set aside from the target capacity for the capacity year corresponding to delivery year x.

(2B) For the purposes of paragraph (2A)(b), the Secretary of State must determine the T-1 auction set aside by applying a 95% confidence interval around the target capacity for the capacity year corresponding to delivery year x.

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(2C) For each T-1 auction, where the delivery year corresponds with delivery year x, the Secretary of State must determine the auction parameter referred to in regulation 11(1)(b) (auction target capacity) to be an amount equal to or greater than 50% of the T-1 auction set aside if previously determined under paragraph (2A)(b) for the T-1 auction for delivery year x.]

(3) The determinations under paragraphs (1) and (2) are subject to any adjustments which may be made under regulations 13 and 28.

(4) The Secretary of State must—

- (a) make the determinations under paragraph (1) and, if applicable, paragraph (2), and give notice of them to the Delivery Body as soon as reasonably practicable after publishing a decision to hold a capacity auction; and
- (b) publish the determinations.

(5) In making the determinations under paragraphs (1) and (2), the Secretary of State must take into account—

- (a) the electricity capacity report [<sup>F64</sup>(including any annex prepared under regulation 7(6) [<sup>F65</sup>or (8)])];
- (b) the reliability standard; and
- (c) the matters specified in section 5(2) of the Act.

[<sup>F66</sup>(6) If the auction target capacity determined by the Secretary of State for a T-1 auction or a T-4 auction is different from a recommendation in the electricity capacity report as to the portion of the target capacity that should be used in that capacity auction, the determination must include an explanation of—

- (a) the Secretary of State’s reasons for not following that recommendation; and
- (b) the basis upon which the Secretary of State has made the determination.]

[<sup>F67</sup>(7) In this regulation—

- “the 95% confidence interval” means the range of values within which the target capacity for a capacity year may be expected to lie with a 0.95 level of probability;
- “auction target capacity” has the meaning given in regulation 11(3).]

#### Textual Amendments

- F62** Reg. 12(2)(b) omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 45**
- F63** Reg. 12(2A)-(2C) inserted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 3(1)**
- F64** Words in reg. 12(5)(a) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 4**
- F65** Words in reg. 12(5)(a) inserted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), **2(5)**
- F66** Reg. 12(6) substituted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 3(2)**
- F67** Reg. 12(7) inserted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 3(3)**

## Adjustment of auction parameters following prequalification

**13.**—(1) [<sup>F68</sup>Subject to paragraph (1A),] after the Secretary of State receives a notification from the Delivery Body under regulation 23, the Secretary of State may decide to adjust any of the auction parameters for the capacity auction to which the notification relates.

[<sup>F69</sup>(1A) If the Secretary of State adjusts the auction parameter referred to in regulation 11(1) (b) (auction target capacity) for a T-1 auction, that auction target capacity must remain equal to or greater than 50% of the T-1 auction set aside if previously determined under regulation 12(2A)(b) for that T-1 auction and delivery year.]

(2) The Secretary of State must make any decision under paragraph (1), and give notice of any adjustments to the Delivery Body, within [<sup>F70</sup>10] working days after receiving the notification from the Delivery Body.

[<sup>F71</sup>(3) In this regulation, “the T-1 auction set aside” has the meaning given in regulation 12(2A) (b).]

### Textual Amendments

**F68** Words in reg. 13(1) inserted (4.7.2020) by *The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020* (S.I. 2020/697), reg. 1(2), **Sch. 1 para. 4(1)**

**F69** Reg. 13(1A) inserted (4.7.2020) by *The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020* (S.I. 2020/697), reg. 1(2), **Sch. 1 para. 4(2)**

**F70** Word in reg. 13(2) substituted (14.7.2016) by *The Electricity Capacity (Amendment) Regulations 2016* (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 46**

**F71** Reg. 13(3) inserted (4.7.2020) by *The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020* (S.I. 2020/697), reg. 1(2), **Sch. 1 para. 4(3)**

## CHAPTER 3

### Eligibility criteria and prequalification

#### Eligibility to bid in capacity auctions

**14.**—(1) [<sup>F72</sup>Subject to paragraph (3), an applicant] is eligible to bid in a capacity auction in respect of a CMU if—

- (a) the CMU has prequalified for the capacity auction; and
- (b) the applicant is the person who applied for its prequalification under capacity market rules.

(2) A CMU has prequalified for a capacity auction if, by 11 working days before the start of the capacity auction—

- (a) the Delivery Body has determined under capacity market rules, or under Chapter 1 of Part 10 (dispute resolution and appeals), that the CMU has prequalified; or
- (b) the Delivery Body has registered the CMU on the capacity market register as a prequalified CMU in accordance with a direction of the Authority or the court under Chapter 1 of Part 10.

[<sup>F73</sup>(3) In respect of an interconnector CMU, an applicant is not eligible to bid in a capacity auction [<sup>F74</sup>(other than a supplementary auction)] held for a delivery year commencing before 2019.]



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#### Textual Amendments

- F72** Words in [reg. 14\(1\)](#) substituted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 4\(1\)](#)
- F73** [Reg. 14\(3\)](#) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 4\(2\)](#)
- F74** Words in [reg. 14\(3\)](#) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 5](#)

#### General eligibility criteria

**15.—**(1) The Delivery Body must not prequalify a CMU for a capacity auction unless it meets the general eligibility criteria.

(2) The general eligibility criteria for a CMU are the conditions specified in paragraphs (3) to (5).

(3) The first condition is that the CMU is in Great Britain or the offshore area.

[<sup>F75</sup>(4) The second condition is—

- (a) in the case of a generating CMU or an interconnector CMU, that the connection capacity of the CMU is equal to or greater than [<sup>F76</sup>1MW] (the “minimum capacity threshold”); or
- (b) in the case of a demand side response CMU, that the DSR capacity of the CMU is equal to or greater than the minimum capacity threshold.]

(5) The third condition is that the CMU is not [<sup>F77</sup>a] CMU which, by virtue of regulations 16 to 18, the Delivery Body must not prequalify for a capacity auction.

#### Textual Amendments

- F75** [Reg. 15\(4\)](#) substituted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 14](#)
- F76** Word in [reg. 15\(4\)\(a\)](#) substituted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 5](#)
- F77** Word in [reg. 15\(5\)](#) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 47](#)

#### Excluded capacity: low carbon support scheme CMUs

**16.—**(1) The Delivery Body must not prequalify a CMU (“CMU i”) in respect of which—

- (a) if CMU i is accredited under the FIT Order, the RHI Regulations or the ROO, the applicant does not provide a non-support confirmation by the close of the prequalification window; or
- (b) if an application (which is not determined) for a low carbon exclusion has been made in respect of CMU i for any of the delivery period, the applicant does not provide a withdrawal confirmation by the close of the prequalification window.

(2) The Delivery Body must not prequalify CMU i if CMU i is subject to a CFD which applies for any of the delivery period.

(3) The Delivery Body may request an applicant or the CFD counterparty to provide it with such information as it may require for the purposes of paragraphs (1) and (2), and the applicant or CFD counterparty must, to the extent that it holds the information, comply with such a request as soon as reasonably practicable.



(4) In this regulation—

“co-firing CMU” means a generating CMU consisting of one or more generating units which have, in any month after March 2013, generated electricity in the way described in Schedule 2 to the ROO <sup>M15</sup> as “co-firing of regular bioliquid”, “low-range co-firing”, “mid-range co-firing”, “high-range co-firing” or “unit conversion”;

“the FIT Order” means the Feed-in Tariffs Order 2012 <sup>M16</sup>;

“low carbon exclusion” means—

(a) an accreditation under—

- (i) the FIT Order;
- (ii) the RHI Regulations; or
- (iii) the ROO; or

(b) a CFD;

“non-support confirmation” means a declaration in writing to the Delivery Body from an applicant—

(a) that the period for which relevant support may be paid or issued under the FIT Order, the RHI Regulations or the ROO in respect of CMU i will have expired before the start of the delivery period; or

(b) that—

- (i) CMU i is a co-firing CMU; and
- (ii) if the applicant is awarded a capacity obligation in respect of CMU i, the applicant will not, except in accordance with regulation 34, seek to obtain relevant support in respect of CMU i for any of the delivery period;

“relevant support” means—

(a) a FIT payment within the meaning referred to in the FIT Order;

(b) a periodic support payment within the meaning of the RHI Regulations; or

(c) a ROC;

“the RHI Regulations” means the Renewable Heat Incentive Scheme Regulations 2011 <sup>M17</sup>;

“withdrawal confirmation” means a notice to the Delivery Body from the applicant in respect of CMU i that the applicant has withdrawn its application for a low carbon exclusion in respect of that CMU.

#### Marginal Citations

**M15** The definitions of “co-firing of regular bioliquid”, “low-range co-firing”, “mid-range co-firing”, “high-range co-firing” and “unit conversion” were inserted into Schedule 2 to S.I. 2009/785 by S.I. 2013/768, and were inserted into Schedule 2 to S.S.I. 2009/140 by S.S.I. 2013/116.

**M16** S.I. 2012/2782, amended by S.I. 2013/1099.

**M17** S.I. 2011/2860, amended by S.I. 2012/1999, S.I. 2013/1033, S.I. 2013/2410 and S.I. 2013/3179.

#### Excluded capacity: NER 300 and CCS grant scheme CMUs

17.—(1) The Delivery Body must not prequalify a CMU (“CMU i”) unless the applicant has provided to it, by the close of the prequalification window, a declaration in writing that no relevant grant has been, or will be, paid in respect of CMU i.

(2) In this regulation—

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[<sup>F78cc</sup>“carbon capture and storage technology” has the meaning given in section 7(3) of the Energy Act 2010;]

[<sup>F79cc</sup>“relevant grant” means a grant—

- (a) under a relevant scheme;
- (b) the first payment of which is made, or to be made, within the period of 10 years immediately before the commencement of the delivery period; and
- (c) which is made for purposes other than—
  - (i) carrying out activities of research and development in relation to the design and use of carbon capture and storage technology in respect of CMU i; or
  - (ii) assessing the feasibility of the use of carbon capture and storage technology in respect of CMU i]

“relevant scheme” means a scheme of financial assistance provided under—

- (a) NER 300;
- (b) section 1(1) of the Energy Act 2010 <sup>M18</sup> in respect of a CCS demonstration project within the meaning of that section; or
- (c) section 5(1) of the Science and Technology Act 1965 <sup>M19</sup> to support carbon capture and storage.

(3) In paragraph (2), “NER 300” means the competition established under Article 10a(8) of Directive [2003/87/EC](#) of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive [96/61/EC](#) <sup>M20</sup>.

#### Textual Amendments

**F78** Words in [reg. 17\(2\)](#) inserted (4.12.2015) by [The Electricity Capacity \(Amendment\) \(No. 2\) Regulations 2015 \(S.I. 2015/1974\)](#), regs. 1(2), **3(a)**

**F79** Words in [reg. 17\(2\)](#) substituted (4.12.2015) by [The Electricity Capacity \(Amendment\) \(No. 2\) Regulations 2015 \(S.I. 2015/1974\)](#), regs. 1(2), **3(b)**

#### Marginal Citations

**M18** [2010 c.27](#).

**M19** [1965 c.4](#). Section 5(1) has been amended by [S.I. 1971/719](#), [S.I. 1992/1296](#), [S.I. 1995/2785](#) and [S.I. 1995/2985](#). Other amendments have been made to section 5 which are not relevant.

**M20** [OJ L 275, 25.10.2003, p.32](#). Aspects of NER 300 are implemented by [Commission Decision 2010/670/EU \(OJ L 290, 6.11.2010, p.39\)](#). Those projects which have received a grant under NER 300 can be examined at: [www.ec.europa.eu/clima/funding/ner300/index\\_en.htm](http://www.ec.europa.eu/clima/funding/ner300/index_en.htm).

#### Excluded capacity: long term STOR CMUs

<sup>F80</sup>**18.** . . . . .

#### Textual Amendments

**F80** [Reg. 18](#) omitted (4.7.2020) by virtue of [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 6**

## Regulations 16 <sup>[F81]</sup> and 17]: interpretation

19. In regulations 16 <sup>[F82]</sup> and 17], “delivery period” means the delivery year or period of delivery years for which a capacity obligation would be awarded in respect of a CMU (“CMU i”) if a bid in respect of CMU i were accepted at the capacity auction for which the applicant is applying for prequalification.

### Textual Amendments

**F81** Words in [reg. 19](#) heading substituted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 7\(1\)](#)

**F82** Words in [reg. 19](#) substituted (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 7\(2\)](#)

## CHAPTER 4

### Determining eligibility and holding capacity auctions

#### General duty of Delivery Body

20.—(1) This Chapter applies where the Secretary of State has determined that a capacity auction is to be held.

(2) The Delivery Body must exercise the functions conferred on it by—

- (a) this Chapter; and
- (b) capacity market rules.

(3) The Delivery Body must exercise those functions in accordance with these Regulations and capacity market rules.

#### Auction guidelines

21.—(1) The Delivery Body must, before the start of the prequalification window, publish guidelines for the capacity auction (“auction guidelines”).

(2) The auction guidelines must contain—

- (a) the provisional date on which the capacity auction is to start;
- (b) details of how to apply to prequalify to bid in the capacity auction;
- (c) the timetable for submission and determination of applications, which must in particular include the closing date for submission of applications;
- (d) the auction parameters;
- (e) the de-rating factor for each generating technology class, <sup>[F83]</sup>and for each interconnector CMU,] as determined by the Delivery Body <sup>[F83]</sup>or the Secretary of State] under capacity market rules; and
- (f) such other information as may be—
  - (i) required by capacity market rules; or
  - (ii) directed by the Secretary of State or the Authority.

(3) The Delivery Body must, not less than 3 weeks before the date specified under paragraph (2) (a), publish a final version of the auction guidelines which contains—

- (a) the date on which the capacity auction is to start; and
- (b) any changes made to the auction parameters under regulation 13.

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### Textual Amendments

**F83** Words in [reg. 21\(2\)\(e\)](#) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 5](#)

### Determination of eligibility

**22.** The Delivery Body must—

- (a) determine each application for prequalification that is made to it in accordance with capacity market rules;
- (b) notify each applicant of its determination; and
- (c) reconsider a determination, if an applicant requests it to do so under regulation 69.

### Notifying prequalification results to the Secretary of State

**23.**—(1) The Delivery Body must, as soon as reasonably practicable after it has determined all the applications made to it [<sup>F84</sup>and, if applicable, complied with any obligations under regulation 69(3) or (4) in relation to requests to review prequalification decisions notified to applicants on prequalification results day (which has the meaning given to that term in the Rules)], notify the Secretary of State of the aggregate de-rated capacity of—

- (a) CMUs which have prequalified to bid in the capacity auction;
- (b) CMUs in respect of which applications were rejected; and
- (c) generating CMUs [<sup>F85</sup>, or interconnector CMUs,] in respect of which the Delivery Body received—
  - (i) an opt-out notification stating that the CMU will be closed down, decommissioned or otherwise non-operational by the commencement of the delivery year;
  - (ii) an opt-out notification stating that the CMU will be temporarily non-operational for all the winter of the delivery year but will be operational thereafter; or
  - (iii) an opt-out notification stating that the CMU will remain operational during the delivery year.

(2) The Delivery Body must, at the same time—

- (a) advise the Secretary of State whether, in light of the data referred to in paragraph (1), the demand curve for the capacity auction should be adjusted; and
- (b) provide a recommendation to the Secretary of State as to the adjustment, if any, that should be made to the demand curve.

(3) The Delivery Body must give the advice and recommendation in accordance with any directions given by the Secretary of State.

(4) In paragraph (1), “opt-out notification” has the meaning given in the Rules.

### Textual Amendments

**F84** Words in [reg. 23\(1\)](#) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 48](#)

**F85** Words in [reg. 23\(1\)\(c\)](#) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 6](#)

### Holding the capacity auction

**24.**—(1) The Delivery Body must, subject to regulation 26, hold a capacity auction starting on the date specified in the final auction guidelines published under regulation 21(3).

(2) The Delivery Body may arrange for another person to conduct the capacity auction on its behalf, and in these Regulations “the auctioneer” means—

- (a) the Delivery Body, if it conducts the capacity auction itself; or
  - (b) the person appointed by the Delivery Body to conduct the capacity auction.
- (3) The auctioneer must conduct the capacity auction in accordance with—
- (a) capacity market rules;
  - (b) the auction guidelines; and
  - (c) any instructions given by the Secretary of State on how price decrements are to be set.

(4) The Delivery Body is responsible for the performance of functions conferred on the auctioneer by these Regulations or capacity market rules, whether or not the Delivery Body performs those functions itself.

(5) In paragraph (3)(c), “price decrement” means the amount by which the bidding price is to be decreased from one bidding round of a capacity auction to the next.

### Notification of results

**25.**—(1) The Delivery Body must, after a capacity auction is completed—

- (a) as soon as reasonably practicable notify the auction results to the Secretary of State;
- (b) within one working day, give notice to each bidder of whether or not its bid was a successful bid; and
- (c) within 8 working days, publish the auction results.

(2) In paragraph (1) “the auction results” means—

- (a) the auction clearing price;
- (b) the total amount of capacity in respect of which successful bids were made;
- (c) the CMUs in respect of which successful bids were made;
- (d) in respect of each such CMU—
  - (i) the de-rated capacity of the CMU<sup>F86</sup> ...; and
  - (ii) the duration of capacity obligation for which, and the price at which, the successful bid was made.

(3) In paragraphs (1) and (2), a “successful bid” means a bid that, subject to regulation 27, results in the award of a capacity obligation to the bidder.

#### Textual Amendments

**F86** Words in [reg. 25\(2\)\(d\)\(i\)](#) omitted (2.11.2017) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2017 \(S.I. 2017/1053\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 2](#)

### Cancellation, postponement or stopping of capacity auction

**26.**—(1) A capacity auction may not be cancelled, postponed or stopped except as provided in this regulation.

(2) The Delivery Body—

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- (a) must cancel or postpone a capacity auction if directed to do so by the Secretary of State under paragraph (3); and
  - (b) may postpone or stop a capacity auction if, in the Delivery Body's opinion, the capacity auction cannot be conducted fairly and in accordance with regulation 24(3), because of a failure of the auction IT system or any other exceptional circumstances.
- (3) The Secretary of State—
- (a) must, before the date on which the capacity auction is to start, direct the Delivery Body to cancel or postpone the capacity auction if, in the Secretary of State's opinion, were the capacity auction to proceed the awarding of capacity agreements or making of capacity payments to successful bidders could breach the law relating to state aid;
  - (b) may, at any time before the date on which the capacity auction is to start, direct the Delivery Body for any other reason—
    - (i) to postpone a capacity auction for an indefinite period; or
    - (ii) to start the capacity auction on a later date than the date specified in auction guidelines.
- (4) If the Delivery Body postpones or stops a capacity auction under paragraph (2)(b), the Delivery Body must hold or restart the capacity auction at a later date, and must comply with regulation 28(3)(b) and (c) in relation to the rearranged capacity auction.
- (5) If the Secretary of State gives a direction under paragraph (3)(a) to postpone a capacity auction, the Secretary of State—
- (a) may subsequently direct the Delivery Body to rearrange the capacity auction if the Secretary of State is, at the date of the later direction, satisfied that the awarding of capacity agreements and making of capacity payments to successful bidders would not breach the law relating to state aid; and
  - (b) must otherwise direct the Delivery Body to cancel the capacity auction.
- (6) If the Secretary of State gives a direction under paragraph (3)(b) to postpone a capacity auction, the Secretary of State must as soon as reasonably practicable give a further direction to the Delivery Body to rearrange or cancel the capacity auction.
- (7) Paragraphs (5)(a) and (6) are subject to regulation 28(4).
- (8) If the Secretary of State directs the Delivery Body to cancel or postpone a capacity auction, the Secretary of State must, not later than 4 weeks after giving that direction, publish the reasons for it.

### **Power to annul capacity auction**

**27.—**(1) The Secretary of State may, within 7 working days after a capacity auction is completed, annul the capacity auction if it appears to the Secretary of State that there are reasonable grounds to suspect that—

- (a) there was an irregularity in relation to the capacity auction; and
  - (b) the irregularity affected—
    - (i) the auction clearing price; or
    - (ii) the CMUs which were successful in the capacity auction.
- (2) For the purposes of paragraph (1) there is an irregularity if, but only if, the capacity auction was not conducted in accordance with regulation 24(3).
- (3) If the Secretary of State decides to annul a capacity auction, the Secretary of State must—
- (a) immediately publish that decision; and
  - (b) not later than 4 weeks after making that decision, publish the reasons for it.

## Rearranged capacity auctions

**28.**—(1) If the Secretary of State gives a direction under regulation 26(5) or (6) to rearrange a capacity auction, the Secretary of State may, subject to paragraph (4)—

- (a) give directions to the Delivery Body about the holding of that capacity auction; and
- (b) decide to adjust any of the auction parameters for that capacity auction.

(2) Directions under paragraph (1)(a) may include a direction to re-open prequalification for the capacity auction, and must include such a direction if any of the auction parameters are adjusted.

(3) The Delivery Body must—

- (a) comply with any directions under paragraph (1);
- (b) publish a revised version of the auction guidelines for the rearranged auction; and
- (c) ensure that a rearranged capacity auction is completed by the earlier of—
  - (i) the end of the auction window; or
  - (ii) 6 months after the date of any direction by the Secretary of State to hold a rearranged capacity auction.

(4) The Secretary of State must not give directions under regulation 26(5)(a) or (6), or paragraph (1) of this regulation, if the effect of those directions is that it would not be reasonably practicable for the Delivery Body to comply with paragraph (3)(c).

## CHAPTER 5

### DSR transitional auctions

#### DSR transitional auctions

**29.**—(1) A “DSR transitional auction” is a capacity auction in which bids may only be made for a one year capacity agreement in respect of—

- (a) a demand side response CMU; or
- (b) a non-CMRS distribution CMU with a connection capacity not exceeding 50MW.

(2) The Delivery Body must hold a DSR transitional auction—

- (a) in the auction window commencing on 1st September 2015, for the 2016-17 delivery year; and
- (b) in the auction window commencing on 1st September 2016, for the 2017-18 delivery year.

(3) Following a DSR transitional auction, a successful bidder must, in accordance with capacity market rules, elect whether to be issued with a capacity agreement for—

- (a) a time banded capacity obligation; or
- (b) a non-time banded capacity obligation.

(4) A time banded capacity obligation is an obligation to provide capacity during such times of the day and such months of a delivery year as are specified in capacity market rules.

(5) A non-time banded capacity obligation is an obligation to provide capacity at any time during a delivery year.

(6) Capacity payments for a non-time banded capacity obligation are payable at a rate equal to the auction clearing price.

(7) Capacity payments for a time banded capacity obligation awarded following the DSR transitional auction held under paragraph (2)(a) are payable at a rate equal to 70% of the auction clearing price.

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(8) The Secretary of State must determine as an auction parameter the rate, expressed as a percentage of the auction clearing price, at which capacity payments are to be payable for a time banded capacity obligation awarded following the DSR transitional auction held under paragraph (2) (b).

(9) The Secretary of State must—

(a) determine the auction parameters under—

(i) regulation 12(1); and

(ii) paragraph (8);

(b) give notice of them to the Delivery Body as soon as reasonably practicable after making those determinations; and

(c) publish the determinations.

[<sup>F87</sup>(9A) The Delivery Body must not prequalify a CMU (“CMU i”) for the DSR transitional auction held under paragraph (2)(a) if CMU i is subject to an EDR participant agreement which applies for any of the delivery period.

(9B) The Delivery Body may request an applicant or the Secretary of State to provide it with such information as it may require for the purposes of paragraph (9A) and the applicant or the Secretary of State must, to the extent that it holds the information, comply with such a request as soon as reasonably practicable.]

(10) Chapters 1 to 4 of this Part apply in relation to DSR transitional auctions with the modifications that—

(a) regulation 12 applies as if paragraphs (4), (5)(a) and (b) and (6) were omitted; and

[<sup>F88</sup>(aa) regulation 13 applies as if in paragraph (1), for “regulation 23” there were substituted “regulation 23(1)”, and the following paragraphs were inserted after paragraph (2)—

“(3) After the Secretary of State receives a notification from the Delivery Body under regulation 23(1A), the Secretary of State may decide to adjust any of the auction parameters for the capacity auction to which the notification relates.

(4) The Secretary of State must make any decision under paragraph (3), and give notice of any adjustments to the Delivery Body, within 5 working days after receiving the notification from the Delivery Body.”;

(ab) regulation 21 applies as if after paragraph (3) there were inserted—

“(4) If the Secretary of State gives notice of an adjustment to auction parameters under regulation 13(4)—

(a) within 5 working days after receiving the notice, the Delivery Body must publish a revised final version of the auction guidelines accordingly; or

(b) if the Delivery Body has not published a final version of the auction guidelines when it receives the notice, it must publish those guidelines at the time required by paragraph (3) or within 5 working days after receiving the notice, whichever is later.”]

(b) regulation 23 applies as if paragraphs (1)(c) and (2) to (4) were omitted [<sup>F89</sup>and the following paragraph were inserted after paragraph (1)—

“(1A) The Delivery Body must—

(a) on the auction results day for a supplementary auction, or

(b) on the auction results day for a third T-4 auction if there is no supplementary auction but there is a third T-4 auction,



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notify the Secretary of State of the aggregate de-rated capacity of CMUs which are eligible to participate in the capacity auction, and CMUs in respect of which applications were rejected.”]

[<sup>F90</sup>(10A) Regulation 69(5) does not apply in relation to the reconsideration of a prequalification decision for the DSR transitional auctions held by the Delivery Body under paragraph (2).]

[<sup>F91</sup>(11) In this regulation—

[<sup>F92</sup>“auction results day” means the date on which the auction results are published under regulation 25(1)(c);]

“delivery period” has the meaning given in regulation 19;

“EDR participant agreement” means an agreement entered into between the Secretary of State and the applicant under a pilot scheme for electricity demand reduction established under section 43 of the Act;

“non-CMRS distribution CMU” means a CMU consisting of one or more non-CMRS distribution units, within the meaning given in regulation 4(8).]

#### Textual Amendments

- F87** Reg. 29(9A)(9B) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015](#) (S.I. 2015/875), reg. 1(2), [Sch. 1 para. 15\(1\)](#)
- F88** Reg. 29(10)(aa)(ab) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), reg. 1(2), [Sch. 1 para. 49\(1\)\(a\)](#)
- F89** Words in reg. 29(10)(b) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), reg. 1(2), [Sch. 1 para. 49\(1\)\(b\)](#)
- F90** Reg. 29(10A) inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015](#) (S.I. 2015/875), reg. 1(2), [Sch. 1 para. 15\(2\)](#)
- F91** Reg. 29(11) substituted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015](#) (S.I. 2015/875), reg. 1(2), [Sch. 1 para. 15\(3\)](#)
- F92** Words in reg. 29(11) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), reg. 1(2), [Sch. 1 para. 49\(2\)](#)

#### [<sup>F93</sup>Second DSR transitional auction

**29A.**—(1) This regulation applies to the DSR transitional auction held in the auction window commencing on 1<sup>st</sup> September 2016.

(2) In this auction—

- (a) regulation 15(4) applies as if the minimum capacity threshold is 500 kilowatts; and
- (b) regulation 29(1) applies as if for sub-paragraphs (a) and (b) there were substituted “a demand side response CMU which does not provide DSR capacity by using a generating unit.”]

#### Textual Amendments

- F93** Reg. 29A inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), reg. 1(2), [Sch. 1 para. 38](#)

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## PART 5

### Capacity agreements, capacity market register and termination

#### Capacity agreements

**30.**—(1) A “capacity agreement” [F94 comprises] the rights and obligations accruing to a capacity provider under or by virtue of electricity capacity regulations and capacity market rules in relation to a particular capacity committed CMU and one or more delivery years.

(2) A [F95 distinct capacity agreement accrues] to each successful bidder in a capacity auction (unless the capacity auction is annulled under regulation 27), in relation to each CMU for which a successful bid was made, for—

- (a) [F96 a capacity obligation equal to] the de-rated capacity of the CMU F97 ...;
- (b) the delivery year for which the capacity auction was held in the case of a capacity agreement for a one year capacity obligation, or a period of two or more whole delivery years commencing with that delivery year in the case of a capacity agreement for a multi-year capacity obligation; and
- (c) the capacity cleared price.

(3) The “capacity cleared price” means the price which, subject to any provision for adjustment for inflation, is to be used for the purpose of calculating capacity payments in respect of a capacity obligation.

[F98(4) The capacity cleared price is—

- (a) the auction clearing price; or
- (b) in the case of a time banded capacity obligation awarded in a DSR transitional auction, the percentage of the auction clearing price applicable under regulation 29(7) or (8).]

(5) A capacity agreement—

- (a) may not be disclaimed; and
- (b) may not be transferred or terminated except as provided in these Regulations and capacity market rules.

(6) Unless terminated in accordance with these Regulations or capacity market rules, [F99 and subject to any termination of a transferred part in accordance with regulation 30A(4).] a capacity agreement remains in force until the expiry of the period of delivery years for which it is issued.

#### Textual Amendments

**F94** Word in reg. 30(1) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 21\(1\)](#) (with reg. 1(4))

**F95** Words in reg. 30(2) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 21\(2\)\(a\)](#) (with reg. 1(4))

**F96** Words in reg. 30(2)(a) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 21\(2\)\(b\)](#) (with reg. 1(4))

**F97** Words in reg. 30(2)(a) omitted (2.11.2017) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2017 \(S.I. 2017/1053\)](#), reg. 1(2), [Sch. 1 para. 3](#)

**F98** Reg. 30(4) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 50](#)

**F99** Words in reg. 30(6) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 21\(3\)](#) (with reg. 1(4))

## [<sup>F100</sup>Transfer of a capacity agreement

**30A.**—(1) A capacity agreement may be transferred in accordance with capacity market rules so as to apply in respect of a CMU—

- (a) for the entire delivery year, or period of delivery years, for which the capacity agreement has effect; or
- (b) only for a specified number of calendar days in such a delivery year (“the transfer period”).

(2) A transfer under paragraph (1) may be made—

- (a) in respect of the entire capacity obligation comprised in the capacity agreement; or
- (b) in respect of a part only of that obligation.

(3) For the purposes of this regulation, a “transferred part” comprises the rights and obligations accruing to the transferee in respect of a CMU where the capacity agreement (“the related agreement”) is transferred under paragraph (1)(b) or (2)(b).

(4) A transferred part may be terminated, in accordance with capacity market rules, so as to extinguish the rights and obligations accruing to the transferee.

(5) But a termination of the transferred part does not—

- (a) in itself amount to the termination of the related agreement; or
- (b) affect any rights and obligations accruing—
  - (i) in a part of a delivery year that is not included in the transfer period; or
  - (ii) in relation to any part of the capacity obligation that is not transferred.

(6) A termination of the related agreement does not in itself amount to the termination of a transferred part, but extinguishes the rights and obligations accruing in respect of the transferred part.

(7) This regulation applies to the further transfer of a transferred part as it applies to a transfer of a capacity agreement.]

### Textual Amendments

**F100** Reg. 30A inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 22](#) (with reg. 1(4))

## Capacity market register

**31.**—(1) The Delivery Body must, in accordance with this regulation and capacity market rules, establish and maintain a capacity market register containing details of—

- (a) in respect of each CMU that is the subject of an application to prequalify for a capacity auction—
  - (i) the prequalification decision; and
  - (ii) the de-rated capacity of the CMU; and
- (b) each capacity agreement.

(2) The Delivery Body must include on the capacity market register in respect of each capacity agreement—

- (a) a description of the CMU in respect of which the capacity agreement is issued;
- (b) the duration of the capacity agreement, and the delivery year or years for which it is issued;
- (c) the capacity obligation for which the capacity agreement is issued;
- (d) the capacity cleared price;

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- (e) in the case of a capacity agreement issued following a T-4 auction, the base period applicable for the purpose of calculating capacity payments;
  - (f) the annual penalty cap and monthly penalty cap applicable in accordance with the electricity capacity regulations in force at the date of issue of the capacity agreement, expressed respectively as percentages of the annual capacity payment and the monthly capacity payments payable under the capacity agreement;
  - (g) whether the capacity provider is subject to a financial commitment milestone and, if so, the date by which that milestone must be met;
  - (h) whether the capacity provider is subject to a minimum completion requirement and, if so, the long stop date in respect of that requirement;
  - (i) the [<sup>F101</sup>rate at which each termination fee is payable], which must be determined by the Delivery Body in accordance with regulation 32; and
  - (j) such other matters as may be specified in capacity market rules.
- (3) The matters referred to in sub-paragraphs (a) to (i) of paragraph (2) apply throughout the duration of the capacity agreement and may not be amended except—
- (a) by the Delivery Body to correct an administrative error;
  - (b) in accordance with a direction of the Authority or the court under Chapter 1 of Part 10;
  - (c) in accordance with any provision of electricity capacity regulations or capacity market rules for—
    - (i) the adjustment of amounts for inflation;
    - (ii) the extension of a date by which a milestone or other requirement must be met; or
    - (iii) the termination of capacity agreements.
- (4) In paragraph (2)(h), “long stop date” and “minimum completion requirement” have the meanings given in the Rules.

#### Textual Amendments

**F101** Words in reg. 31(2)(i) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 9](#) (with reg. 1(3))

#### Termination fee rates

**32.**—(1) In this regulation—

[<sup>F102</sup>“TF<sub>x</sub><sub>rate</sub>” (for any value of x from x = 1 to x = 5) means] the rate at which a termination fee is payable by a capacity provider if—

- (a) a capacity agreement is terminated on a ground specified in capacity market rules; and
- (b) capacity market rules specify [<sup>F103</sup>that TF<sub>x</sub>] is payable in the event of the capacity agreement being terminated on that ground;

<sup>F104</sup> ...

[<sup>F105</sup>(2) Those rates are as follows—

TF1<sub>rate</sub> is £5,000/MW;

TF2<sub>rate</sub> is £25,000/MW;

TF3<sub>rate</sub> is £10,000/MW;

TF4<sub>rate</sub> is £15,000/MW;

TF5<sub>rate</sub> is £35,000/MW.]

(4) References in this regulation to a rate expressed as £/MW are to that amount in pounds per MW of de-rated capacity<sup>F106</sup>... for which the capacity agreement is issued, as specified in the capacity market register.

[<sup>F107</sup>(5) This regulation applies to the termination of a transferred part as it applies to the termination of a capacity agreement; but in that case, the reference in paragraph (4) to the de-rated capacity<sup>F106</sup>... for which the capacity agreement is issued is to be construed as a reference to the capacity obligation comprised in the transferred part.]

#### Textual Amendments

- F102** Words in reg. 32(1) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 10(1)(a)** (with reg. 1(3))
- F103** Words in reg. 32(1) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 10(1)(b)** (with reg. 1(3))
- F104** Words in reg. 32(1) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 10(1)(c)** (with reg. 1(3))
- F105** Reg. 32(2) substituted for reg. 32(2)(3) (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 10(2)** (with reg. 1(3))
- F106** Words in reg. 32(4)(5) omitted (2.11.2017) by virtue of The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 4**
- F107** Reg. 32(5) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 23** (with reg. 1(4))

#### Termination of capacity agreements: Secretary of State's discretion

**33.**—(1) This regulation applies where the Delivery Body gives a termination notice to a capacity provider under capacity market rules.

(2) The Secretary of State may, if the Secretary of State thinks fit, within 3 months of the date on which the termination notice is given—

- (a) direct the Delivery Body to withdraw the termination notice; or
- (b) if the termination notice was given on the ground that the capacity provider has failed to meet a specified requirement, extend the date by which the capacity provider must meet that requirement.

(3) The date to which a requirement is extended under paragraph (2)(b) must not be later than 6 months after the date on which the termination notice was given.

(4) A capacity provider may make representations to the Secretary of State requesting the Secretary of State to exercise the discretion in paragraph (2).

(5) Representations under paragraph (4)—

- (a) must be made in writing within 20 working days after the date on which the termination notice is given; and
- (b) if the termination notice was given on the ground that the capacity provider has failed to meet a specified requirement, must specify a cure plan.

(6) The Secretary of State must consider any representations made in accordance with paragraph (5).

(7) A capacity provider may not use the procedure in paragraphs (4) and (5) to dispute whether a termination event has occurred, and may only dispute that matter in accordance with Chapter 1 of Part 10.

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- (8) In this regulation—
- (a) a “cure plan” means proposals by the capacity provider demonstrating how and when it will comply with the specified requirement (except as to any provision in capacity market rules about the time for compliance with the specified requirement);
  - (b) a “specified requirement” means a requirement in capacity market rules, the non-compliance with which is specified in capacity market rules as a termination event.
- (9) In this regulation, “termination event” and “termination notice” have the meanings given in the Rules.

**Modifications etc. (not altering text)**

- C3** Reg. 33 applied (with modifications) (10.4.2019) by [The Electricity Capacity \(No. 1\) Regulations 2019 \(S.I. 2019/862\)](#), regs. 1(2), **26**
- C4** Reg. 33 modified (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 2 para. 2**

**Termination of capacity agreements: CFDs and ROO conversions**

**34.**—(1) The Delivery Body must terminate a capacity agreement (“A”) issued following a T-4 capacity auction where, by no later than 16 months before the start of the delivery period, the Delivery Body receives in respect of A—

- (a) a CFD transfer notice; or
  - (b) a ROO conversion notice.
- (2) The Delivery Body must—
- (a) comply with paragraph (1) immediately it receives the notice; and
  - (b) as soon as reasonably practicable, give a notice that it has terminated A to—
    - (i) the capacity provider in respect of A;
    - (ii) the Settlement Body; and
    - (iii) the CFD counterparty in respect of a CFD transfer notice or the Authority in respect of a ROO conversion notice.

(3) In this regulation—

“CFD transfer notice” means a notice from the CFD counterparty which—

- (a) identifies A;
- (b) states that the CFD counterparty intends to grant a CFD in respect of CMU i for any of the delivery period; and
- (c) gives the date on which the CFD is intended to be granted;

“CMU i” means the CMU to which A applies;

“the delivery period” means the delivery year or the period of delivery years for which A imposes a capacity obligation;

“ROO conversion notice” means a notice from the capacity provider in respect of A which—

- (a) identifies A;
- (b) states that the capacity provider intends to claim ROCs in respect of CMU i as a unit conversion or as part of a station conversion for any of the delivery period; and

- (c) includes a written confirmation from the Authority that at least one ROC has been issued in respect of CMU i as a unit conversion or as part of a station conversion since the date A was awarded;

“station conversion” has the same meaning as it has in the ROO <sup>M21</sup>; and

“unit conversion” has the same meaning as it has in the ROO <sup>M22</sup>.

#### Marginal Citations

**M21** The definition of “station conversion” was inserted into [S.I. 2009/785](#) by [S.I. 2013/768](#), and into [S.S.I. 2009/140](#) by [S.S.I. 2013/116](#).

**M22** The definition of “unit conversion” was inserted into [S.I. 2009/785](#) by [S.I. 2013/768](#), and into [S.S.I. 2009/140](#) by [S.S.I. 2013/116](#).

### Null and void capacity agreements

**35.—**(1) Any capacity agreement issued in respect of a CMU which, at the date on which the capacity agreement was issued, did not meet the general eligibility criteria is null and void.

(2) Where the Delivery Body becomes aware that a capacity agreement is null and void by reason of paragraph (1), the Delivery Body must as soon as reasonably practicable give a notice to the capacity provider and the Settlement Body which—

- (a) identifies the capacity agreement; and
- (b) states that the capacity agreement is null and void.

## PART 6

### Payments

#### CHAPTER 1

##### General

### The settlement calculations

**36.—**(1) The Settlement Body must make the calculations set out in this Part and Schedule 1 (the “settlement calculations”)—

- (a) by such date as may be specified or, where no date is specified, by such time as is necessary to enable the Settlement Body to comply with the regulations in this Part; and
- (b) so far as possible, using the required data.

(2) Where, by the time a settlement calculation is to be made, the Settlement Body has not been provided with any required data which is necessary for that calculation, the calculation must be made using the best data available to the Settlement Body.

(3) In this regulation, “required data” means data which is required to be provided to the Settlement Body under capacity market rules.

### Data default notices

**37.—**(1) Where a capacity provider (“C”) fails to comply with a requirement in capacity market rules to provide data to the Settlement Body, the Settlement Body must give a notice to C that C is in default (a “data default notice”).



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(2) A data default notice may be varied by the Settlement Body and must be revoked when C has provided all the data required by capacity market rules.

### **Invoices and credit notes: general**

**38.**—(1) An invoice or credit note issued by the Settlement Body must set out the determination of the amount which the recipient is liable to pay, or is entitled to receive, in such detail as will readily show the recipient how the determination has been made.

(2) An invoice must specify the day by which it is to be paid, which must be not less than 3 working days after the date on which the invoice is issued.

(3) Each electricity supplier and capacity provider must provide the Settlement Body with an address for electronic service of invoices and credit notes.

(4) Where an electricity supplier or a capacity provider has complied with paragraph (3), the Settlement Body must send an invoice or credit note electronically to the address provided.

## CHAPTER 2

### Calculations and determinations: capacity providers

#### **Determination of adjusted load-following capacity obligation, net output and adjusted net output**

**39.**—(1) For each relevant settlement period in a month (“month M”), the Settlement Body must determine for each capacity committed CMU—

- (a) the adjusted load-following capacity obligation of the CMU in the settlement period (“ $ALFCO_{ij}$ ”);
- (b) the net output of the CMU in the settlement period (“ $E_{ij}$ ”); and
- (c) adjusted  $E_{ij}$  (“ $AE_{ij}$ ”).

(2) The Settlement Body must make the determinations under paragraph (1) in accordance with capacity market rules.

(3) The determinations under paragraph (1)(a) and (b) must be made by no later than 10 working days after the end of month M.

(4) The determination under paragraph (1)(c) must be made after the close of the volume reallocation window for month M, but by no later than 20 working days after the end of month M.

(5) In this regulation—

“adjusted  $E_{ij}$ ”, in relation to a capacity committed CMU and a relevant settlement period, means  $E_{ij}$  with any adjustment made to it as a result of volume reallocation;

“capacity market volume reallocation notifications” has the meaning given in the Rules;

[<sup>F108</sup>“net output”, in relation to a demand side response CMU, means DSR volume (as defined in capacity market rules);]

“volume reallocation” means the procedure in capacity market rules by which part of the net output of a <sup>F109</sup>... CMU in a relevant settlement period may be reallocated to another <sup>F109</sup>... CMU for the purpose of the settlement calculations; and

“volume reallocation window” means the period during which [<sup>F110</sup>persons qualified to do so (within the meaning given in regulation 42(2)(c))] may submit capacity market volume reallocation notifications under capacity market rules.



**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Electricity Capacity Regulations 2014. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

- F108** Words in reg. 39(5) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 51**
- F109** Words in reg. 39(5) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 24(a)** (with reg. 1(4))
- F110** Words in reg. 39(5) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 24(b)** (with reg. 1(4))

### Capacity payments

**40.**—(1) A capacity provider (“C”) is entitled, subject to paragraphs (5) and (6) and to regulations 49 to 51, to receive from the Settlement Body a capacity payment determined in accordance with this regulation in respect of each month of a delivery year (“month M”) for the capacity committed CMUs for which C was the capacity provider during month M.

(2) The Settlement Body must, after the end of month M—

- (a) determine the amount of the capacity payment which is payable to C in respect of month M (“ $MCP_{cm}$ ”); and
- (b) issue a credit note to C for the amount determined for it.

(3)  $MCP_{cm}$  must be calculated in accordance with paragraph 4 of Schedule 1.

(4) The Settlement Body must issue a credit note to C under paragraph (2)(b)—

- (a) by no later than the [F11128<sup>th</sup>] working day after the end of month M; but
- (b) if C is liable to pay a capacity provider penalty charge in respect of month M, not earlier than the day after the day by which C is required to pay that charge.

(5) Paragraphs (1) to (4) do not apply unless by the [F11226<sup>th</sup>] working day after the end of month M the Settlement Body has received capacity market supplier charges in respect of month M.

(6) If by the day referred to in paragraph (5) the Settlement Body has received capacity market supplier charges in respect of month M the total of which is less than the sum of  $MCP_{cm}$  for all capacity providers, the amount of each capacity payment which would otherwise be determined under paragraph (2) must be reduced by the same proportion so that the total amount of capacity payments payable to capacity providers is equal to the total amount of capacity market supplier charges received.

(7) In this regulation, “capacity market supplier charges” means charges which electricity suppliers are required to pay under electricity capacity regulations to meet the cost of funding capacity payments.

### Textual Amendments

- F111** Word in reg. 40(4)(a) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 52(a)**
- F112** Word in reg. 40(5) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 52(b)**

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## Capacity provider penalty charges

**41.**—(1) A capacity provider (“C”) must pay to the Settlement Body a capacity provider penalty charge in respect of any month of a delivery year (“month M”) if, in respect of month M, a settlement period penalty applies to one or more capacity committed CMUs for which C was the capacity provider during month M.

(2) If one or more capacity providers are liable to pay a capacity provider penalty charge in respect of month M the Settlement Body must, by no later than the 21st working day after the end of month M—

- (a) determine the amount, if any, payable by each capacity provider in respect of capacity provider penalty charges incurred in month M; and
- (b) issue to each capacity provider which is liable to pay capacity provider penalty charges an invoice for the amount determined for it.

(3) The amount payable by C under paragraph (2)(a) is the sum of—

- (a) <sup>[F113]</sup>MPSA<sub>imj</sub>, as calculated under paragraph 6 of Schedule 1, for each capacity committed CMU for which C was registered on the capacity market register as the capacity provider for the whole of month M; and
- (b) C’s proportion of <sup>[F114]</sup>MPSA<sub>imj</sub>, as calculated under paragraphs 6 and 8 of Schedule 1, for each capacity committed CMU for which C was registered on the capacity market register as the capacity provider for part of month M.

<sup>[F115]</sup>(3A) The percentages to be included in the capacity market register under regulation 31(2) (f) are—

- (a) for the annual penalty cap, 100%; and
- (b) for the monthly penalty cap, 200%.]

(4) In paragraph (1), “settlement period penalty” means a penalty calculated under paragraph 5 of Schedule 1.

### Textual Amendments

**F113** Word in reg. 41(3)(a) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 25** (with reg. 1(4))

**F114** Word in reg. 41(3)(b) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 25** (with reg. 1(4))

**F115** Reg. 41(3A) inserted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), reg. 1(2), **Sch. 2 para. 5**

## <sup>[F116]</sup>Over-delivery payments

**42.**—(1) A person (“P”) is entitled to receive from the Settlement Body an over-delivery payment in respect of a delivery year (“year X”) if—

- (a) any capacity committed CMU (“CMU i”) for which P was the capacity provider over-delivered in any relevant settlement period in year X; or
- (b) P has made a qualifying delivery in any such settlement period.

(2) For the purposes of this regulation—

- (a) CMU i over-delivers in a relevant settlement period j if  $AE_{ij}$  is greater than  $ALFCO_{ij}$  in that settlement period;
- (b) P makes a qualifying delivery in a relevant settlement period j if—

- (i) P was a qualified person (but not a capacity provider) in respect of a CMU (“CMU i”) during that period, and
  - (ii) in that period,  $AE_{ij}$  is greater than zero;
  - (c) a “qualified person” is a person who—
    - (i) has registered with the delivery body under capacity market rules in respect of a CMU for the purpose of participating in volume reallocation, and
    - (ii) is an “acceptable transferee” within the meaning of capacity market rules; and
  - (d) “volume reallocation” has the meaning given in regulation 39(5).
- (3) The Settlement Body must, by not later than the 28<sup>th</sup> working day after the end of year X—
- (a) determine the amount, if any, of the payments payable to each person under this regulation in respect of year X; and
  - (b) issue to each person who is entitled to such a payment a credit note for the amount determined for it.
- (4) The amount payable to P under paragraph (3)(a) is the sum of—
- (a)  $TODP_{ix}$ , as calculated in accordance with paragraph 7 of Schedule 1, for each CMU—
    - (i) for which P was registered on the capacity market register as the capacity provider for the whole of year X, or
    - (ii) in respect of which P was a qualified person for the whole of year X; and
  - (b) P’s proportion of  $TODP_{ix}$ , as calculated in accordance with paragraphs 7 and 8 of Schedule 1, for each CMU—
    - (i) for which P was registered on the capacity market register as the capacity provider for part of year X, or
    - (ii) in respect of which P was a qualified person for part of year X.]

#### Textual Amendments

**F116** Reg. 42 substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 26](#) (with reg. 1(4))

#### Termination fees

**43.**—(1) A capacity provider must pay to the Settlement Body a termination fee, by way of a financial penalty, if—

- (a) a capacity agreement is terminated on a ground specified in capacity market rules; and
- (b) capacity market rules specify that a termination fee is payable in the event of the capacity agreement being terminated on that ground.

[<sup>F117</sup>(1A) A termination fee is payable in accordance with paragraph (1) if the capacity agreement is terminated in accordance with capacity market rules, notwithstanding that the termination does not take effect until after the expiry of the delivery year, or period of delivery years, to which the capacity agreement relates (“the relevant period”).]

(2) The Settlement Body must, as soon as reasonably practicable after receiving notice of the termination of a capacity agreement on a ground for which a termination fee is payable—

- (a) determine the amount in pounds of the termination fee that is payable; and
- (b) issue to the capacity provider an invoice for that amount.

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<sup>F118</sup>(3) Where capacity market rules specify that [<sup>F119</sup>TFx is payable (for any value of x from x = 1 to x = 5)], the amount must be determined in accordance with the formula—

$$TFx = TFx_{rate} \times CO.$$

<sup>F120</sup>(4) .....

(5) In this regulation—

“CO” means the capacity obligation in MW for which the capacity agreement was issued, as specified in the capacity market register;

[<sup>F121</sup>“TFx<sub>rate</sub>” (for any value of x from x = 1 to x = 5) means the rate in pounds per MW determined in accordance with regulation 32 and specified on the capacity market register as the rate at which TFx is payable under the capacity agreement.]

[<sup>F122</sup>(6) In this regulation, references to the termination of a capacity agreement include references to the termination of a transferred part; and for that purpose—

- (a) the reference to the relevant period in paragraph (1A) is to be construed as a reference to the transfer period as defined in regulation 30A(1)(b); and
- (b) “CO” in paragraph (5) means the capacity obligation in MW comprised in that transferred part as specified on the capacity market register.]

#### Textual Amendments

**F117** Reg. 43(1A) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 27(1)** (with reg. 1(4))

**F118** Formula in reg. 43(3) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 11(1)(b)** (with reg. 1(3))

**F119** Words in reg. 43(3) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 11(1)(a)** (with reg. 1(3))

**F120** Reg. 43(4) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 11(2)** (with reg. 1(3))

**F121** Words in reg. 43(5) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 11(3)** (with reg. 1(3))

**F122** Reg. 43(6) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 27(2)** (with reg. 1(4))

#### [<sup>F123</sup>Termination fees: adjustment for DSR providers

**43ZA.**—(1) This regulation applies where—

- (a) a termination fee is payable by a DSR provider;
- (b) before that termination fee became payable, the Settlement Body had drawn down applicant credit cover provided by the DSR provider in accordance with regulation 60(3) or regulation 61(1)(a)(ii);
- (c) the termination fee and the applicant credit cover relate to the same unproven demand side response CMU; and
- (d) either—
  - (i) the termination fee and the applicant credit cover relate to the same capacity auction; or
  - (ii) the termination fee relates to a capacity auction for which no further applicant credit cover was required to be provided because of regulation 59(1B).

(2) The amount of the termination fee to be determined and invoiced under regulation 43 is reduced by the amount of the credit cover drawn down.]

#### Textual Amendments

**F123** Reg. 43ZA inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 12**

#### [<sup>F124</sup>Non-completion fee

**43A.**—(1) A capacity provider in respect of a new build interconnector CMU must pay to the Settlement Body a fee (a “non-completion fee”) by way of a financial penalty if, in circumstances specified for the purposes of this regulation by capacity market rules, the capacity provider fails to meet the completion requirements of the capacity agreement.

(2) For the purposes of paragraph (1)—

“completion requirements” are requirements to reach a level of operational capability specified in capacity market rules by the end of a delivery year;

“new build interconnector CMU” means a prospective interconnector CMU which has not been commissioned.

(3) The Settlement Body must, as soon as reasonably practicable after receiving notice in accordance with capacity market rules of the imposition of a non-completion fee—

(a) determine the amount in pounds of the non-completion fee that is payable; and

(b) issue to the capacity provider an invoice for that amount.

(4) Paragraphs (3) to (5) of regulation 43 apply to the determination of the amount of a non-completion fee as they apply to the determination of the amount of a termination fee.

(5) For the purposes of this regulation, references in regulation 32(1)—

(a) to a “termination fee” are to be construed as references to a non-completion fee; and

(b) to termination on a ground specified in capacity market rules are to be construed as references to a failure to meet completion requirements in circumstances so specified.]

[<sup>F125</sup>(6) Regulation 33 applies (except for paragraphs (2)(b), (3) and (5)(b)) to a non-completion notice as it applies to a termination notice, and for that purpose, a reference in regulation 33 to—

(a) a “termination fee” is to be construed as a reference to a non-completion fee; and

(b) a “termination notice” is to be construed as a reference to a non-completion notice.]

#### Textual Amendments

**F124** Reg. 43A inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015](#) (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 8**

**F125** Reg. 43A(6) inserted (10.4.2019) by [The Electricity Capacity \(No. 1\) Regulations 2019](#) (S.I. 2019/862), regs. 1(2), **24**

#### Modifications etc. (not altering text)

**C5** Reg. 43A applied (with modifications) (10.4.2019) by [The Electricity Capacity \(No. 1\) Regulations 2019](#) (S.I. 2019/862), regs. 1(2), **27**

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### <sup>F126</sup>Repayment of capacity payments: termination

- 43B.**—(1) A capacity provider must repay capacity payments to the Settlement Body if—
- (a) a capacity agreement is terminated on a ground specified in capacity market rules; and
  - (b) capacity market rules specify that capacity payments are repayable in the event of the capacity agreement being terminated on that ground.
- (2) The Settlement Body must, as soon as reasonably practicable after receiving final notice of termination of the capacity agreement—
- (a) determine the amount in pounds of the capacity payments that are repayable; and
  - (b) issue to the capacity provider an invoice for that amount.
- (3) Where capacity market rules specify that capacity payments are repayable in respect of—
- (a) the period TP1, the capacity payments that must be repaid are those made in respect of the period beginning with the date of the termination notice and ending with the date of termination of the relevant capacity agreement;
  - (b) the period TP2, the capacity payments that must be repaid are those made in respect of the period beginning with the date of the termination event and ending with the date of termination of the relevant capacity agreement;
  - [ the period TP3, the capacity payments that must be repaid are those made in respect of
- <sup>F127</sup>(c) the period beginning with the date on which capacity payments began under the relevant capacity agreement and ending with the date of termination of the relevant capacity agreement [<sup>F128</sup>;]]
- [ the period TP4, the capacity payments that must be repaid are those made in respect of the
- <sup>F129</sup>(d) period beginning on 1st October, and ending on 1st May, of the relevant delivery year.]
- (4) In this regulation—
- (a) “final notice of termination” means a notice given by the Delivery Body in accordance with capacity market rules that the capacity agreement has terminated; and
  - (b) “termination event” and “termination notice” have the meaning given in the Rules.
- [
- <sup>F130</sup>(5) This regulation applies to the termination of a transferred part as it applies to the termination of a capacity agreement.]

#### Textual Amendments

- F126** Regs. 43B, 43C inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), reg. 1(2), **Sch. 1 para. 16**
- F127** Reg. 43B(3)(c) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 13** (with reg. 1(3))
- F128** Reg. 43B(3)(c): semicolon substituted for full stop (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), **2(6)(a)**
- F129** Reg. 43B(3)(d) inserted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), **2(6)(b)**
- F130** Reg. 43B(5) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 28** (with reg. 1(4))

### Repayment of capacity payments: metering fault

- 43C.**—(1) A capacity provider must repay capacity payments to the Settlement Body if—



- (a) a metering test certificate or DSR test certificate is, in accordance with capacity market rules, determined to be invalid on a ground specified in those rules; and
  - (b) capacity market rules specify that capacity payments are repayable in the event that a metering test certificate or DSR test certificate is determined to be invalid on that ground.
- (2) The Settlement Body must, as soon as reasonably practicable after the relevant date—
- (a) determine the amount in pounds of the capacity payments that are repayable; and
  - (b) issue to the capacity provider an invoice for that amount.
- (3) In paragraph (2) the “relevant date” means the date on which, in accordance with capacity market rules—
- (a) in the case of a metering test certificate, the certificate was determined by the Settlement Body to be invalid; or
  - (b) in the case of a DSR test certificate, the Settlement Body received notice of the invalidity of the certificate.
- (4) Where capacity market rules specify that capacity payments are repayable in respect of—
- (a) the period MP1, the capacity payments that must be repaid are those made in respect of the period beginning with the relevant invalidation date and ending with the date on which the relevant metering recovery payment notice is issued;
  - (b) the period MP2, the capacity payments that must be repaid are those made in respect of the period beginning with the relevant invalidation date and ending with the date on which the relevant completion notice is issued;
  - (c) the period MP3, the capacity payments that must be repaid are those made in respect of the period beginning with the first day of the relevant delivery year and ending with the date on which the relevant metering recovery payment notice is issued.
- (5) In this regulation, “completion notice”, “invalidation date”, “metering recovery payment notice” and “metering test certificate” have the meaning given in the Rules.]

**Textual Amendments**

**F126** Regs. 43B, 43C inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), reg. 1(2), [Sch. 1 para. 16](#)

CHAPTER 3

Calculations and determinations: electricity suppliers

**Settlement costs levy: the first levy period**

**44.**—(1) Each liable electricity supplier must pay to the Settlement Body a settlement costs levy calculated in accordance with this regulation in respect of the first levy period.

(2) Subject to paragraph (3), the prescribed amount is £1,374,000.

(3) If the appointment date is on or after 1st September 2014, the prescribed amount is to be reduced by £100,000 for each full calendar month between 31st July 2014 and the appointment date.

(4) The Settlement Body must, as soon as reasonably practicable after the end of the first levy period—

- (a) calculate the amount of the settlement costs levy to be paid by each liable electricity supplier; and
- (b) issue an invoice to each liable electricity supplier for the amount to be paid by that supplier.

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(5) The calculation under paragraph (4)(a) must be made in accordance with paragraph 9 of Schedule 1.

(6) In this regulation—

“the appointment date” means the date on which the Secretary of State first appoints a Settlement Body under regulation 80;

“the first levy period” means the period commencing on the appointment date and ending on 31st March 2015; and

“liable electricity supplier” means an electricity supplier which supplied electricity to [<sup>F131</sup>premises] in Great Britain in the first levy period;

“the prescribed amount” means the total amount of the settlement costs levy to be invoiced to liable electricity suppliers in respect of the first levy period;

“settlement costs” means costs incurred by the Settlement Body in connection with the performance of its functions under electricity capacity regulations and capacity market rules;

“settlement costs levy” means the levy imposed by this regulation on liable electricity suppliers in respect of settlement costs.

**Textual Amendments**

**F131** Word in [reg. 44\(6\)](#) substituted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 6](#)

CHAPTER 4

Payment and non-payment

**General**

**45.—(1)** In this Chapter—

“draw down” has the same meaning as it has in Part 7;

“in default” means a failure to pay in full an invoiced amount by [<sup>F132</sup>the end of] the payment due date;

“invoiced amount” means the total amount payable by a payer as stated in the invoice issued to that payer under regulation 41, 43 [<sup>F133</sup>, 44 or 49A];

“payer” [<sup>F134</sup>, subject to regulation 47(7),] means a person to whom an invoice is issued under regulation 41, 43 [<sup>F135</sup>, 44 or 49A];

“payment due date” means the day specified in an invoice in accordance with regulation 38(2) as the date by which it is to be paid.

<sup>F136</sup>(2) .....

<sup>F136</sup>(3) .....

**Textual Amendments**

**F132** Words in [reg. 45\(1\)](#) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 53\(a\)](#)

**F133** Words in [reg. 45\(1\)](#) substituted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), [regs. 1\(2\)](#), [2\(7\)\(a\)](#)



- F134** Words in reg. 45(1) inserted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), reg. 1(2), **Sch. 2 para. 7**
- F135** Words in reg. 45(1) substituted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), **2(7)(b)**
- F136** Reg. 45(2)(3) omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 53(b)**

## Payment of invoices and accruing interest

46.—(1) A payer must pay the invoiced amount to the Settlement Body by no later than <sup>F137</sup>the end of] the payment due date.

(2) Where a payer has not paid in full the invoiced amount to the Settlement Body as required by paragraph (1), the payer must pay the Settlement Body simple interest at the rate specified in paragraph (4) (“late payment interest”) on the outstanding balance of the invoiced amount from and including the payment due date until the date of payment.

(3) Where a payer disputes an invoiced amount under Chapter 2 of Part 10—

- (a) if the decision of the Settlement Body under that Part is that the invoiced amount is reduced but not extinguished, late payment interest accrues on the reduced amount from and including the payment due date until the date of payment;
- (b) if the decision of the Settlement Body under that Part is that the invoiced amount is extinguished, no late payment interest accrues in respect of the invoiced amount.

(4) The rate at which late payment interest is payable is 5 per cent per annum over the Bank of England base rate in force on the 30th June (in respect of interest which starts to run between 1st July and 31st December) or the 31st December (in respect of interest which starts to run between 1st January and 30th June) immediately before the date on which the interest starts to run.

(5) In paragraph (4), “Bank of England base rate” means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998 <sup>M23</sup> is in force, any equivalent rate determined by the Treasury under that section.

### Textual Amendments

- F137** Words in reg. 46(1) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 54**

### Marginal Citations

- M23** 1998 c.11.

## The non-payment register

47.—(1) The Settlement Body must maintain a register (“the non-payment register”) which is to include in respect of a payer (“P”) who has not paid an invoice by <sup>F138</sup>the end of] the payment due date—

- (a) the name of P;
- (b) whether P is an electricity supplier or a capacity provider;
- (c) the type of invoice in respect of which P is in default;

**Status:** Point in time view as at 04/07/2020.

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- (d) the payment due date;
  - (e) the date or dates when any payment has been made by P in respect of the invoice, and whether it is a full or partial payment; and
  - (f) whether P has given a disputes notice to the Settlement Body in respect of the invoice;
  - (g) if P has given a disputes notice in respect of the invoice, whether the dispute has been determined under Chapter 2 of Part 10 and, if so, that determination.
- (2) The matters included on the non-payment register under paragraph (1) are a “relevant register entry” in relation to P.
- (3) The Settlement Body must—
- (a) make a relevant register entry as soon as possible after P is in default; and
  - (b) update the relevant register entry if a payment is subsequently made, or a dispute is raised or determined.
- (4) The Settlement Body must remove a relevant register entry—
- (a) if it is determined under Chapter 2 of Part 10 that the payment is not due, as soon as reasonably practicable after the Settlement Body makes that determination;
  - (b) in any other case, 12 months after the date on which P became in default.
- (5) The Settlement Body must publish the information contained in the non-payment register on a website.
- (6) The Settlement Body must retain the data contained in a relevant register entry for 5 years after the relevant register entry is made.
- [<sup>F139</sup>(7) In this regulation, “payer” means a person to whom an invoice is issued under these Regulations or the Supplier Payment Regulations.]

#### Textual Amendments

- F138** Words in [reg. 47\(1\)](#) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), [reg. 1\(2\)](#), [Sch. 1 para. 55](#)
- F139** [Reg. 47\(7\)](#) inserted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014](#) (S.I. 2014/3354), [reg. 1\(2\)](#), [Sch. 2 para. 8](#)

#### Payment of credit notes

- 48.** Subject to regulations 49 to 52, the Settlement Body must pay the amount due to—
- (a) each capacity provider issued with a credit note for a capacity payment, by no later than [<sup>F140</sup>the end of the 33<sup>rd</sup>] working day after the end of the month to which the payment relates; and
  - (b) each capacity provider issued with a credit note for an over-delivery payment, by no later than [<sup>F141</sup>the end of the 33<sup>rd</sup>] working day after the end of the delivery year to which the payment relates.

#### Textual Amendments

- F140** Words in [reg. 48\(a\)](#) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), [reg. 1\(2\)](#), [Sch. 1 para. 56](#)
- F141** Words in [reg. 48\(b\)](#) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), [reg. 1\(2\)](#), [Sch. 1 para. 56](#)

### **Reducing capacity payments: unpaid capacity provider penalty charges**

**49.**—(1) This regulation applies if, at the time when a credit note is issued to a capacity provider (“C”) for a capacity payment, C is in default in respect of a capacity provider penalty charge (an “unpaid penalty charge”).

(2) If this regulation applies—

(a) the Settlement Body must ensure that the credit otherwise payable to C is reduced—

(i) by the amount of the unpaid penalty charge;

(ii) to nil, if the amount of the unpaid penalty charge is equal to or greater than the amount of the credit; and

(b) the amount by which the credit is reduced is to be treated as a payment or part payment of the unpaid penalty charge.

(3) The Settlement Body must ensure that the credit note issued to C states the amount by which the credit is reduced, and the reason for the reduction.

### **[<sup>F142</sup>Reducing capacity payments: offsetting relevant expenditure**

**49A.**—[<sup>F143</sup>(1) This paragraph applies if, before the time when a credit note is issued to a capacity provider (“C”) for a capacity payment, the Delivery Body has acknowledged receipt of a declaration under the Rules that—

(a) relevant expenditure has been incurred, or is expected to be incurred; or

(b) relevant benefit has been received, or is expected to be received,

in respect of the capacity committed CMU for which C is responsible (“CMU i”).]

(2) If [<sup>F144</sup>paragraph (1)] applies, the Settlement Body must ensure that the credit otherwise payable to C is reduced—

(a) by the [<sup>F145</sup>aggregate] amount of any outstanding relevant expenditure [<sup>F146</sup>and outstanding relevant benefit]; or

(b) to nil, if the [<sup>F147</sup>aggregate] amount of any outstanding relevant expenditure [<sup>F148</sup>and outstanding relevant benefit] is equal to or greater than the amount of the credit.

(3) The Settlement Body must ensure that the credit note issued to C states the amount by which the credit is reduced, and the reason for the reduction.

[<sup>F149</sup>(3A) This paragraph applies where—

(a) the aggregate amount of any outstanding relevant expenditure and outstanding relevant benefit (“aggregate outstanding amount”) in respect of CMU i is greater than nil; and

(b) there are no further capacity payments in respect of CMU i which the Settlement Body would be required to reduce under paragraph (2) to offset this aggregate outstanding amount.

(3B) Where paragraph (3A) applies—

(a) C is liable to pay to the Settlement Body an amount equal to the lesser of—

(i) the aggregate outstanding amount; or

(ii) the total amount of all the capacity payments paid to C in respect of CMU i, less the amount of any repayment of these capacity payments by C to the Settlement Body under regulation 43B, 43C or 50; and

(b) the Settlement Body must, as soon as reasonably practicable after paragraph (3A) becomes applicable, issue to C an invoice for the amount C is liable to pay under sub-paragraph (a).]

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[<sup>F150</sup>(4) This regulation applies to a credit note or invoice issued in respect of a transferred part as it applies to a credit note or invoice issued in respect of a capacity agreement, and where a capacity agreement has been transferred pursuant to regulation 30A(1)(b) or (2)(b)—

- (a) the reduction in the amount payable to C pursuant to paragraph (2) is to be calculated so that it is proportionate to the period and part of the capacity obligation held by C during the month to which the credit note relates; and
- (b) the aggregate outstanding amount attributable to C under paragraph (3B)(a) is to be determined by adjusting this amount so that it is proportionate to the period and part of the capacity obligation held by C throughout the duration of the capacity agreement.]

(5) In this regulation—

[<sup>F151</sup>“outstanding relevant benefit” means relevant benefit that has not been deducted from capacity payments pursuant to this regulation;]

“outstanding relevant expenditure” means relevant expenditure that has not been deducted from capacity payments pursuant to this regulation; and

[<sup>F152</sup>“relevant benefit” has the meaning given in the Rules.]

“relevant expenditure” has the meaning given in the Rules.]

#### Textual Amendments

- F142** Reg. 49A inserted (2.11.2017) by The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 5**
- F143** Reg. 49A(1) substituted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(a)**
- F144** Words in reg. 49A(2) substituted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(b)(i)**
- F145** Word in reg. 49A(2)(a) inserted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(b)(ii)(aa)**
- F146** Words in reg. 49A(2)(a) inserted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(b)(ii)(bb)**
- F147** Word in reg. 49A(2)(b) inserted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(b)(iii)(aa)**
- F148** Words in reg. 49A(2)(b) inserted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(b)(iii)(bb)**
- F149** Reg. 49A(3A)(3B) inserted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(c)**
- F150** Reg. 49A(4) substituted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(d)**
- F151** Words in reg. 49A(5) inserted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(e)(i)**
- F152** Words in reg. 49A(5) inserted (18.7.2019) by The Electricity Capacity (No. 2) Regulations 2019 (S.I. 2019/1139), regs. 1(2), **2(8)(e)(ii)**

#### Reducing capacity payments: failure to demonstrate satisfactory performance

**50.**—(1) This regulation applies in relation to a capacity committed CMU (“CMU i”) and a delivery year (“year X”) if—

- (a) a satisfactory performance requirement applies in respect of CMU i in year X; and
- (b) the requirement has not been met by 30th April in year X.

(2) If, by the end of a relevant month, the capacity provider in respect of CMU i (“C”) has not complied with the satisfactory performance requirement, no monthly capacity payment is to be paid in respect of CMU i for that month.

[<sup>F153</sup>(2A) If C complies with the satisfactory performance requirement during May in year X, no monthly capacity payment is to be paid in respect of CMU i for that month.]

(3) If C complies with the satisfactory performance requirement during a relevant month [<sup>F154</sup>other than May], the Settlement Body must ensure that the credit which would otherwise be payable to C in respect of the monthly capacity payment for CMU i for that month is reduced by the proportion

$\frac{A}{B}$ , where—

- (a) A is the number of days in the relevant month before the day on which C complies with the satisfactory performance requirement; and
- (b) B is the number of days in the relevant month.

(4) If C has not complied with the satisfactory performance requirement by the end of year X—

- (a) C must repay to the Settlement Body all capacity payments made in respect of CMU i and year X [<sup>F155</sup>less the total amount of any capacity provider penalty charges that C has paid in respect of CMU i and year X]; and
- (b) the Settlement Body must, as soon as reasonably practicable after the end of year X, issue an invoice to C for the amount [<sup>F156</sup>due under sub-paragraph (a)].

(5) The Settlement Body must—

- (a) if paragraph (2) [<sup>F157</sup>or paragraph (2A)] applies, give a notice to C which states that no monthly capacity payment is to be paid in respect of CMU i for the relevant month, and states the reason;
- (b) if paragraph (3) applies, ensure that the credit note issued to C for the relevant month states the amount by which the credit is reduced, and states the reason;
- (c) if paragraph (4) applies, ensure that the invoice issued to C under paragraph (4)(b) states the reason for the issue of the invoice.

(6) In this regulation—

“relevant month” means May, June, July, August or September in year X;

“satisfactory performance day” has the meaning given in the Rules;

“satisfactory performance requirement” means a requirement in capacity market rules for a capacity provider to demonstrate satisfactory performance days in respect of a capacity committed CMU.

### Textual Amendments

**F153** Reg. 50(2A) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 17(a)**

**F154** Words in reg. 50(3) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 17(b)**

**F155** Words in reg. 50(4)(a) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 57(a)**

**F156** Words in reg. 50(4)(b) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 57(b)**

**F157** Words in reg. 50(5)(a) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 17(c)**

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#### **Modifications etc. (not altering text)**

**C6** Reg. 50 modified (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), [Sch. 2 para. 3](#)

#### **Withholding credit payments to capacity providers**

**51.**—(1) This regulation applies where, at the time when a credit note is issued to a capacity provider (“C”) under this Part—

- (a) C is subject to a data default notice; or
  - (b) the Settlement Body is aware that C is insolvent.
- (2) The Settlement Body must ensure that—
- (a) the credit is withheld; and
  - (b) the credit note states that the payment is to be withheld and states the reason why.
- (3) In this regulation, “data default notice” has the meaning given by regulation 37(1).

#### **Payment of withheld credit**

**52.**—(1) Paragraphs (2) and (3) apply where a credit is withheld from a capacity provider (“C”) under regulation 51.

(2) If, where the credit is withheld for the reason in regulation 51(1)(b), an invoice is due to be issued to C, the Settlement Body may deduct all or part of the withheld credit from the amount invoiced, and the amount so deducted is to be treated as having been paid to C.

(3) Except where the withheld credit has been deducted from an invoice in accordance with paragraph (2), the Settlement Body must pay the withheld credit on the next occasion which the Settlement Body considers practicable when—

- (a) credit payments are made under this Part; and
- (b) the Settlement Body is not required to withhold a credit from C under regulation 51.

## **PART 7**

### **Credit cover**

#### **CHAPTER 1**

##### **General**

#### **Application of this Part and interpretation**

**53.**—(1) This Part applies to a person who—

- (a) has applied to prequalify for a capacity auction; and
  - (b) receives a notice from the Delivery Body under capacity market rules (a “conditional prequalification notice”) that it has prequalified in respect of that CMU subject to satisfying the requirements of this Part.
- (2) In this Part, “A” means a person who is required to provide credit cover.
- (3) In this Part—

“applicant credit cover” means credit cover provided, or required to be provided, by a person to which this Part applies;

“credit cover” means a letter of credit or cash deposit which meets the requirements in regulation 54;

“credit obligation period” means the period for which, under regulation 60, A is required to provide credit cover;

“draw down” means—

- (a) in relation to a cash deposit in a bank account, the withdrawal of funds from the account by the Settlement Body;
- (b) in relation to a letter of credit, the payment of funds by the issuing bank to the Settlement Body further to a notice of drawing;

“letter of credit” means a letter, in a form approved by the Settlement Body, which contains an irrevocable and unconditional authorisation in favour of the Settlement Body to be paid on demand up to an amount stated in the letter from an account held at a qualifying bank at any time during a period specified in the letter;

“notice of drawing” means a notice signed by or on behalf of the Settlement Body demanding payment under a letter of credit;

“qualifying bank” means—

- (a) a United Kingdom clearing bank;
- (b) any other bank which has a long term debt rating of—
  - (i) not less than A– by Standard & Poor's <sup>M24</sup>; or
  - (ii) not less than A3 by Moody's <sup>M25</sup>; or
- (c) such other bank as the Settlement Body may approve;

“the required amount” means the amount of credit cover which A is required to provide, as determined in accordance with regulation 59(1) [<sup>F158</sup>or (4)] or, if applicable, regulation 60(2).

(4) In this Part, references to a prospective generating CMU are to be treated as including any generating CMU in respect of which a bidder is awarded, or an applicant pre-qualifies to bid for, a multi-year capacity obligation in a T-4 auction held on or before 31st July 2016.

(5) In paragraph (3), in the definition of “qualifying bank”—

“Moody's” means the corporation known as Moody's Investors Service, Inc, incorporated in the US State of Delaware with the file number 0577904;

“Standard & Poor's” means the corporation known as Standard & Poor's Corporation, incorporated in the US State of Delaware with the file number 4621989.

#### Textual Amendments

**F158** Words in [reg. 53\(3\)](#) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 14](#) (with [reg. 1\(3\)](#))

#### Marginal Citations

**M24** The register of rating is available from the following webpage: [www.standardandpoors.com/home/en/eu](http://www.standardandpoors.com/home/en/eu).

**M25** The register of ratings is available from the following webpage: [www.moodys.com/Pages/atc.aspx](http://www.moodys.com/Pages/atc.aspx).

### Credit cover: requirements

**54.**—(1) A person who is under an obligation to provide credit cover must do so—

- (a) for at least the required amount; and

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- (b) in a permissible form (or partly in one permissible form and partly in the other).
- (2) The following are permissible forms of credit cover—
  - (a) a letter of credit which meets the conditions in paragraph (3);
  - (b) a cash deposit in a bank account specified by the Settlement Body in accordance with paragraph (4).
- (3) The conditions in this paragraph are that the letter of credit is—
  - (a) issued by a qualifying bank;
  - (b) in sterling;
  - (c) available for payment at a London branch of the issuing bank against a notice of drawing delivered by the Settlement Body; and
  - (d) valid—
    - (i) at least until the end of the credit obligation period; or
    - (ii) if the credit obligation period is more than 6 months, for a period of not less than 6 months.
- (4) A bank account specified by the Settlement Body for the purpose of paragraph (2)(b) must—
  - (a) be an interest bearing account in the name of the Settlement Body;
  - (b) be used only for the purpose of holding credit cover provided under these Regulations; and
  - (c) be an account the funds in which may only be withdrawn by or on behalf of the Settlement Body.

#### **Approval of credit cover**

- 55.**—(1) When credit cover is provided by A, the Settlement Body must—
- (a) determine whether the credit cover is—
    - (i) approved in full;
    - (ii) approved in part and not approved in part; or
    - (iii) not approved; and
  - (b) give a notice to A of its determination.
- (2) The Settlement Body must approve credit cover if it meets the requirements in regulation 54, and must not approve it otherwise.
- (3) The notice under paragraph (1)(b) must be given—
- (a) in the case of additional credit cover provided by A under regulation 56(2), not later than 2 working days after the additional credit cover is provided; and
  - (b) in any other case, not later than 15 working days after the credit cover is provided.

#### **Maintenance of credit cover**

- 56.**—(1) A must maintain credit cover equal to or more than the required amount at all times during the credit obligation period.
- (2) If the Settlement Body gives notice to A that any credit cover provided by A is not approved, A must within 5 working days provide additional credit cover so that the total amount of credit cover provided (excluding credit cover which is not approved or has been drawn down) is equal to or more than the required amount.



(3) Where a letter of credit which A has provided as credit cover is due to expire on a date before the end of the credit obligation period (“the expiry date”), A must, not later than 10 working days before the expiry date, provide to the Settlement Body—

- (a) written confirmation from the issuing bank that the letter of credit will be extended by a further period of not less than—
  - (i) 6 months; or
  - (ii) the remaining duration of the credit obligation period, if less; or
- (b) replacement credit cover.

[<sup>F159</sup>(3A) If A does not comply with paragraph (3)—

- (a) the Settlement Body may immediately draw down on the letter of credit to the full amount stated in the letter of credit and on receipt of funds from the paying bank place the funds in a bank account which satisfies the conditions in regulation 54(4); and
- (b) funds placed in a bank account under sub-paragraph (a) shall be treated as credit cover provided by A.]

(4) A may at any time during the credit obligation period provide additional credit cover, whether or not A needs to provide the additional credit cover in order to comply with paragraphs (1) to (3).

#### Textual Amendments

**F159** Reg. 56(3A) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 15](#) (with reg. 1(3))

#### Downgrade of letter of credit

**57.**—(1) If A becomes aware that the bank issuing the letter of credit ceases to be a qualifying bank (a “downgrade”), then A must give notice to the Settlement Body as soon as it becomes so aware.

(2) If the Settlement Body becomes aware of a downgrade, the Settlement Body may give notice to A to that effect.

(3) A must within [<sup>F160</sup>10 working] days of the giving of such notice by the Settlement Body or A, whichever is the earlier, provide replacement credit cover so that the total amount of credit cover provided which conforms with regulation 54 is equal to or more than the secured amount.

(4) If A does not comply with paragraph (3)—

- (a) the Settlement Body may immediately draw down on the letter of credit to the full amount stated in the letter of credit and on receipt of funds from the paying bank place the funds in a bank account which satisfies the conditions in regulation 54(4); and
- (b) funds placed in a bank account under sub-paragraph (a) shall continue to be treated as credit cover provided by A.

#### Textual Amendments

**F160** Words in reg. 57(3) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 16](#)

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**Release of credit cover**

58.—(1) This paragraph applies if A has provided credit cover and one of the following circumstances applies—

- (a) A is no longer required, under regulation 60, to maintain any credit cover;
- (b) A has provided further credit cover under regulation 57(3) to replace the credit cover previously provided, and the Settlement Body has approved the replacement credit cover; or
- (c) the amount of credit cover provided by A and approved by the Settlement Body exceeds the required amount.

(2) Where paragraph (1) applies—

- (a) A may, by giving notice in writing to the Settlement Body, request the Settlement Body to release—
  - (i) if paragraph (1)(a) applies, all or part of the credit cover;
  - (ii) if paragraph (1)(b) applies, the credit cover that has been replaced;
  - (iii) if paragraph (1)(c) applies, an amount of credit cover not exceeding the amount by which the credit cover referred to in paragraph (1)(c) exceeds the required amount; and
- (b) the Settlement Body must release that amount of credit cover as soon as reasonably practicable.

(3) Credit cover is released—

- (a) in the case of a cash deposit, by repaying the principal to A; and
- (b) in the case of a letter of credit, by issuing notice to A confirming that the letter of credit is no longer required.

CHAPTER 2

Applicant credit cover

**Requirement to provide applicant credit cover**

59.—(1) [F161Subject to [F162paragraph] (1B), an applicant] to prequalify for a capacity auction in respect of a CMU (“CMU i”) must, if the applicant receives from the Delivery Body a conditional prequalification notice under capacity market rules, provide applicant credit cover in the amount determined in accordance with paragraph (2).

[F163(1A) . . . . .]

[F164(1B) Where an applicant provides applicant credit cover for a capacity auction in respect of an unproven demand side response CMU [F165or an interconnector CMU], the applicant is not required to provide further applicant credit cover for any subsequent capacity auction in respect of that CMU except in circumstances specified in capacity market rules.]

(2) [F166Subject to paragraphs (2A) [F167, (2B) and (2C)], the amount] of applicant credit cover to be provided is—

- [F168(a) in the case of an application to prequalify for a T-4 auction or a T-1 auction—
  - (i) [F169subject to paragraph (ia),] if CMU i is an unproven demand side response CMU, an amount equal to £5,000 per MW of the de-rated capacity of CMU i; [F170...]
  - [F171(ia) if CMU i is an unproven demand side response CMU, in respect of which the applicant has applied to prequalify to bid for a multi-year capacity obligation and has

not yet met the requirements for DSR partial credit cover release in accordance with the Rules, an amount equal to £10,000 per MW of the de-rated capacity of CMU i; and]

(ii) if CMU i is not an unproven demand side response CMU, an amount equal to £10,000 per MW of the de-rated capacity of CMU i;]

(b) in the case of an application to prequalify for a DSR transitional auction, an amount equal to £500 per MW of the de-rated capacity of CMU i.

[<sup>F172</sup>(2A) Paragraph (2B) applies where an applicant for a supplementary auction is required to provide credit cover in accordance with this regulation.

(2B) Where at the time applicant credit cover must be provided for the supplementary auction the applicant is maintaining applicant credit cover in accordance with regulation 60 for any other capacity auction (including a T-4 auction held in the same auction window as the supplementary auction) in respect of a CMU (“the original credit cover”)—

(a) in order to prequalify for the supplementary auction in respect of that CMU, the applicant is not required to provide additional credit cover of an amount exceeding the difference between—

(i) the amount determined under paragraph (2)(a), and

(ii) the amount of the original credit cover;

(b) the original credit cover is included in the credit cover that may be drawn down under regulation 61(1)(c) in relation to a capacity agreement awarded in the supplementary auction; and

(c) notwithstanding sub-paragraph (h) of regulation 60(1), any credit cover drawn down in relation to that agreement must be replaced in accordance with the obligation under regulation 60(1) to maintain the original credit cover.]

[<sup>F173</sup>(2C) The applicant credit cover provided under paragraph (1) must, where an applicant which applied to prequalify to bid for a multi-year capacity obligation in respect of an unproven demand side response CMU has met the requirements for DSR partial credit cover release in accordance with the Rules, be reduced to an amount equal to £5,000 per MW of the de-rated capacity of the CMU.]

(3) If A is required to provide credit cover under paragraph (1), A must do so within [<sup>F174</sup>15 working days] after receiving the conditional prequalification notice.

[<sup>F175</sup>(4) In circumstances specified in capacity market rules, the applicant credit cover provided under paragraph (1) in respect of a new build CMU must, where twelve months have elapsed after auction results day, be increased by the capacity provider to an amount equal to £15,000 per MW of de-rated capacity.

(5) The increased credit cover required to be provided under paragraph (4) must be provided within 15 working days after the end of that twelve-month period.

(6) For the purposes of paragraph (4)—

(a) “new build CMU” has the meaning given in the Rules; and

(b) “auction results day” means the date on which the auction results are published under regulation 25(1)(c).]

[<sup>F176</sup>(7) In this regulation, “DSR partial credit cover release” has the meaning given in the Rules.]

#### Textual Amendments

**F161** Words in [reg. 59\(1\)](#) substituted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 9\(1\)](#)

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- F162** Word in reg. 59(1) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 17(1)(a)**
- F163** Reg. 59(1A) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 17(1)(b)**
- F164** Reg. 59(1A)(1B) inserted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 9(2)**
- F165** Words in reg. 59(1B) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 17(1)(c)**
- F166** Words in reg. 59(2) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 6(1)**
- F167** Words in reg. 59(2) substituted (4.7.2020) by The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020 (S.I. 2020/697), reg. 1(2), **Sch. 1 para. 8(1)(a)**
- F168** Reg. 59(2)(a) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 17(2)**
- F169** Words in reg. 59(2)(a)(i) inserted (4.7.2020) by The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020 (S.I. 2020/697), reg. 1(2), **Sch. 1 para. 8(1)(b)**
- F170** Word in reg. 59(2)(a)(i) omitted (4.7.2020) by virtue of The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020 (S.I. 2020/697), reg. 1(2), **Sch. 1 para. 8(1)(c)**
- F171** Reg. 59(2)(a)(ia) inserted (4.7.2020) by The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020 (S.I. 2020/697), reg. 1(2), **Sch. 1 para. 8(1)(d)**
- F172** Reg. 59(2A)(2B) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 6(2)**
- F173** Reg. 59(2C) inserted (4.7.2020) by The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020 (S.I. 2020/697), reg. 1(2), **Sch. 1 para. 8(2)**
- F174** Words in reg. 59(3) substituted (4.12.2015) by The Electricity Capacity (Amendment) (No. 2) Regulations 2015 (S.I. 2015/1974), regs. 1(2), 4
- F175** Reg. 59(4)-(6) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 17(3)** (with reg. 1(3))
- F176** Reg. 59(7) inserted (4.7.2020) by The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020 (S.I. 2020/697), reg. 1(2), **Sch. 1 para. 8(3)**

### Credit obligation period

**60.**—(1) Where A provides applicant credit cover in respect of a CMU (“CMU i”), A must maintain credit cover in the amount calculated in accordance with regulation 59 until the earliest of the following events has occurred—

- [<sup>F177</sup>(a) where CMU i is an unproven demand side response CMU, the de-rated capacity for CMU i becomes, in accordance with capacity market rules, less than the product (in MW to three decimal places) of the unproven DSR capacity of CMU i and the de-rating factor;]
- (b) where A is required by capacity market rules to provide confirmation to the Delivery Body of its intention to bid in the capacity auction in respect of CMU i, it does not provide such confirmation within the time required by capacity market rules;
- [<sup>F178</sup>(ba) where A is required by capacity market rules to provide a notice of confirmation or other document as a requirement for being eligible to bid in the capacity auction in respect of CMU i, it does not do so within the time required by capacity market rules;]
- (c) the capacity auction is—
- (i) cancelled; or
  - (ii) postponed or stopped, and rearranged, and A gives notice to the Delivery Body (where permitted to do so by capacity market rules) that it does not intend to bid in the rearranged auction in respect of CMU i;

- (d) A is unsuccessful in its bid at the capacity auction in respect of CMU i;
- (e) A has transferred its capacity agreement in respect of CMU i to another person in accordance with capacity market rules and the transferee has provided replacement credit cover which the Settlement Body has approved;
- (f) where CMU i is a demand side response CMU, A has in accordance with capacity market rules provided to the Delivery Body a DSR test certificate which evidences—
- (i) a proven DSR capacity equal to or greater than CMU i's [<sup>F179</sup>de-rated capacity]; or
  - (ii) a proven DSR capacity less than CMU i's [<sup>F179</sup>de-rated capacity], but equal to or greater than 90% of that capacity;
- [<sup>F180</sup>(g) save where CMU i is an unproven demand side response CMU, A has fully discharged all the requirements in capacity market rules against which its applicant credit cover was secured, and which a failure to meet would result in its capacity agreement being terminated under capacity market rules;]
- (h) the credit cover is drawn down under regulation 61.
- [<sup>F181</sup>(2) Where paragraph (1)(a) applies, A must thereafter maintain credit cover—
- (a) for a T-4 or a T-1 auction, in an amount equal to £5,000 per MW of the amount of the [<sup>F182</sup>de-rated capacity] of CMU i, or
  - (b) for a DSR transitional auction, in an amount equal to £500 per MW of the amount of the DSR bid capacity of CMU i,
- until the earliest of the events in sub-paragraphs (b) to (h) of paragraph (1) has occurred.]
- (3) Where paragraph (1)(f)(ii) applies—
- (a) the Settlement Body must draw down part of the credit cover calculated in accordance with paragraph (5); and
  - (b) the applicant must maintain credit cover in the amount so calculated until it has been drawn down, but is no longer required to maintain the remainder of the credit cover.
- (4) Where any other sub-paragraph of paragraph (1) applies, the applicant is no longer required to maintain any credit cover.
- [<sup>F183</sup>(5) The amount of credit cover to be drawn down under paragraph (3)(a) (“DD”) must be calculated in accordance with the formula—
- $$DD = RA \times \frac{UC - PC}{UC}.$$
- (6) In paragraph (5)—
- [<sup>F184</sup>“DC” means CMU i's de-rated capacity;]
- “PC” means CMU i's proven DSR capacity;
- “RA” means the required amount for CMU i as calculated under regulation 59;
- [<sup>F185</sup> ...
- (7) In this regulation “the capacity auction” means the capacity auction in relation to which applicant credit cover has been provided in respect of CMU i.

### Textual Amendments

**F177** Reg. 60(1)(a) substituted (2.11.2017) by [The Electricity Capacity \(Amendment\) Regulations 2017 \(S.I. 2017/1053\)](#), reg. 1(2), [Sch. 1 para. 6\(1\)](#)

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- F178** Reg. 60(1)(ba) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 18(1)**
- F179** Words in reg. 60(1)(f) substituted (2.11.2017) by The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 6(2)**
- F180** Reg. 60(1)(g) substituted (2.11.2017) by The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 6(3)**
- F181** Reg. 60(2) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 18(2)**
- F182** Words in reg. 60(2)(a) substituted (2.11.2017) by The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 6(4)** (with reg. 4)
- F183** Reg. 60(5): formula amended by the substitution of "DC" for "UC" (2.11.2017) by The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 6(5)**
- F184** Words in reg. 60(6) inserted (2.11.2017) by The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 6(6)(a)**
- F185** Words in reg. 60(6) omitted (2.11.2017) by virtue of The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 6(6)(b)**

**Draw down of applicant credit cover**

**61.**—(1) The Settlement Body must draw down applicant credit cover provided by A in respect of a CMU (“CMU i”) if—

- (a) where CMU i is an unproven demand side response CMU—
  - (i) the credit obligation period has not ended by the date on which the delivery year of A’s capacity agreement in respect of CMU i commences; or
  - (ii) the Settlement Body receives a notice from the Delivery Body that A has provided a DSR test certificate which evidences a proven DSR capacity less than 90% of CMU i’s <sup>F186</sup>de-rated capacity];

<sup>F187</sup>(b) .....

- (c) payment of a termination fee <sup>F188</sup>or non-completion fee] has become due pursuant to an invoice issued under regulation 43 <sup>F188</sup>or 43A], and the termination fee <sup>F188</sup>or non-completion fee] is unpaid.

(2) Where the Settlement Body is required to drawn down applicant credit cover—

- (a) under sub-paragraph (a)(i) <sup>F189</sup>... of paragraph (1), it must do so within 60 days from the date specified in that sub-paragraph;
- (b) under sub-paragraph (a)(ii) of paragraph (1), it must do so within 60 days from the date on which the Settlement Body receives the notice referred to in that sub-paragraph;
- (c) under sub-paragraph (c) of paragraph (1), it must do so as soon as reasonably practicable after the date on which payment of the termination fee <sup>F190</sup>or non-completion fee] becomes due.

(3) Subject to paragraph (4), applicant credit cover which is drawn down in accordance with this regulation is forfeited by A.

(4) If, after applicant credit cover has been drawn down, it is determined under Chapter 2 of Part 10 that the credit cover should not have been drawn down, the Settlement Body must pay to A the amount of the credit cover that was wrongly drawn down.

<sup>F191</sup>(5) .....

### Textual Amendments

- F186** Words in reg. 61(1)(a)(ii) substituted (2.11.2017) by The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 7(a)**
- F187** Reg. 61(1)(b) omitted (2.11.2017) by virtue of The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 7(b)**
- F188** Words in reg. 61(1)(c) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 19(1)** (with reg. 1(3))
- F189** Words in reg. 61(2)(a) omitted (2.11.2017) by virtue of The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 7(c)**
- F190** Words in reg. 61(2)(c) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 19(2)** (with reg. 1(3))
- F191** Reg. 61(5) omitted (2.11.2017) by virtue of The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 7(d)**

### Effect of non-compliance

**62.** A may not bid in a capacity auction in respect of a CMU for which applicant credit cover is required, if A has not complied with this Part in relation to the provision of applicant credit cover in respect of that CMU.

## PART 8

### Information

#### Duties to provide information

**63.**—(1) The Secretary of State may, for the purpose of any review of the capacity market under regulation 81, require—

- (a) an administrative party;
- (b) an electricity supplier; or
- (c) the owner of a CMU (whether or not a capacity provider),

to provide the Secretary of State with any specified information.

(2) The Authority may, for the purpose of exercising its functions under regulation 82 or 83, require—

- (a) an administrative party;
- (b) an electricity supplier; or
- (c) the owner of a CMU (whether or not a capacity provider),

to provide the Authority with any specified information.

(3) A person appointed under capacity market rules as an auction monitor may require—

- (a) any bidder in a capacity auction;
- (b) the Delivery Body; or
- (c) the auctioneer,

to provide it with any specified information relating to the conduct of a capacity auction.



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(4) Any requirement on a person to provide information under this regulation must be made by giving notice to the person in writing; and references in this regulation to “specified information” mean information specified in such a notice.

(5) Any person on whom a requirement is made under this regulation must, subject to regulation 64, comply with the requirement as soon as reasonably practicable.

### **Limitation on duty to provide information**

**64.**—(1) A person may not be required under these Regulations or capacity market rules to produce, disclose or permit the inspection of protected items.

(2) In paragraph (1) “protected items” means—

- (a) communications between a professional legal adviser (“LA”) and LA's client or any person representing LA's client which fall within paragraph (3);
- (b) communications between LA, LA's client or any person representing LA's client and any other person which fall within paragraph (3) (as a result of sub-paragraph (b) of that paragraph);
- (c) items which—
  - (i) are enclosed with, or referred to in, such communications;
  - (ii) fall within paragraph (3); and
  - (iii) are in the possession of a person entitled to possession of them.

(3) A communication or item falls within this paragraph if it is made—

- (a) in connection with the giving of legal advice to the client; or
- (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.

(4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

### **Protection of information**

**65.**—(1) A person who, by virtue of these Regulations or capacity market rules, has obtained information which relates to the affairs of any individual or to any particular business (“protected information”) must not except as provided in paragraphs (2) to (4)—

- (a) use that information for any purpose other than—
  - (i) participating in the capacity market;
  - (ii) exercising capacity market functions; or
  - (iii) providing services to a person exercising capacity market functions; or
- (b) disclose that information.

(2) Paragraph (1) does not prohibit a use or disclosure of protected information which is—

- (a) made with the consent of the person to whom the information relates; or
- (b) required by—
  - (i) an enactment (including capacity market rules);
  - (ii) auction guidelines;
  - (iii) a licence condition (where the person using or disclosing the information is a licence holder);



- (iv) a condition of an industry code to which the person using or disclosing the information is a party; or
  - (v) an EU obligation.
- (3) Paragraph (1) does not prohibit the use of protected information—
- (a) by the Secretary of State, the Authority or the Delivery Body, for the purpose of exercising any EMR functions;
  - (b) by the Authority, for the purpose of exercising any other statutory functions; or
  - (c) where the Delivery Body is the national system operator, by the national system operator for the purpose of exercising its functions, to the extent that the use of the information is permitted by the conditions of the national system operator's transmission licence.
- (4) Paragraph (1) does not prohibit the disclosure of protected information—
- (a) to a person exercising capacity market functions, to the extent that the disclosure is required to enable that person to carry out those functions;
  - (b) by an administrative party to any public authority exercising any functions in relation to competition law, to the extent that the disclosure is required to enable that authority to carry out those functions in relation to the capacity market;
  - (c) by an administrative party to a person providing services to it in connection with its performance of capacity market functions, to the extent that the disclosure is required to enable that person to provide those services;
  - (d) which is already publicly available (other than by reason of a breach of this regulation); or
  - (e) in accordance with an order of a court.
- (5) In this regulation—
- “capacity market functions” means functions conferred by or by virtue of Chapter 3 of Part 2 of the Act;
  - “EMR functions” means functions conferred by or by virtue of Chapter 2, 3 or 4 of Part 2 of the Act;
  - “EU obligation” has the same meaning as in the European Communities Act 1972 <sup>M26</sup>; and
  - “licence” means a licence under section 6 of EA 1989.

**Marginal Citations**

**M26** 1972 c.68. The definition of “EU obligation” in Part II of Schedule 1 was amended by the [European Union \(Amendment\) Act 2008 \(c.7\)](#).

**Disclosure of information under capacity market rules**

**66.** Section 33(3) of the Act applies in relation to a disclosure of information required by virtue of capacity market rules.

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## PART 9

### Enforcement

#### Relevant requirements

**67.**—(1) The following requirements are enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989 <sup>M27</sup>—

- (a) the duties and prohibitions in Part 8 (information), except in so far as they apply to the Secretary of State or the Authority;
- (b) any other requirement to which any person other than the Secretary of State, the Authority or the Settlement Body is subject under these Regulations [<sup>F192</sup>, the Supplier Payment Regulations] or capacity market rules.

(2) For the avoidance of doubt, paragraph (1) applies whether or not the person on whom a requirement is imposed is in fact a regulated person within the meaning of EA 1989.

#### Textual Amendments

**F192** Words in reg. 67(1)(b) inserted (18.12.2014) by The Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354), reg. 1(2), **Sch. 2 para. 9**

#### Marginal Citations

**M27** 1989 c.29. The definitions of “regulated person” and “relevant requirement” in section 25(8) of EA 1989 were amended by S.I. 2011/2704. Other amendments to section 25 of EA 1989 were made by section 54(3) of, and Schedule 10 to, the Competition Act 1998 (c.41); sections 3(2), 60 and 108 of, and Schedule 6 to, the Utilities Act 2000 (c.27); section 63(1) of, and Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c.17); section 51(5) of, and Schedule 14 to, the Enterprise and Regulatory Reform Act 2013 (c.24); and S.I. 2011/2704.

## PART 10

### Dispute resolution and appeals

#### CHAPTER 1

#### Delivery Body decisions

#### Delivery body reviewable decisions

**68.**—(1) In this Chapter, a “delivery body reviewable decision” means a decision by the Delivery Body under capacity market rules of a kind specified in the first column of the following table.

- (2) A dispute or appeal in relation to a delivery body reviewable decision may only be brought—
- (a) by a person specified in the corresponding entry in the second column of the table (an “affected person”); and
  - (b) in accordance with this Chapter.

#### Table

*Decision*

*Person who may bring dispute or appeal*

A prequalification decision.	The applicant or secondary trading entrant in relation to whom the decision has been made.
A refusal of a request for rectification of the capacity market register on the basis of factual inaccuracy.	The person who made a request for rectification in accordance with capacity market rules.
A refusal of a request to amend a capacity agreement notice on the basis of factual inaccuracy.	The capacity provider to whom a capacity agreement notice has been issued, and who has made a request to amend it in accordance with capacity market rules.
The issue of [ <sup>F193</sup> a non-completion notice,] a termination notice, or a notice of intention to terminate a capacity agreement [ <sup>F194</sup> or a transferred part].	The capacity provider to whom the notice has been issued.

(3) In the table in paragraph (2), “secondary trading entrant” [<sup>F195</sup>, “termination notice” and “notice of intention to terminate” have the meaning] given in the Rules.

#### Textual Amendments

- F193** Words in reg. 68(2) table inserted (10.4.2019) by [The Electricity Capacity \(No. 1\) Regulations 2019](#) (S.I. 2019/862), regs. 1(2), **25**
- F194** Words in reg. 68(2) table inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 29(1)** (with reg. 1(4))
- F195** Words in reg. 68(3) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016](#) (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 29(2)** (with reg. 1(4))

#### Requesting reconsideration by the Delivery Body

**69.**—(1) An affected person may request the Delivery Body to review a delivery body reviewable decision.

(2) The request must—

- (a) be submitted in writing to the Delivery Body within 5 working days after receiving notice of the decision; and
- (b) include each of the matters specified in sub-paragraphs (a) to (e) of regulation 70(3).

(3) [<sup>F196</sup>If the Delivery Body receives a request which complies with paragraph (2), within 15 working days of giving notice of the decision it must]—

- (a) reconsider the matter; and
- (b) give notice to the affected person of—
  - (i) the outcome of the reconsideration (the “reconsidered decision”); and
  - (ii) the reasons for the reconsidered decision.

(4) The Delivery Body must, within 5 working days after receiving a request which does not comply with paragraph (2), give notice to the affected person that the request is rejected as not complying with that paragraph, and give the reason why.

(5) Subject to [<sup>F197</sup>regulations 29(10A) and 87(7)], in reconsidering a prequalification decision or a decision to issue a termination notice or a notice of intention to terminate, the Delivery Body must not take into account any information or evidence which—

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- (a) the affected person was required by these Regulations or capacity market rules to provide to the Delivery Body before the decision was taken; and
  - (b) the affected person failed to provide in accordance with that requirement.
- (6) Subject to regulations 70 to 72, the reconsidered decision is final.

#### Textual Amendments

**F196** Words in reg. 69(3) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 58**

**F197** Words in reg. 69(5) substituted (24.3.2015) by The Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), reg. 1(2), **Sch. 1 para. 18**

#### Modifications etc. (not altering text)

**C7** Reg. 69 modified (4.7.2020) by The Electricity Capacity (Amendment etc.) (Coronavirus) Regulations 2020 (S.I. 2020/697), reg. 1(2), **Sch. 2 para. 4**

#### Appeals to the Authority

**70.**—(1) An affected person who has, in accordance with regulation 69(2), made a request to the Delivery Body to review a delivery body reviewable decision, may appeal to the Authority if—

- (a) the affected person disputes the reconsidered decision; or
- (b) the request for reconsideration was rejected by the Delivery Body on the ground that it did not comply with regulation 69(2).

(2) An appeal under paragraph (1) must be made by submitting an appeal notice to the Authority within 5 working days after the date on which the affected person received the notice from the Delivery Body under regulation 69(3) or (4).

(3) An appeal notice must contain—

- (a) a concise statement identifying the relevant part of the delivery body reviewable decision in dispute;
- (b) a concise statement of the facts on which the affected person relies;
- (c) a summary of the grounds for disputing the delivery body reviewable decision;
- (d) a succinct presentation of the arguments supporting each of the grounds for dispute; and
- (e) a schedule listing the documents submitted with the appeal notice.

(4) The appeal notice must be accompanied by—

- (a) a copy of—
  - (i) the notice given by the Delivery Body under regulation 69(3) or (4);
  - (ii) the request made to the Delivery Body for reconsideration; and
  - (iii) any information or evidence submitted to the Delivery Body in support of that request;
- (b) in the case of an appeal relating to a prequalification decision, a copy of—
  - (i) the prequalification decision; and
  - (ii) any information or documents provided by the affected person to the Delivery Body as part of the application for prequalification which are relevant to the matter in dispute;

- (c) in the case of an appeal relating to a termination notice or a notice of intention to terminate, a copy of—
  - (i) the notice; and
  - (ii) any information or documents provided by the affected person to the Delivery Body before the notice was issued, which are relevant to the matter in dispute; and
- (d) any other documentary evidence which the affected person wishes to rely on in support of the appeal and which—
  - (i) was provided to the Delivery Body before the reconsidered decision was made; or
  - (ii) is needed to show what evidence was before the Delivery Body when the reconsidered decision was made.

(5) Where a request for reconsideration was rejected by the Delivery Body on the ground that it did not comply with regulation 69(2), the affected person may submit evidence to the Authority that the request did comply with that regulation.

(6) Except as provided in paragraphs (4) and (5), no other documentary evidence may be included in or submitted with the appeal notice.

**Modifications etc. (not altering text)**

**C8** [Reg. 70](#) modified (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), [Sch. 2 para. 5](#)

**Determination of appeal by the Authority**

**71.**—(1) The Authority—

- (a) must notify the Delivery Body when it receives an appeal notice under regulation 70; and
- (b) may request the Delivery Body to provide it with any information relating to the disputed decision which the Authority considers necessary to enable it to determine the appeal.

(2) The Delivery Body must provide to the Authority such of the information requested under paragraph (1)(b) as it holds within 5 working days of receiving the Authority's request.

(3) Upon receiving an appeal notice which complies with regulation 70, and any information requested from the Delivery Body, the Authority must—

- (a) subject to paragraph (4), review the reconsidered decision;
- (b) determine whether the reconsidered decision was correct on the basis of the information which the Delivery Body had when it made the decision.

(4) In a determination under paragraph (3)(b)—

- (a) the Authority must uphold the reconsidered decision if the Authority determines that it was correct on the basis described in paragraph (3)(b);
- (b) if the Authority determines that the Delivery Body incorrectly decided not to prequalify the applicant for a capacity auction in respect of a CMU, it must direct the Delivery Body to register the CMU on the capacity market register as a prequalified CMU (in which case regulation 73 applies);
- (c) in any other case, if the Authority determines that the Delivery Body's decision was incorrect it must substitute the decision that it considers the Delivery Body should have made.

(5) The Authority must give notice of its determination to the affected person, the Delivery Body and the Settlement Body.

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(6) The Authority may, to assist it in determining an appeal, appoint a person independent of the Delivery Body and the affected person to consider the appeal or any matter relating to it and provide a report to the Authority; but the Authority remains responsible for determining the appeal.

(7) If the Authority determines that the Delivery Body incorrectly rejected a request for reconsideration of a decision as mentioned in regulation 70(5)—

- (a) the Authority must remit the request to the Delivery Body and direct the Delivery Body to reconsider the decision in accordance with regulation 69; and
- (b) the Delivery Body must comply with the direction.

### **Appeals to the court**

**72.**—(1) An affected person may appeal to the court against a determination under regulation 71.

(2) In paragraph (1), “the court” means—

- (a) the High Court; or
- (b) in Scotland, the Court of Session.

(3) An appeal under paragraph (1)—

- (a) may only be made on a point of law; and
- (b) must be brought within 28 days after the date of the determination.

(4) On an appeal relating to a prequalification decision in respect of a CMU the court may—

- (a) dismiss the appeal;
- (b) direct the Delivery Body to register the CMU on the capacity market register as a prequalified CMU (in which case regulation 73 applies); or
- (c) remit the matter to the Delivery Body with a direction to reconsider it and make a new decision in accordance with the findings of the court.

(5) On an appeal relating to any other decision, the court may—

- (a) dismiss the appeal; or
- (b) remit the matter to the Delivery Body with a direction to reconsider it and make a new decision in accordance with the findings of the court.

(6) The court may not—

- (a) order a capacity auction to be cancelled, postponed or suspended pending the determination of an appeal; or
- (b) make an order which affects the validity or terms of a capacity agreement that has accrued to any person other than the appellant.

### **Consequences of successful review or appeal**

**73.**—(1) Paragraph (2) applies if the Delivery Body—

- (a) makes a reconsidered decision under regulation 69;
- (b) receives notice of a decision of the Authority or the court under this Chapter; or
- (c) makes a redetermination pursuant to a direction by the Authority or the court under this Chapter.

(2) The Delivery Body must as soon as reasonably practicable—

- (a) make any amendment to the capacity market register required by, or in consequence of, the decision or redetermination; and
- (b) give notice to the affected person of any amendment made to the capacity market register.

(3) Paragraphs (4) to (7) apply if, pursuant to paragraph (2)(a), the Delivery Body registers a CMU on the capacity market register as a prequalified CMU.

(4) If the registration is made not less than 11 working days before the start of the relevant capacity auction, the Delivery Body must permit the applicant to bid in the capacity auction in respect of the CMU.

(5) If—

(a) the registration is made after, or less than 11 working days before, the start of the relevant capacity auction; and

(b) the capacity auction is held and is not annulled,

the Delivery Body must offer to the applicant a capacity agreement in respect of the CMU on terms in accordance with paragraph (6).

(6) A capacity agreement offered under paragraph (5) must be—

(a) at the capacity cleared price which would have applied to the CMU if a successful bid had been made in the relevant capacity auction in respect of the CMU;

[<sup>F198</sup>(b) for—

(i) the de-rated capacity of the CMU (which, if not previously determined, must be determined by the Delivery Body in accordance with capacity market rules); <sup>F199</sup>...

<sup>F200</sup>(ii) . . . . .]

(c) for the number of delivery years which it appears to the Delivery Body that the applicant is entitled to a capacity agreement under capacity market rules.

[<sup>F201</sup>(6A) In the case of a demand side response CMU, the applicant may nominate in accordance with capacity market rules the capacity in respect of which it wishes to be offered a capacity agreement and, where it does so—

(a) that is the capacity which is to be used to determine the de-rated capacity of the CMU for the purposes of paragraph (6)(b), and

(b) the de-rated capacity so determined is the de-rated capacity which applies for the purposes of regulations 32 and 60.]

(7) An applicant which receives an offer of a capacity agreement under paragraph (5)—

(a) must within 5 working days give notice to the Delivery Body of whether it accepts the offer; and

(b) is not entitled to any other remedy if it does not accept the offer within that time.

#### Textual Amendments

**F198** Reg. 73(6)(b) substituted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), reg. 1(2), [Sch. 1 para. 19\(1\)](#)

**F199** Word in reg. 73(6)(b)(i) omitted (2.11.2017) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2017 \(S.I. 2017/1053\)](#), reg. 1(2), [Sch. 1 para. 8\(a\)\(i\)](#)

**F200** Reg. 73(6)(b)(ii) omitted (2.11.2017) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2017 \(S.I. 2017/1053\)](#), reg. 1(2), [Sch. 1 para. 8\(a\)\(ii\)](#)

**F201** Reg. 73(6A) substituted (2.11.2017) by [The Electricity Capacity \(Amendment\) Regulations 2017 \(S.I. 2017/1053\)](#), reg. 1(2), [Sch. 1 para. 8\(b\)](#)

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## CHAPTER 2

### Settlement Body decisions

#### Disputes

74.—(1) Subject to paragraph (2), a disputing party may use the procedure in this Chapter to dispute any calculation or determination made by the Settlement Body under Part 6 or 7.

(2) The procedure in this Chapter may not be used to dispute the correctness of any data used in making a calculation or determination, which has been provided to the Settlement Body by another person under these Regulations or capacity market rules, except for non-BSC data provided by a capacity provider.

(3) In this Chapter, “disputing party” means, as appropriate, a supplier or a capacity provider.

(4) In paragraph (2), “non-BSC data” means data provided by or on behalf of a capacity provider which is not provided under the Balancing and Settlement Code, irrespective of whether the capacity provider is a party to the Balancing and Settlement Code.

#### Disputes notice

75.—(1) A disputing party may give a notice (“a disputes notice”) to the Settlement Body of a dispute.

(2) A disputes notice must—

- (a) set out the matters giving rise to the dispute and the outcome sought by the disputing party; and
- (b) be given not later than 28 days after the disputing party receives notice of the calculation or determination giving rise to the dispute.

#### Determination of disputes

76.—(1) After receiving a disputes notice which complies with regulation 75(2), the Settlement Body must, subject to paragraph (2), review the disputed calculation or determination, and decide whether to uphold it or to substitute a different calculation or determination.

(2) The Settlement Body may, to assist in determining a dispute, appoint an independent person to consider the matter in dispute and provide a report on the matter, or an audit of any disputed calculation.

(3) The Settlement Body must, as soon as reasonably practicable after receiving a disputes notice, give notice to the disputing party whether it—

- (a) is considering the disputed matter;
- (b) has appointed an independent person to consider the disputed matter under paragraph (2); or
- (c) has rejected the disputes notice on the ground that it does not comply with regulation 75(2).

(4) The Settlement Body must determine a dispute—

- (a) where it commissions a report or audit under paragraph (2), not later than 28 days after receiving the report or audit; and
- (b) in any other case, not later than 28 days after receiving the disputes notice.

(5) The Settlement Body must as soon as reasonably practicable after determining a dispute give a notice to the disputing party of its decision and the reason for that decision.



(6) The references in this regulation to “an independent person” include a panel of persons, either—

- (a) established under an industry code; or
- (b) appointed by the Settlement Body for the purpose of considering disputes under this Chapter,

provided that all the panel members who consider the dispute are independent from the Settlement Body and the disputing party.

## PART 11

### Capacity market rules

#### Authority's power to make capacity market rules

77.—(1) The Authority may make capacity market rules about the operation and administration of the capacity market.

(2) The power in paragraph (1)—

- (a) includes power to amend, add to, revoke or substitute any provision of the Rules; and
- (b) includes power to specify that an obligation in capacity market rules made by the Authority is enforceable as if it were a relevant requirement on a regulated person for the purposes of section 25 of EA 1989 (whether or not the person on whom a requirement is imposed is in fact a regulated person within the meaning of EA 1989).

(3) But the Authority must not—

- (a) make any provision in capacity market rules which is inconsistent with these Regulations [<sup>F202</sup>or the Supplier Payment Regulations]; or
- (b) except with the approval of the Secretary of State, [<sup>F203</sup>make, amend or revoke any provision in capacity market rules which confers functions on—
  - (i) the Secretary of State; or
  - (ii) the Authority].

#### Textual Amendments

**F202** Words in reg. 77(3)(a) inserted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), reg. 1(2), [Sch. 2 para. 10](#)

**F203** Words in reg. 77(3)(b) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 59](#)

#### Commencement Information

**II** Reg. 77 coming into force in accordance with reg. 1(3)

#### Objectives

78. The Authority must when making capacity market rules, in addition to having regard to its principal objective and general duties, have regard to the following objectives—

- (a) promoting investment in capacity to ensure security of electricity supply;
- (b) facilitating the efficient operation and administration of the capacity market;

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- (c) ensuring the compatibility of capacity market rules with other subordinate legislation under Part 2 of the Act.

**Commencement Information**

**I2** Reg. 78 coming into force in accordance with reg. 1(3)

**Procedure**

- 79.**—(1) Before making capacity market rules the Authority must consult—
- (a) the Secretary of State;
  - (b) the Delivery Body;
  - (c) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 89;
  - (d) any person who is a capacity provider; and
  - (e) such other persons as the Authority considers it appropriate to consult.
- (2) Paragraph (3) applies where any proposal to amend a provision of capacity market rules is made to the Authority by—
- (a) a person mentioned in paragraph (1)(a) to (d);
  - (b) an applicant, or a person wishing to apply to bid in a capacity auction; or
  - (c) a representative body representing persons mentioned in paragraph (1)(c) or (d) or any other class of persons which, in the Authority's opinion, has a sufficient interest in the capacity market.
- (3) The Authority must—
- (a) consider the proposal; and
  - (b) either—
    - (i) consult in accordance with paragraph (1) on whether to make the proposed amendment; or
    - (ii) publish its reasons for rejecting the proposal without consulting on it.

**Commencement Information**

**I3** Reg. 79 coming into force in accordance with reg. 1(3)

## PART 12

### Other functions of the administrative parties

#### Appointment of Settlement Body

- 80.**—(1) The Secretary of State must, as soon as reasonably practicable after this regulation comes into force, appoint a person to be the Settlement Body.
- (2) The Secretary of State may terminate the appointment of a person as Settlement Body.
- (3) If the Secretary of State terminates the appointment of a person (“A”) as Settlement Body, the Secretary of State must—
- (a) as soon as reasonably practicable, appoint another person (“B”) to that position; and

- (b) make arrangements to ensure that any funds held by A under these Regulations [<sup>F204</sup>or the Supplier Payment Regulations] are transferred to B.
- (4) The Secretary of State must give notice to—
  - (a) each capacity provider;
  - (b) each electricity supplier; and
  - (c) the other administrative parties,of an appointment, or the termination of an appointment, under paragraph (1), (2) or (3)(a).

**Textual Amendments**

**F204** Words in [reg. 80\(3\)\(b\)](#) inserted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 10](#)

**Review by Secretary of State**

- 81.**—(1) The Secretary of State must from time to time—
- (a) carry out a review of—
    - (i) these Regulations [<sup>F205</sup>and the Supplier Payment Regulations]; <sup>F206</sup> ...
    - <sup>F206</sup>(ii) .....
  - (b) set out the conclusions in a report; and
  - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by these Regulations [<sup>F207</sup>and the Supplier Payment Regulations];
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.
- (3) The first report under this regulation must be published before the end of the period of five years beginning with the date on which these Regulations come into force.
- (4) Reports under this regulation are, after the first report, to be published at intervals not exceeding five years.
- (5) In carrying out the review under paragraph (1)(a), the Secretary of State must take account of any reports published by the Authority under regulation 82 or provided to the Secretary of State under regulation 83.

**Textual Amendments**

- F205** Words in [reg. 81\(1\)\(a\)\(i\)](#) inserted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 11](#)
- F206** [Reg. 81\(1\)\(a\)\(ii\)](#) and word omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 39](#)
- F207** Words in [reg. 81\(2\)\(a\)](#) inserted (18.12.2014) by [The Electricity Capacity \(Supplier Payment etc.\) Regulations 2014 \(S.I. 2014/3354\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 11](#)

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**Modifications etc. (not altering text)**

**C9** Reg. 81 modified (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 2 para. 6**

**Review of capacity market rules**

**82.**—(1) The Authority [<sup>F208</sup>and the Secretary of State must each from time to time, in accordance with capacity market rules]—

- (a) carry out a review of capacity market rules;
- (b) set out the conclusions in a report; and
- (c) publish the report.

<sup>F209</sup>(2) .....

<sup>F209</sup>(3) .....

<sup>F209</sup>(4) .....

**Textual Amendments**

**F208** Words in [reg. 82\(1\)](#) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 40(a)**

**F209** [Reg. 82\(2\)-\(4\)](#) omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 40(b)**

**Annual operational reports**

**83.**—(1) The Authority must—

- (a) provide the Secretary of State with an annual report on—
  - (i) the operation of the capacity market; and
  - (ii) the Delivery Body's performance of its functions in relation to the capacity market; and
- (b) publish the report.

(2) The annual report must also include a report on any particular matters specified in a notice given by the Secretary of State to the Authority.

(3) The Secretary of State must give any notice to the Authority under paragraph (2) not later than 3 months before the date by which the Authority is required to provide the annual report.

(4) The first report under this regulation must be provided to the Secretary of State by no later than 6 months after the completion of the first capacity auction.

(5) Reports under this regulation are afterwards to be provided to the Secretary of State—

- (a) by no later than 6 months after the completion of each T-4 auction; and
- (b) if no T-4 auction is held in a capacity year, by no later than 6 months after the end of that capacity year.

**Settlement Body's annual report**

**84.**—(1) The Settlement Body must, in respect of each capacity year which commences after this regulation comes into force, produce an annual report on its performance of its functions.

(2) The Settlement Body must, not later than 3 months after the end of the capacity year to which it relates—

- (a) provide the report to the Secretary of State; and
- (b) publish the report.

## PART 13

### Miscellaneous

#### Restricted liability in damages

85.—(1) Paragraph (2) applies to—

- (a) the national system operator;
- (b) any director of the national system operator; and
- (c) any employee, officer or agent of the national system operator.

(2) Subject to paragraph (3), a person to whom this paragraph applies is not liable in damages for anything done or omitted to be done in the exercise or purported exercise of the national system operator's functions under—

- (a) these Regulations; or
- (b) capacity market rules.

(3) The exclusion of liability in paragraph (2) does not—

- (a) apply where the act or omission occurs in bad faith, including where the act or omission—
  - (i) constitutes a tort which involved a wilful act or omission calculated to cause harm or loss to another person; or
  - (ii) is fraudulent;
- (b) prevent an award of damages in respect of an act or omission which is—
  - (i) unlawful by virtue of section 6(1) of the Human Rights Act 1998<sup>M28</sup>;
  - (ii) a breach of a duty owed by virtue of section 27(4) of EA 1989;
  - (iii) a criminal offence;
  - (iv) an infringement of a person's intellectual property rights;
  - (v) a breach of confidentiality, whether statutory or at common law; or
  - (vi) a breach of contract.

#### Marginal Citations

M28 1998 c.42.

#### Documents

86. Schedule 2 (documents) has effect.

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## PART 14

### Transitory provisions and repeal

#### Transitory provisions: the first T-4 auction

**87.**—(1) If the Secretary of State determines under regulation 10(1)(a) that a capacity auction is to be held for the delivery year starting on 1st October 2018—

- (a) the Secretary of State must at the same time determine the auction window for that capacity auction, which must end not later than 31st July 2015;
- (b) in relation to the determination of auction parameters for that capacity auction, paragraphs (5)(a) and (6) of regulation 12 do not apply; and
- (c) references in these Regulations to a T-4 auction are to be treated as including that capacity auction.

(2) In paragraphs (3)<sup>F210</sup> ... and (7), “the first T-4 auction” means the capacity auction referred to in paragraph (1).

(3) In relation to the first T-4 auction, the Secretary of State may direct the Delivery Body for the purposes of capacity market rules about prequalification—

- (a) to treat a person who applies to prequalify for that capacity auction, and who is not a permitted person within the meaning given in the Rules, as if that person were a permitted person;
- (b) to treat a CMU in respect of which a prequalification application is made, and which is not within a generating technology class specified in capacity market rules, as if that CMU were within such generating technology class as the Secretary of State directs for the purpose of determining its de-rated capacity.

(4) The Delivery Body must comply with a direction under paragraph (3).

<sup>F211</sup>(5) .....

<sup>F212</sup>(6) .....

(7) Regulation 69(5) does not apply in relation to the reconsideration of a prequalification decision for the first T-4 auction.

<sup>F213</sup>(8) .....

<b>Textual Amendments</b>	
<b>F210</b>	Word in reg. 87(2) omitted (2.11.2017) by virtue of <a href="#">The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053)</a> , reg. 1(2), <b>Sch. 1 para. 9(a)</b>
<b>F211</b>	Reg. 87(5) omitted (2.11.2017) by virtue of <a href="#">The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053)</a> , reg. 1(2), <b>Sch. 1 para. 9(b)</b>
<b>F212</b>	Reg. 87(6) omitted (2.11.2017) by virtue of <a href="#">The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053)</a> , reg. 1(2), <b>Sch. 1 para. 9(b)</b>
<b>F213</b>	Reg. 87(8) omitted (2.11.2017) by virtue of <a href="#">The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053)</a> , reg. 1(2), <b>Sch. 1 para. 9(b)</b>

**[<sup>F214</sup>Transitory provisions: the second T-4 auction**

**87A.**—(1) Paragraph (2) applies if the Secretary of State determines under regulation 10(1)(b) that a capacity auction is to be held in the auction window starting on 1st September 2015 (“the second T-4 auction”).

[<sup>F215</sup>(2) Where this paragraph applies, paragraph (7) of regulation 87 has effect as if the reference to the “first T-4 auction” were a reference to the second T-4 auction.]]

**Textual Amendments**

**F214** Reg. 87A inserted (24.3.2015) by [The Electricity Capacity \(Amendment\) Regulations 2015 \(S.I. 2015/875\)](#), reg. 1(2), **Sch. 1 para. 20**

**F215** Reg. 87A(2) substituted (2.11.2017) by [The Electricity Capacity \(Amendment\) Regulations 2017 \(S.I. 2017/1053\)](#), reg. 1(2), **Sch. 1 para. 10**

**[<sup>F216</sup>Transitory provisions: the third T-4 auction and supplementary auction**

**87B.**—(1) If the Secretary of State determines that a third T-4 auction is to be held, paragraph (7) of regulation 87 has effect as if the reference to the “first T-4 auction” were a reference to the third T-4 auction.

(2) If the Secretary of State determines that a supplementary auction is to be held, paragraph (7) of regulation 87 has effect as if the reference to the “first T-4 auction” were a reference to the supplementary auction.]

**Textual Amendments**

**F216** Reg. 87B inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), **Sch. 1 para. 60**

**[<sup>F217</sup>Transitory provisions: the T-3 auction**

**87C.**—(1) This regulation applies if the Secretary of State determines under regulation 10(1)(bb) that the T-3 auction is to be held.

(2) Where this regulation applies—

- (a) references to a T-4 auction in regulations 10(4), 12(2), 31(2)(e), 34(1), 59(2)(a), 60(2)(a) and Schedule 1 are treated as including the T-3 auction;
- (b) regulation 13 (adjustment of auction parameters following prequalification) applies in relation to the T-3 auction and the subsequent T-4 auction as if after paragraph (2) there were inserted—

“(3) After the Secretary of State receives a notification from the Delivery Body under regulation 25(1) in respect of the T-3 auction, the Secretary of State may decide to adjust the demand curve and target capacity for the subsequent T-4 auction (if the Secretary of State has determined this T-4 auction is to be held).

(4) The Secretary of State must make any decision under paragraph (3), and give notice of any adjustments to the Delivery Body, no later than the last working day before the date on which the Delivery Body is required to publish the final version of the auction guidelines for the subsequent T-4 auction under regulation 21(3).”;

- (c) regulation 59 (requirement to provide applicant credit cover) applies—

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- F218 (i) .....
- (ii) in relation to credit cover provided in respect of the T-3 auction and the subsequent T-4 auction as if for paragraphs (2A) and (2B) there were substituted—
- “(2A) Paragraph (2B) applies where an applicant for the T-3 auction and the subsequent T-4 auction is required to provide applicant credit cover in respect of the same CMU (“CMU i”) for both auctions in accordance with this regulation.
- (2B) Where this paragraph applies—
- (a) the applicant may satisfy their obligation to provide credit cover in respect of CMU i for both auctions by providing credit cover of an amount equal to the greater of the amounts determined under paragraph (2)(a) in respect of—
- (i) the T-3 auction; and
- (ii) the subsequent T-4 auction;
- (b) credit cover provided in accordance with sub-paragraph (a) may be drawn down under regulation 61(1) in relation to a capacity agreement awarded in either of the auctions referred to in sub-paragraph (a); and
- (c) notwithstanding paragraph (1)(h) or (3) of regulation 60, any credit cover drawn down in relation to a capacity agreement awarded in either of the auctions referred to in sub-paragraph (a) must be replaced in accordance with the obligation under regulation 60(1) to maintain credit cover in respect of the other auction.”;
- (d) regulation 60 (credit obligation period) applies in respect of the T-3 auction and the subsequent T-4 auction as if—
- (i) before paragraph (1)(a) there were inserted—
- “(aa) where credit cover provided by A in respect of CMU i for an auction (“auction X”) also satisfies A’s obligation to provide credit cover in respect of CMU i for another auction because regulation 59(2B) applies and an event in sub-paragraph (b) to (h) has occurred in respect of the other auction;”;
- (ii) after paragraph (1) there were inserted—
- “(1A) Where paragraph (1)(aa) applies, A must thereafter maintain credit cover in respect of auction X in an amount equal to—
- (a) the amount calculated under regulation 59(2)(a) in respect of A’s application to prequalify for auction X in respect of CMU i; or
- (b) where paragraph (1)(a) applies, the amount calculated under paragraph (2) in respect of CMU i and auction X,
- until the earliest of the events in sub-paragraphs (b) to (h) of paragraph (1) has occurred in respect of auction X.”; and
- (iii) after paragraph (4) there were inserted—
- “(4C) Paragraphs (1) to (4) are subject to paragraph (4D).
- (4D) Where regulation 59(2B) applies, A is required to maintain credit cover in the amount equal to the greater of the amounts A is required to maintain in respect of CMU i under this regulation in relation to—
- (a) the T-3 auction; and
- (b) the subsequent T-4 auction,



until the applicant is no longer required to maintain credit cover in respect of CMU i in relation to either auction.”; and

- (e) regulation 69(3) applies to requests for review of prequalification decisions for—
- (i) the T-1 auction for the delivery year commencing on 1st October 2020;
  - (ii) the T-3 auction; and
  - (iii) the subsequent T-4 auction,
- as if for “15” there were substituted “20”.

(3) In this regulation “subsequent T-4 auction” means the T-4 auction for the delivery year commencing on 1st October 2023.]

#### Textual Amendments

**F217** Reg. 87C inserted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), **2(9)**

**F218** Reg. 87C(2)(c)(i) omitted (4.7.2020) by virtue of [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 1 para. 9**

#### Repeal

**88.** Section 47ZA of EA 1989 <sup>M29</sup> is repealed.

#### Commencement Information

**I4** Reg. 88 in force at 1.1.2015, see [reg. 1\(4\)](#)

#### Marginal Citations

**M29** 1989 c.29. Section 47ZA was inserted by section 79 of the [Energy Act 2011 \(c.16\)](#).

Department of Energy and Climate Change  
31st July 2014

*Amber Rudd*  
Parliamentary Under-Secretary of State

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## SCHEDULE 1

Regulation 36

### Settlement calculations

#### Interpretation

1.—<sup>F219</sup>(1) In this Schedule—

“ $AE_{ij}$ ”, “ $ALFCO_{ij}$ ” and “ $E_{ij}$ ”, in relation to a capacity committed CMU  $i$  and a relevant settlement period  $j$ , are to be interpreted in accordance with regulation 39 and mean the amounts determined in accordance with that regulation;

“ $CO_{ix}$ ” means the capacity obligation in MW, as recorded on the capacity market register, awarded in respect of CMU  $i$  for year  $X$  in a capacity auction;

“ $ICO_{ij}$ ” means the whole or part of any capacity obligation  $CO_{zx}$  in MW, as recorded on the capacity market register, which applies to CMU  $i$  in relevant settlement period  $j$ ;

“ $WF_{mx}$ ” means the weighting factor determined under paragraph 2 for month  $M$  in capacity year  $X$ .]

(2) Where, in a formula, two values in parentheses are separated by a comma and preceded by “min”, that means that the lesser of those two values is to be used in making the calculation.

<sup>F220</sup>(3) Where, in a formula, the symbol  $\sum$  is used, it denotes that a value is to be determined from the summation of the sequence of elements found immediately to its right; these elements may be derived from one variable or a collection of variables contained in parentheses.

(4) In this Schedule, if not otherwise defined, subscript suffixes used in a term refer to the following things unless the context requires otherwise—

“ $i$ ” refers to a specific CMU which is the subject of the provision the term appears in (“the relevant provision”);

“ $j$ ” refers to a relevant settlement period which is the subject of the relevant provision;

“ $k$ ” refers to any relevant settlement periods in a given month that precede the relevant settlement period which is the subject of the relevant provision;

“ $m$ ” refers to a given month;

“ $y$ ” refers to any capacity obligation awarded in a capacity auction in respect of a CMU; and

“ $z$ ” refers to a specific capacity obligation awarded in a capacity auction in respect of a CMU.]

#### Textual Amendments

**F219** Sch. 1 para. 1(1) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 31(1)** (with reg. 1(4))

**F220** Sch. 1 para. 1(3)(4) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 31(2)** (with reg. 1(4))

#### Weighting factor

2.—(1) The Settlement Body must, by no later than 3 months before the commencement of a capacity year (“year  $X$ ”), calculate in respect of each month of year  $X$  (“month  $M$ ”) the weighting factor (“ $WF_{mx}$ ”) which is to be used for the purpose of calculating capacity payments in respect of that month.

(2)  $WF_{mx}$  must be calculated to <sup>F221</sup>10 decimal] places in accordance with the formula—

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$$WF_{mx} = \frac{A}{B}$$

(3) In this paragraph—

“A” means the sum of the amounts of electrical demand in GWh in Great Britain during each of the months corresponding to month M in the calculation period;

“B” means the sum of the amounts of electrical demand in GWh in Great Britain during the calculation period;

“the calculation period” means the period of 3 years ending on the last day of the month preceding the month in which  $WF_{mx}$  is calculated.

#### Textual Amendments

**F221** Words in Sch. 1 para. 2(2) substituted (18.12.2014) by The Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354), reg. 1(2), Sch. 2 para. 12

#### Capacity payments: calculations to be made annually for each capacity committed CMU

3.—(1) The Settlement Body must, by no later than 3 months before the commencement of a delivery year (“year X”), calculate in respect of each capacity committed CMU (“CMU i”)—

- (a) the total amount in pounds of the capacity payments which, subject to regulation 40(5) and (6) and to regulations 49 to 51, are payable in respect of  $[^{F222}CO_{ix}]$  (“ $ACP_{ix}$ ”); and
- (b) in respect of each month of year X (“month M”), the amount in pounds of the capacity payment which, subject to those regulations, is payable in respect of CMU i for that month (“ $MCP_{im}$ ”).

$[^{F223}(2)$   $ACP_{yx}$  (for any value y) must be calculated in accordance with the formula—

$$ACP_{yx} = CO_{yx} \times PE_{yx}$$

(3)  $MCP_{im}$  must be calculated in accordance with the formula—

$$MCP_{im} = WF_{mx} \times (ACP_{ix} + \sum N_t ACP_N \times DT_{mNDm})$$

(3A) For the purpose of sub-paragraph (3)  $tACP_N$  is the amount

$$ACP_{zx} \times tICO_{iNCO_{zx}}$$

where—

“ $tICO_{iN}$ ” is any obligation, being the whole or part of the capacity obligation  $CO_{zx}$ , that has been transferred so as to—

- (a) apply to CMU i for all or part of month M, or
- (b) cease to apply to CMU i for all or part of month M (in which case  $tACP_N$  is to be expressed as a negative number);

“ $DT_{mN}$ ” means the number of days in month M for which that capacity obligation has been transferred;

“ $D_m$ ” means the total number of days in month M.]

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(4) For the purpose of sub-paragraph (2), “[<sup>F224</sup>PE<sub>yx</sub>]” means the price in pounds per MW at which capacity payments are payable in respect of [<sup>F224</sup>CO<sub>yx</sub>], which is to be determined in accordance with sub-paragraphs (5) and (6).

<sup>F225</sup>(5) If the relevant capacity auction was a T-4 auction,  $PE_{ix}$  is to be calculated in accordance with the formula—

$$PE_{ix} = CCP_i \times \frac{CPI_x}{CPI_{base}}$$

<sup>F225</sup>(6) If the relevant capacity auction was a T-1 auction or a DSR transitional auction,  $PE_{ix}$  is equal to  $CCP_i$ .

(7) In this paragraph—

[<sup>F226</sup>“CCP<sub>y</sub>” means the capacity cleared price for CO<sub>yx</sub>, as recorded on the capacity market register]

<sup>F227</sup> ...

“ $CPI_{base}$ ” means the average of the monthly values of CPI for the months of the base period [<sup>F228</sup>referred to in] regulation 11 for the relevant capacity auction;

“ $CPI_x$ ” means the average of the monthly values of CPI for the months of the winter ending on the 30th April preceding the start of year X;

“relevant capacity auction” means the capacity auction in which [<sup>F229</sup>CO<sub>yx</sub>] was awarded;

<sup>F230</sup> ...

#### Textual Amendments

**F222** Words in Sch. 1 para. 3(1)(a) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 32(1)** (with reg. 1(4))

**F223** Sch. 1 para. 3(2)-(3A) substituted for Sch. 1 para. 3(2)(3) (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 32(2)** (with reg. 1(4))

**F224** Word in Sch. 1 para. 3(4) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 32(3)** (with reg. 1(4))

**F225** Sch. 1 para. 3(5)(6): the subscript “y” substituted for the subscript “i” wherever it occurs (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 32(4)** (with reg. 1(4))

**F226** Words in Sch. 1 para. 3(7) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 32(5)(a)** (with reg. 1(4))

**F227** Words in Sch. 1 para. 3(7) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 32(5)(b)** (with reg. 1(4))

**F228** Words in Sch. 1 para. 3(7) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 32(5)(c)** (with reg. 1(4))

**F229** Word in Sch. 1 para. 3(7) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 32(5)(d)** (with reg. 1(4))

**F230** Words in Sch. 1 para. 3(7) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 32(5)(e)** (with reg. 1(4))

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### Capacity payments: calculations to be made monthly for each capacity provider

4.—(1) The Settlement Body must, after the end of each month of a delivery year (“month M”), calculate for each capacity provider (“C”) the amount in pounds of the capacity payment which, subject to regulation 40(5) and (6) and to regulations 49 to 51, is payable to C in respect of month M (“ $MCP_{cm}$ ”).

(2)  $MCP_{cm}$  must be calculated as the sum of—

- (a)  $MCP_{im}$ , as calculated under paragraph 3, for each capacity committed CMU for which C was the capacity provider for the whole of month M; and
- (b) C’s proportion of  $MCP_{im}$ , as calculated under paragraphs 3 and 8, for each capacity committed CMU for which C was the capacity provider for part of month M.

### Capacity provider penalty charges: calculation of settlement period penalty applying to a capacity committed CMU

5.—(1) The Settlement Body must, after the end of each month of a delivery year (“year X”) in which one or more relevant settlement periods occur (“month M”), calculate in respect of each relevant CMU (“CMU i”) and each relevant settlement period (“settlement period j”) the settlement period penalty in pounds applying to CMU i in respect of settlement period j (“ $SPP_{ij}$ ”).

(2)  $SPP_{ij}$  must be calculated in accordance with the <sup>F231</sup> formula—

$$SPP_{ij} = PR_{ix} \times (ALFCO_{ij} - AE_{ij}).$$

[<sup>F232</sup>(2A) For the purpose of sub-paragraph (2), “PR<sub>ij</sub>” is the penalty rate in pounds per MWh applying to CMU i in respect of settlement period j, and is to be calculated in accordance with the formula—

$$PR_{ij} = \frac{PR_{ix} \times \sum (ICO_{ijN})}{\sum (INCO_{ijN})}$$

where—

“ICO<sub>ijN</sub>” is the whole or a part of any capacity obligation CO<sub>zx</sub> applying to CMU i in settlement period j, and

“PR<sub>N</sub>” is the penalty rate applying to that capacity obligation.]

[<sup>F233</sup>(3) For the purpose of sub-paragraph (2A), PR<sub>N</sub> is to be calculated in accordance with the formula—

$$PR_N = PE_{zx} \times (124)$$

.]

(4) In this paragraph—

[<sup>F234</sup>“PE<sub>zx</sub>” means the price in pounds per MW determined for CO<sub>zx</sub> in accordance with paragraph 3(4) to (6)]

“relevant CMU” means a capacity committed CMU in respect of which  $AE_{ij}$  is less than  $ALFCO_{ij}$  in one or more relevant settlement periods in month M.

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### Textual Amendments

- F231** Sch. 1 para. 5(2): formula amended by the substitution of "PRij" for "PRix" (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 33(1)** (with reg. 1(4))
- F232** Sch. 1 para. 5(2A) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 33(2)** (with reg. 1(4))
- F233** Sch. 1 para. 5(3) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 33(3)** (with reg. 1(4))
- F234** Words in Sch. 1 para. 5(4) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 33(4)** (with reg. 1(4))

### Capacity provider penalty charges: calculation of monthly penalty charge for a capacity committed CMU

6.—<sup>F235</sup>(1) The Settlement Body must, after the end of each month of a delivery year ("year X") in which one or more relevant settlement periods occur ("month M"), calculate for each relevant CMU ("CMU i")—

- (a) for each relevant settlement period in month M ("settlement period j"), the settlement period penalty settlement amount for CMU i in settlement period j ("SPPSA<sub>ij</sub>"); and
  - (b) the monthly penalty charge to be paid in respect of month M ("MPSA<sub>im</sub>").
- (2) For the purpose of sub-paragraph (1)—
- (a) SPPSA<sub>ij</sub> is—
    - (i) equal to the amount P<sub>ij</sub> (calculated in accordance with paragraph (3)) unless paragraph (2A) applies; and
    - (ii) equal to the lesser of the amount P<sub>ij</sub> and the amount Q<sub>ij</sub> (calculated in accordance with paragraph (5)) if paragraph (2A) applies; and
  - (b) MPSA<sub>im</sub> is equal to the value of SPPSA<sub>ij</sub> for the last relevant settlement period j in month M in which the value of ALFCO<sub>ij</sub> for CMU i was greater than zero.

(2A) This paragraph applies where—

- (a) a capacity provider penalty charge has been incurred in respect of CMU i in at least 48 relevant settlement periods, and
- (b) those periods together comprise at least 8 relevant settlement periods in each of at least 6 months in delivery year X.]

<sup>F236</sup>(3) P<sub>ij</sub> must be calculated in accordance with the formula—

$$P_{ij} = (SP_i \times \text{MaxSP}_i) \times \min(\text{MaxSP}_i, \text{MPC}_{ij})$$

.]

<sup>F237</sup>(4) For the purposes of the calculation in sub-paragraph (3), MPC<sub>ij</sub> is the monthly penalty cap in pounds applying to CMU i in respect of relevant settlement period j in month M, and is to be calculated in accordance with the formula—

$$\text{MPC}_{ij} = \text{RMCP}_{ij} + \sum \text{ASPPA}'$$

where—

- (a) RMCP<sub>ij</sub> is to be calculated in accordance with the formula—

$$\text{RMCP}_{ij} = (\text{ACP}_{ix} \times \text{WF}_{mx} \times \text{Fi}) + \sum \text{N}(\text{tACP}_{N} \times \text{WF}_{mx} \times \text{Fz})$$

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, and

(b)  $\sum ASPPA'$  is to be calculated in accordance with the formula—

$$\sum ASPPA' = \sum AASPPAA - \sum BASPPAB$$

where—

(i)  $\sum_A ASPPA_A$  is the sum of each amount  $ASPPA_{ikA}$  calculated under paragraph 6A(4) for any obligation  $ICO_{ikA}$  applying to CMU i in any relevant settlement period k in month M preceding settlement period j; and

(ii)  $\sum_B ASPPA_B$  is the sum of each amount  $ASPPA_{ijB}$  calculated under paragraph 6A(4) for any obligation  $ICO_{ijB}$  applying to CMU i in both—

(aa) settlement period j, and

(bb) any relevant settlement period k in month M preceding settlement period j.]

[<sup>F238</sup>(5)  $Q_{ij}$  must be calculated in accordance with the formula—

$$Q_{ij} = APC_{ij} - \sum_{k=1}^m IMPSA_{ik}$$

and where that calculation would give a negative number, the value of  $Q_{ij}$  is to be taken to be zero.]

[<sup>F239</sup>(5A) For the purposes of the calculation in sub-paragraph (5),  $APC_{ij}$  is the annual penalty cap in pounds applying to CMU i in respect of relevant settlement period j, and is to be calculated in accordance with the formula—

$$APC_{ij} = ACP_{ix} \times G_i + \sum N(tACP_N \times G_z \times WF_{mx} \times DT_{mNDm})$$

where “ $DT_{mN}$ ” and “ $D_m$ ” have the meanings given in paragraph 3(3A)]

(6) In this paragraph—

<sup>F240</sup>  
...

[<sup>F241</sup>“ $ACP_{ix}$ ” means the amount of annual capacity payments calculated under paragraph 3 for CMU i in respect of year X;

[<sup>F242</sup>“ $F_y$ ” (for any value y) means the percentage stated on the capacity market register under regulation 31(2)(f), at the date of issue of the capacity agreement, as the monthly penalty cap percentage for the capacity obligation  $CO_{yx}$  awarded in respect of CMU y for year X;

“ $G_y$ ” (for any value y) means the percentage stated on the capacity market register under regulation 31(2)(f), at the date of issue of the capacity agreement, as the annual penalty cap percentage for the capacity obligation  $CO_{yx}$  awarded in respect of CMU y for year X;]]

“ $MaxSP_i$ ” is the sum in pounds of all settlement period penalties which would have applied to CMU i in respect of relevant settlement periods in month M, as calculated in accordance with paragraph 5 [<sup>F243</sup>up to and including the settlement period for which the calculation is being made], if  $AE_{ij}$  had been 0 for all such settlement periods;

“ $MCP_{im}$ ” means the amount of the monthly capacity payment calculated under paragraph 3 for CMU i and month M;

[<sup>F244</sup>“

$$\sum_{k=1}^m IMPSA_{ik}$$

”

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means the sum of the monthly penalty charges paid or payable in respect of CMU *i* for each of the months of year *X* preceding month *M* (or where *M* is the first such month, zero); and] “relevant CMU” has the same meaning as in paragraph 5;

“ *SP<sub>i</sub>*” is the sum of all settlement period penalties applying to CMU *i* in respect of relevant settlement periods in month *M*, as calculated in accordance with paragraph 5 [<sup>F243</sup>up to and including the settlement period for which the calculation is being made];

F245  
...

[<sup>F246</sup>“tACP<sub>N</sub>” has the meaning given in paragraph 3(3A)]

### Textual Amendments

- F235** Sch. 1 para. 6(1)-(2A) substituted for Sch. 1 para. 6(1)(2) (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(1)** (with reg. 1(4))
- F236** Sch. 1 para. 6(3) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(2)** (with reg. 1(4))
- F237** Sch. 1 para. 6(4) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(3)** (with reg. 1(4))
- F238** Sch. 1 para. 6(5) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(4)** (with reg. 1(4))
- F239** Sch. 1 para. 6(5A) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(5)** (with reg. 1(4))
- F240** Words in Sch. 1 para. 6(6) omitted (18.12.2014) by virtue of The Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354), reg. 1(2), **Sch. 2 para. 13(c)(i)**
- F241** Words in Sch. 1 para. 6 inserted (18.12.2014) by The Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354), reg. 1(2), **Sch. 2 para. 13(c)(ii)**
- F242** Words in Sch. 1 para. 6(6) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(6)(a)** (with reg. 1(4))
- F243** Words in Sch. 1 para. 6(6) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(6)(b)** (with reg. 1(4))
- F244** Words in Sch. 1 para. 6(6) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(6)(d)** (with reg. 1(4))
- F245** Words in Sch. 1 para. 6(6) omitted (14.7.2016) by virtue of The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(6)(c)** (with reg. 1(4))
- F246** Words in Sch. 1 para. 6(6) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 34(6)(e)** (with reg. 1(4))

### [<sup>F247</sup>Capacity provider penalty charges: apportionment

**6A.**—(1) Immediately after calculating  $SPPSA_{ij}$  for a relevant CMU *i* and any relevant settlement period *j* in month *M* under paragraph 6, the settlement body must also calculate *D* in accordance with the formula—

$$D = SPPSA_{ij} - SPPSA_{i(j-1)}$$

where “ $SPPSA_{i(j-1)}$ ” is the settlement period penalty settlement amount for CMU *i* in the relevant settlement period preceding period *j* (or, where *j* is the first such period in month *M*, zero).

(2) For each relevant settlement period *j* in month *M*, the settlement body must then determine for each obligation  $ICO_{ij}$  applying to CMU *i* in that settlement period (“ $ICO_{ijN}$ ”)—



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- (a) the monthly penalty cap applying in respect of  $ICO_{ijN}$  (“MPC<sub>ijN</sub>”); and
  - (b) the apportioned settlement period penalty amount for  $ICO_{ijN}$  (“ASPPA<sub>ijN</sub>”) as determined in accordance with sub-paragraph (4).
- (3) For the purpose of sub-paragraph (2)(a), MPC<sub>ijN</sub> is to be determined in accordance with the formula—

$$MPC_{ijN} = ICO_{ijN} \times PE_{zX} \times WF_{mX} \times F_z - \sum_{k=1}^{j-1} ASPPA_{ikN}$$

where—

“ $ICO_{ijN}$ ” is the whole or a part of the capacity obligation  $CO_{zX}$  awarded in respect of CMU z for year X,

“ $PE_{zX}$ ” means the price in pounds per MW determined for  $CO_{zX}$  in accordance with paragraph 3(4) to (6),

“ $F_z$ ” is to be interpreted in accordance with paragraph 6(6), and

“

$$\sum_{k=1}^{j-1} ASPPA_{ikN}$$

”

means the sum of all apportioned settlement period penalty amounts calculated for  $ICO_{ijN}$  when that obligation applies to CMU i in any relevant settlement period in month M that precedes period j (or, where j is the first such period, zero).

- (4) For the purpose of sub-paragraph (2)(b) ASPPA<sub>ijN</sub> is to be determined as follows (where D is the result of the calculation referred to in sub-paragraph (1))—

- (a) for each obligation  $ICO_{ijN}$  referred to in sub-paragraph (2), calculate PR<sub>N</sub> in accordance with paragraph 5(3), and arrange those obligations in a series (beginning with  $ICO_{ij1}$ ) as described in paragraph (b);

- (b) each such obligation  $ICO_{ijN}$  is ranked according to the magnitude of its corresponding PR<sub>N</sub> (in descending order with the highest corresponding penalty rate first), except that where the same penalty rate corresponds to more than one such obligation those obligations are ranked between themselves—

- (i) according to the date on which the obligation was awarded in respect of CMU i, or transferred so as to apply to CMU i (with the latest such date first), and

- (ii) for obligations awarded or transferred on the same date, according to the time at which a request to transfer the obligation was received by the Delivery Body (with the latest such time first), and with an awarded obligation ranking prior to any transferred obligation;

- (c) then for any such  $ICO_{ijN}$ —

- (i) if

$$\sum_{k=1}^N MPC_{ijk} > D$$

,

$$ASPPA_{ijN} = \sum_{k=1}^N MPC_{ijk}$$

;

- (ii) if

$$\sum_{k=1}^N MPC_{ijk} < D$$

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and

$$\sum_{k=1}^N MPC_{ijk} > D$$

,

$$ASPPA_{ijN} = D - \sum_{k=1}^N MPC_{ijk}$$

; and

(iii) otherwise,

$$ASPPA_{ijN} = 0$$

.]

### Textual Amendments

**F247** Sch. 1 para. 6A inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 35** (with reg. 1(4))

### Over-delivery payments

7.—(1) The Settlement Body must, after the end of each delivery year (“year X”), determine for each relevant CMU (“CMU i”)—

- (a) the over-delivery rate in £/MWh applying to CMU i in respect of <sup>F248</sup>each relevant settlement period in year X (“ODR<sub>ij</sub>”);
- (b) the amount in pounds of the over-delivery payment applying to CMU i in respect of each such settlement period in which CMU i over-delivered (“<sup>ODP<sub>ij</sub></sup>”); and
- (c) the amount in pounds of the total over-delivery payment applying to CMU i in respect of year X (“<sup>TODP<sub>ix</sub></sup>”).

(2) <sup>F249</sup>Subject to sub-paragraph (2A), <sup>F250</sup>ODR<sub>ij</sub> must be calculated in accordance with the <sup>F250F251</sup>formula—

$$ODR_{ix} = \min \left( PR_{ix}, \frac{TPR_x}{TODV_x} \right).$$

<sup>F252</sup>(2A) For the purposes of the calculation in paragraph (2), where the over-delivery payment is to be made to a qualified person who is not a capacity provider in settlement period j, the value of PR<sub>ij</sub> is deemed to be equal to the penalty rate applying to a capacity obligation awarded in the T-4 auction for year X and calculated in accordance with paragraph 5.]

(3) <sup>ODP<sub>ij</sub></sup> must be calculated in accordance with the <sup>F253</sup>formula—

$$ODP_{ij} = ODR_{ix} \times (AE_{ij} - ALFCO_{ij}).$$

(4) <sup>TODP<sub>ix</sub></sup> must be calculated as the sum of <sup>ODP<sub>ij</sub></sup> for all the relevant settlement periods in year X in which CMU i over-delivered.

(5) For the purposes of this paragraph—

“over-delivered” is to be interpreted in accordance with regulation 42(2);

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[<sup>F254</sup>“PR<sub>ij</sub>” means the penalty rate in pounds per MWh applying to CMU i in respect of settlement period j, as calculated in accordance with paragraph 5]

[<sup>F255</sup>“qualified person” has the meaning given in regulation 42(2);]

a “relevant CMU” means a capacity committed CMU in respect of which  $AE_{ij}$  is greater than  $ALFCO_{ij}$  in one or more relevant settlement periods in year X;

“ $TODV_x$ ” means the aggregate in MWh of the total amounts over-delivered in year X by all relevant CMUs;

“ $TPR_x$ ” means the total amount of capacity market penalty charge payments received by the Settlement Body in respect of year X.

### Textual Amendments

- F248** Words in Sch. 1 para. 7(1)(a) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 36(1)** (with reg. 1(4))
- F249** Words in Sch. 1 para. 7(2) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 36(3)(a)** (with reg. 1(4))
- F250** Sch. 1 para. 7(2): “ODR<sub>ij</sub>” substituted for “ODR<sub>ix</sub>” (wherever it occurs) (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 36(2)** (with reg. 1(4))
- F251** Sch. 1 para. 7(2): formula amended by the substitution of “PR<sub>ij</sub>” for “PR<sub>ix</sub>” (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 36(3)(b)** (with reg. 1(4))
- F252** Sch. 1 para. 7(2A) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 36(4)** (with reg. 1(4))
- F253** Sch. 1 para. 7(3): “ODR<sub>ij</sub>” substituted for “ODR<sub>ix</sub>” (wherever it occurs) (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 36(2)** (with reg. 1(4))
- F254** Words in Sch. 1 para. 7(5) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 36(5)(a)** (with reg. 1(4))
- F255** Words in Sch. 1 para. 7(5) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 36(5)(b)** (with reg. 1(4))

### Apportionment between capacity providers

8.—(1) This paragraph applies if—

- an amount in pounds (“AC”) has been calculated under paragraph 3(1)(b), 6(1) or 7(1)(c) in respect of a CMU (“CMU i”); and
- two or more persons were each registered on the capacity market register as the capacity provider in respect of CMU i for different parts of the period for which the calculation was made.

(2) For each of the persons referred to in sub-paragraph (1)(b) (“CX”), the Settlement Body must calculate CX’s share of AC (“ $AC_{cx}$ ”).

(3)  $AC_{cx}$  must be calculated in accordance with the formula—

$$AC_{cx} = AC \times \frac{DP_{cx}}{DP}$$

(4) In sub-paragraph (3)—

“DP” means the number of days in the period for which AC was calculated; and

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“ $DP_{\alpha}$ ” means the number of days during that period for which CX was registered on the capacity market register as the capacity provider in respect of CMU i.

### Settlement costs levy: the first levy period

9.—(1) The Settlement Body must, in respect of the first levy period, calculate the amount of settlement costs levy (“ $SL_s$ ”) to be paid by each liable electricity supplier (“S”) in accordance with the formula—

$$SL_s = PA \times \frac{D_s}{\sum D_s}$$

(2) In this paragraph—

“ $D_s$ ” means the net demand of S for the first levy period;

“ $\sum D_s$ ” means the sum of the net demand of all liable electricity suppliers for the first levy period;

“the first levy period” has the same meaning as in regulation 44;

“liable electricity supplier” has the same meaning as in regulation 44;

“net demand” means the sum of the demand for active energy for which an electricity supplier is responsible including demand directly connected to the transmission system or a distribution network, less the output of any generation for which an electricity supplier is responsible that is connected to a distribution network, and for the purposes of this paragraph net demand cannot be less than zero; and

“PA” means the prescribed amount, as specified in regulation 44(2).

## SCHEDULE 2

Regulation 86

### Documents

1. The provisions of this Schedule—

- (a) apply to a document, which includes an application, notice, invoice or credit note; and
- (b) are subject to any specific provisions in these Regulations [<sup>F256</sup>, the Supplier Payment Regulations] or capacity market rules about—
  - (i) a particular kind of document; or
  - (ii) the provision of documents by or to a particular person or class of persons.

#### Textual Amendments

**F256** Words in Sch. 2 para. 1(b) inserted (18.12.2014) by The Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354), reg. 1(2), Sch. 2 para. 14

2. A document must be in writing and dated.

3. A document given to a person on a non-working day is to be treated as given on the next following working day.

4. A document may be given to a person by—

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- (a) delivering it to that person in person;
  - (b) leaving it at that person's proper address;
  - (c) sending it by post or fax to that person's proper address;
  - (d) sending it by email to that person; or
  - (e) submitting it by means of a dedicated portal on that person's website.
5. For the purposes of paragraph 4(a) a document is given to—
- (a) a body corporate, where it is given to a person having control or management of that body;
  - (b) a partnership, where it is given to a partner or a person having control or management of the partnership business;
  - (c) an unincorporated association, where it is given to a person having management responsibilities in respect of the association.
6. For the purposes of paragraph 4(d), a document is given to—
- (a) a body corporate, where it is sent to an email address of—
    - (i) the body corporate; or
    - (ii) a person having control or management of that body,where that address is supplied by that body for the conduct of the affairs of that body;
  - (b) a partnership, where it is sent to an email address of—
    - (i) the partnership; or
    - (ii) a partner or a person having control or management of the partnership business,where that address is supplied by that partnership for the conduct of the affairs of that partnership;
  - (c) an unincorporated association, where it is sent to an email address of a person having management responsibilities in respect of the association, where that address is supplied by that association for the conduct of the affairs of that association.
7. A person may, in substitution for the proper address which would otherwise apply, specify an address in the United Kingdom at which that person or someone on that person's behalf may be given documents, which address is to be treated instead as that person's proper address.
8. In this Schedule—
- “dedicated portal” means a facility on a person's website which is established to allow electronic communication with that person;
- “proper address” means in the case of—
- (a) a body corporate, the registered office (if it is in the United Kingdom) or the principal office of that body in the United Kingdom;
  - (b) a partnership, the principal office of the partnership in the United Kingdom;
  - (c) any other person, that person's last known address, which includes an email address.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

<sup>M30</sup>These Regulations make provision for the purpose of enabling consumers' demands for electricity in Great Britain to be met. They do so through capacity agreements, instruments which confer rights and impose obligations on those awarded an agreement. These rights and obligations consist principally of the right to receive capacity payments from the Settlement Body for generating (or reducing demand for) electricity at times of system stress, and the liability to make a penalty payment where the capacity agreement is breached. The Regulations also impose obligations on persons who supply electricity in Great Britain pursuant to an electricity supply licence (granted by the Gas and Electricity Markets Authority (“the Authority”) under section 6 of the Electricity Act 1989 ). Those obligations consist principally of requirements to make payments to the settlement body.

### Part 1

Regulation 2 contains definitions of terms used in these Regulations, including “the Rules” (i.e. capacity market rules), “the Delivery Body”, “the GB transmission system”, and “the Settlement Body”. It also defines various connected terms concerning the “prequalification” and the “de-rating” of generating stations in respect of which capacity agreements may be issued.

<sup>M31</sup>Regulation 3 explains what is meant by the terms “providing electricity”, “reducing demand for electricity” and “electricity supplier” in sections 27, 28 and 30 of the Energy Act 2013 . Regulation 4 defines a “generating Capacity Market Unit” (a “CMU”), and regulation 5 a “demand side response” (a “DSR”) CMU – both terms used in the Regulations – for the purpose of identifying those who are to be eligible to compete for a capacity agreement in a capacity auction.

### Part 2

Regulation 6 deals with the reliability standard. The reliability standard is set by the Secretary of State to provide an indication of the acceptable level of security of supply for the GB transmission system, bearing in mind the likely cost of providing that level of security, and is used to inform a decision as to whether a capacity auction is to be held and the auction parameters for such a capacity auction. The reliability standard will be 3 hours of expected loss of load per capacity year.

### Part 3

Regulation 7 requires the Delivery Body, before the 1st June in 2015 and in each subsequent year, to deliver an annual electricity capacity report to the Secretary of State. This report will contain an assessment, taking into account a range of forecasts, of the amount of capacity that is needed for a delivery year, which runs from 1 October to 30 September, to meet the reliability standard. The report will include recommendations as to the target capacity that should be used in capacity auctions held four years ahead of a delivery year (“T-4”) and the target capacity that should be used in capacity auctions held one year ahead of a delivery year (“T-1”). It will also include the de-rating factors that should be applied to both generating CMUs and DSR CMUs in capacity auctions.

## Part 4

Regulation 10 identifies when the Secretary of State must decide whether or not a capacity auction is to be held. A specific timeframe is laid down for the first capacity auction and then all subsequent T-4 auctions, and from 2017, T-1 and T-4 auctions. The regulation also makes provision to allow the Secretary of State not to hold a T-1 auction and the reasons for when this provision may apply. Regulation 11 makes provision for the Secretary of State to determine the auction parameters which are to apply in a capacity auction. These are to be set before a capacity auction and include the target capacity to be obtained and the maximum price that can be paid at auction. Regulations 12 and 13 make further provision concerning auctions, including the circumstances in which auction parameters can be adjusted.

Regulation 14 sets out the eligibility of the applicant to bid in capacity auction for a CMU following the prequalification of the CMU. Regulation 15 details the general eligibility criteria which a CMU has to meet.

Regulations 16 to 18 confirm which CMUs should be excluded from participating in a capacity auction, and regulation 19 defines relevant terms used in those regulations.

Regulation 20 establishes the general duty of the Delivery Body, where a capacity auction is to be held, to exercise the functions conferred on it by regulations 21 to 28 and by capacity market rules. Regulation 21 sets out that the Delivery Body must publish auction guidelines before the start of a prequalification window and these are to include information on when the auction is to start, details on how to apply to prequalify, the timetable and the de-rating factor of each generating technology class set out in the capacity market rules.

Regulation 22 makes provision for the Delivery Body to determine the prequalification of all applications and notify each applicant of its decision in accordance with the capacity market rules. The regulation requires the Delivery Body to reconsider its prequalification decision if requested by the applicant.

Regulation 23 sets out that following the prequalification decisions, the Delivery Body is required to notify the Secretary of State of various matters. Regulation 24 confers responsibility for holding the capacity auction on the Delivery Body in accordance with the capacity market rules and the auction guidelines. The Regulations make provision for the Delivery Body to conduct the capacity auction itself, or to arrange for another person to do so, although the Delivery Body remains responsible for running the auction.

Regulation 25 requires the Delivery Body, following the completion of a capacity auction, to notify the results to the Secretary of State and each bidder, and to publish the auction results.

Regulation 26 sets out the circumstances in which a capacity auction can be cancelled, postponed or stopped by either the Secretary of State or the Delivery Body.

Regulation 27 gives the Secretary of State the power to annul a capacity auction within 7 working days of being notified of the auction result, if the Secretary of State has reasonable grounds to suspect that there was an irregularity in the capacity auction that affected either the clearing price or the CMUs successful in the capacity auction. If a decision is taken to annul a capacity auction, the Secretary of State must publish the decision immediately and within 4 weeks publish the reasons for it.

Regulation 28 sets out what is to happen if the Secretary of State rearranges a capacity auction, and regulation 29 provides for DSR transitional auctions to be held in the auction window commencing 1st September 2015 (for the 2016-17 delivery year) and in the auction window commencing 1st September 2016 (for the 2017-18 delivery year).

## Part 5

Regulation 30 defines “capacity agreement”. Capacity agreements are awarded to those bidders successful at a capacity auction.

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Regulation 31 requires the Delivery Body to set up and maintain a capacity market register. The register is required to contain the details of (amongst other things) each capacity agreement that is awarded following a capacity auction.

Regulation 32 sets out how termination fees (“TF1” and “TF2”) are calculated and the grounds on which a termination fee is payable by a capacity provider. It also confirms that for the first auction, TF1 will be £5,000/MW and TF2 will be £25,000/MW.

Regulation 33 makes provision for the Secretary of State to direct the Delivery Body to withdraw a termination notice issued by the Delivery Body or to extend the date by which a capacity provider must meet a specific requirement.

Regulation 34 sets out that the circumstances in which a capacity provider awarded a capacity agreement at a T-4 capacity auction can withdraw from the capacity agreement.

Regulation 35 provides that, should a capacity agreement be awarded in circumstances where the capacity provider did not meet the general eligibility criteria, the capacity agreement will be null and void.

## Part 6

Regulation 36 requires the Settlement Body to make settlement calculations. Regulation 37 requires the Settlement Body to issue a “data default notice” to a capacity provider who fails to comply with a requirement to provide information under the capacity market rules. Such a notice will prevent a capacity provider receiving payment from the Settlement Body.

Regulation 38 deals with invoices and credit notes issued by the Settlement Body.

Regulation 39 requires the Settlement Body to determine, in accordance with the capacity market rules, various matters for each capacity committed CMU.

Regulation 40 provides for each capacity provider to be entitled to receive from the Settlement Body a capacity payment in each month of a delivery year. Regulation 41 sets out the circumstances in which a capacity provider must pay to the Settlement Body a capacity provider penalty charge in respect of any month of a delivery year. And regulation 42 makes provision for a capacity provider to receive from the Settlement Body an over-delivery payment in respect of a delivery year in which the capacity provider's CMU over-delivered its obligation in the delivery year.

Regulation 43 sets out that a capacity provider must pay to the Settlement Body a termination fee if a capacity agreement is terminated on a ground specified in the capacity market rules.

Regulation 44 provides for the Settlement Body to levy electricity suppliers for the first levy period from 1st August 2014 to 31st March 2015 to enable the Settlement Body to covers its costs for this period.

Regulation 45 contains various defined terms.

Regulation 46 sets out that invoices issued by the Settlement Body must be paid no later than the payment due date. If the invoice is not paid in full by the payment due date, interest will be payable at 5 per cent per annum over the Bank of England base rate on the outstanding balance. Provision is given to allow a payer to dispute an invoiced amount.

Regulation 47 requires the Settlement Body to establish and maintain a “non-payment register” to list any payer who does not pay an invoice by the payment due date.

Regulation 48 sets out the time by which the Settlement Body must deal with credit notes and over-delivery payment credit notes, while regulations 49 and 50 make provision for the Settlement Body to reduce capacity payments if a capacity provider is liable for any unpaid capacity provider penalty charges or has failed to demonstrate satisfactory performance.

Regulation 51 makes provision for the Settlement Body to withhold making capacity payments to capacity providers if a capacity provider has been issued a data default notice or if the capacity provider is insolvent.

Regulation 52 sets out the process for the Settlement Body paying withheld credit, and makes provision for the Settlement Body to deduct all or part of the withheld credit to a capacity provider who is insolvent.



## **Part 7**

Regulation 53 sets out that Part 7 of the Regulations is applicable to prospective generating CMUs or unproven DSR CMUs as well as those CMUs who have received a “conditional prequalification notice” from the Delivery Body.

Regulation 54 sets out how a person can provide credit cover and the permissible forms of credit support.

Regulation 55 sets out how the Settlement Body must determine whether the credit support can be approved.

Regulation 56 requires credit cover equal to or more than the required amount to be maintained by the applicant at all times during the specified credit obligation period.

Regulation 57 requires an applicant to notify the Settlement Body if the bank issuing a letter of credit is downgraded and, within eight days, to provide replacement credit cover.

Regulation 58 sets out the circumstances in which the credit cover can be released by the Settlement Body back to the applicant.

Regulation 59 makes provision for the Settlement Body to draw down the credit cover from an unproven DSR CMU or a prospective generating CMU if specific requirements are not met. This also applies if a termination fee is due but is not paid.

Regulation 60 makes further provision concerning an applicant's credit cover. An applicant who is required to provide credit cover must do so within 5 working days on receipt of a conditional prequalification notice.

Regulation 61 confirms the period for which credit cover must be maintained by the applicant and the circumstances in which the period ends or the credit cover amount can be altered.

Regulation 62 provides that, where an applicant fails to maintain the required credit cover, the applicant will not be eligible for participation in the capacity auction.

## **Part 8**

Regulation 63 enables the Secretary of State, the Authority and auction monitors to require information to be provided to them from identified persons for specified purposes. For example, the Secretary of State can require information from suppliers and owners of CMUs for the purpose of reviewing the capacity market.

Regulation 64 makes provision for certain protected items not to be disclosed on receipt of a request for information under regulation 63.

Regulation 65 puts in place provisions on protection of information, and regulation 66 confirms that section 33(3) of the Energy Act 2013 applies in relation to the disclosure of information required in the capacity market rules.

## **Part 9**

Regulation 67 identifies those requirements which are to be enforceable by the Authority as if they were relevant requirements for the purposes of section 25 of the Electricity Act 1989.

## **Part 10**

Regulation 68 sets out which decisions made by the Delivery Body under the capacity market rules may be reviewed, and by whom a dispute or appeal can be brought.

Regulation 69 sets out the process for making a request to the Delivery Body to reconsider a decision and requires the Delivery Body, on receipt of a request, to reconsider its decision and notify the person of the outcome of the reconsideration and the reasons for the reconsidered decision.

Regulation 70 allows an affected person who disputes the Delivery Body's reconsidered decision to apply to the Authority to resolve the dispute.

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Regulation 71 sets out the process for the Authority to determine applications it receives to resolve a dispute and the options open to the Authority in making a determination.

Regulation 72 makes provision for an affected person to appeal to the court against a determination made by the Authority. An appeal to the court may only be made on a point of law and must be brought within 28 days after the date of the Authority's determination.

Regulation 73 sets out the consequences of a successful review or appeal depending on when the outcome of a successful review or appeal is made.

Regulation 74 makes provision for a dispute on a calculation or determination made by the Settlement Body under Parts 6 or 7 of the Regulations to be brought.

Regulation 75 sets out that a disputing party may give a notice to the Settlement Body of a dispute setting out the matter giving rise to the dispute and the outcome sought.

Regulation 76 sets out the process for determining a dispute, for which the Settlement Body must decide whether to uphold the disputed calculation or determination or substitute it with a different calculation or determination.

## **Part 11**

Regulation 77 grants the Authority, the day after the first full capacity auction results are published, the power to make capacity market rules which are concerned with the operation and administration of the capacity market. This includes the power to amend, add to, revoke or substitute any provision of the capacity market rules. Any change to the capacity market rules which confers functions on the Secretary of State or confers additional functions on the Authority can only be made with the approval of the Secretary of State.

Regulation 78 sets out the objectives to which the Authority must have regard when making capacity market rules in addition to its principal objective and general duties.

Regulation 79 sets out the procedure the Authority must follow before making capacity market rules.

## **Part 12**

Regulation 80 makes provision for the Secretary of State to appoint a person to be the Settlement Body once these Regulations come into force.

Regulation 81 requires the Secretary of State to review both the Regulations and the functions conferred on the Authority by capacity market rules within 5 years of these Regulations coming into force and thereafter at intervals not exceeding 5 years.

Regulation 82 requires the Authority to review the capacity market rules within 5 years of the capacity market rules first coming into force and thereafter at intervals not exceeding 5 years.

Regulation 83 requires the Authority to provide the Secretary of State with an annual report on the operation of the capacity market and the Delivery Body's performance of its functions in relation to the capacity market. The first report must be provided to the Secretary of State by no later than 6 months after the completion of the first capacity auction and thereafter no later than 6 months after the completion of each T-4 auction.

Regulation 84 requires the Settlement Body to produce an annual report, no later than 3 months after the end of the capacity year to which the report relates, on its performance of its functions.

## **Part 13**

Regulation 85 sets out restrictions on the Delivery Body's liability in damages for anything done or omitted to be done in the exercise of its functions under these Regulations or capacity market rules.

## **Part 14**

Regulation 87 sets out the transitory provisions for the first T-4 auction.

Regulation 88 confirms that section 47ZA of the Electricity Act 1989 is repealed.

### **Schedules**

Schedule 1 sets out the detailed settlement calculations to be made by the Settlement Body, including capacity payments, capacity provider penalty charges, over-delivery payments and the settlement costs levy for the first levy period.

Schedule 2 makes general provision concerning documents.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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