

STATUTORY INSTRUMENTS

2019 No. 862

The Electricity Capacity (No. 1) Regulations 2019

PART 3 E+W+S

Payments administered by the Settlement Body

CHAPTER 1 E+W+S

Supplier charge payments during standstill period

Settlement Body to hold supplier charge payments E+W+S

7.—(1) The Settlement Body must hold any capacity market supplier charge and any other payments it receives from electricity suppliers under regulation 6A(7) of the Supplier Payment Regulations^{M1} (unless returned to the electricity supplier which made the payment) to enable it to meet the cost of making capacity payments—

- (a) in respect of capacity obligations contained in capacity agreements that existed on 15th November 2018 which were payable in respect of a standstill month (but were prevented by the law relating to state aid from being paid at the time); and
- (b) in respect of capacity obligations awarded through the conditional agreement auction in respect of a T-1 standstill month.

(2) In this regulation, “T-1 standstill month” means—

- (a) any month included (wholly or partly) in the T-1 standstill period; or
- (b) the month after the month in which the T-1 capacity agreement trigger event or T-1 termination trigger event occurs.

(3) For the purposes of paragraph (2), “T-1 standstill period” means any part of the delivery year beginning on 1st October 2019 which falls before the date on which the T-1 capacity agreement trigger event or T-1 termination trigger event occurs.

Commencement Information

II Reg. 7 in force at 10.4.2019, see [reg. 1\(2\)](#)

Marginal Citations

M1 [Regulation 6A\(7\)](#) is read into those regulations as modifications to the application of the Supplier Payment Regulations made by regulation 56(2).

Supplier charge payments used to make capacity payments: deferred capacity payment trigger event E+W+S

8. If the deferred capacity payment trigger event occurs, the Settlement Body must use the capacity market supplier charge and any other payments it holds under regulation 7(1) on the day

on which the trigger event occurs to meet the cost of making the capacity payments described in regulation 7(1)(a) in accordance with regulation 40 of the Principal Regulations ^{M2}.

Commencement Information

I2 Reg. 8 in force at 10.4.2019, see [reg. 1\(2\)](#)

Marginal Citations

M2 [Regulation 40](#) applies in respect of those payments as modified by regulation 13.

Supplier charge payments used to make capacity payments: T-1 capacity agreement trigger event **E+W+S**

9. If the T-1 capacity agreement trigger event occurs, the Settlement Body must use the supplier charge and any other payments it holds under regulation 7(1) on the day on which the trigger event occurs to meet the cost of making capacity payments to capacity providers in respect of capacity obligations awarded through the conditional agreement auction in accordance with regulations 40 and 40A of the Principal Regulations ^{M3}.

Commencement Information

I3 Reg. 9 in force at 10.4.2019, see [reg. 1\(2\)](#)

Marginal Citations

M3 [Regulations 40](#) and 40A apply in respect of those payments as modified by regulation 38.

Return of supplier charge payments: agreement termination trigger event **E+W+S**

10.—(1) If the agreement termination trigger event and T-1 termination trigger event have both occurred, the Settlement Body must, for each electricity supplier (“S”), as soon as reasonably practicable after both trigger events have occurred—

- (a) determine the amount of supplier charge and any other payments paid by S which it holds under regulation 7(1) on the day on which the trigger event occurs;
- (b) determine the amount of interest payable (if any) on the amount determined under sub-paragraph (a); and
- (c) make a payment to S for an amount determined by adding the amounts determined under sub-paragraphs (a) and (b).

(2) In paragraph (1)(b), interest is payable only if there is a legal obligation to pay S interest in respect of the amount determined under paragraph (1)(a), and is only payable to the extent of that legal obligation.

Commencement Information

I4 Reg. 10 in force at 10.4.2019, see [reg. 1\(2\)](#)

CHAPTER 2 **E+W+S**

Modifications to application of Principal Regulations: agreements existing on 15th November 2018

Application **E+W+S**

11. The modifications to the application of the Principal Regulations in this Chapter apply only in respect of capacity agreements that existed on 15th November 2018.

Commencement Information

I5 Reg. 11 in force at 10.4.2019, see [reg. 1\(2\)](#)

Interpretation: modifications **E+W+S**

12. Regulation 2 (interpretation) of the Principal Regulations applies as if in paragraph (1), in the appropriate places, there were inserted the following definitions—

- (a) “conditional agreement auction” has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;
- (b) “deferred capacity payment trigger event” has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;
- (c) “standstill month” has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019; ^{F1}...
- (d) “standstill period” has the meaning given in regulation 3 of the Electricity Capacity (No. 1) Regulations 2019 [^{F2}; and]
- [^{F3}(e) “supplementary mutualisation payment” has the meaning given in regulation 7A(8) of the Supplier Payment Regulations.]

Textual Amendments

- F1** Word in reg. 12(c) omitted (18.7.2019) by virtue of [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), [regs. 1\(2\)](#), [3\(3\)\(a\)](#)
- F2** Word in reg. 12(d) substituted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), [regs. 1\(2\)](#), [3\(3\)\(b\)](#)
- F3** Reg. 12(e) inserted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), [regs. 1\(2\)](#), [3\(3\)\(c\)](#)

Commencement Information

I6 Reg. 12 in force at 10.4.2019, see [reg. 1\(2\)](#)

Capacity payments: modifications **E+W+S**

13.—(1) Regulation 40 (capacity payments) of the Principal Regulations applies as if, after paragraph (7) there were inserted—

“(8) Paragraphs (1) to (7) are subject to regulation 40A”.

(2) The Principal Regulations apply as if after regulation 40, there were inserted—

“Capacity payments: standstill months

40A.—(1) This regulation applies where regulation 40 relates to capacity payments in respect of a standstill month of a delivery year.

(2) Where this regulation applies, regulation 40 applies as if—

- (a) in paragraph (1), after “month of a delivery year” there were inserted “ which is a standstill month ”;
- (b) at the end of paragraph (2)(b), there were inserted “in accordance with paragraph (4) (a)”;
- (c) in paragraph (4)(a), for “month M” there were substituted “ the month following the month in which the deferred capacity payment trigger event occurs ”;
- (d) in paragraph (5)—
 - (i) for “month M”, in the first place it occurs, there were substituted “ the month following the month in which the deferred capacity payment trigger event occurs ”; and
 - (ii) for “month M”, in the second place it occurs, there were substituted “ the standstill collection period ”;

(e) for paragraphs (6) and (7), there were substituted—

“(6) If by the day referred to in paragraph (5) the Settlement Body has received capacity market supplier charges in respect of the standstill collection period for a delivery year (“collection period X”) the total of which is less than the sum of MCP_{cm} for all capacity providers for every month within collection period X (“month SM”), the amount of each capacity payment which would otherwise be determined under paragraph (2) in respect of each month SM 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) Where the amount of capacity payments determined under paragraph (2) in respect of months within collection period X is reduced under paragraph (6), the Settlement Body must—

- (a) determine the total amount of this reduction (the “residual amount”);
- (b) determine the portion of the residual amount attributable to each capacity provider (“C”) to whom a capacity payment was payable under paragraph (2) in respect of one or more months within collection period X (“residual capacity payment”); and
- (c) issue a credit note to C for the amount of the residual capacity payment attributable to C.

(8) The Settlement Body must issue a credit note to C under paragraph (7)(c) by no later than the 28th working day after the date on which invoices for supplementary mutualisation payments are issued under regulation 6A(11) of the Supplier Payment Regulations in respect of the standstill collection period.

(9) If, by the 26th working day after the date on which invoices for supplementary mutualisation payments are issued under regulation 6A(11) of the Supplier Payment Regulations, the Settlement Body has received capacity market supplier charges in respect of the full residual amount the total of which is less than the full residual amount, the amount of each residual capacity payment determined under paragraph (7)(b) must be reduced by the same proportion so that the total amount of residual capacity payments payable to all capacity providers is equal to the total

amount of capacity market supplier charges received in respect of the full residual amount.

(10) A capacity provider's entitlement to receive a residual capacity payment under paragraph (7) is subject to paragraph (9) and regulations 49 to 51.

(11) In paragraph (6)—

- (a) the total amount of capacity market supplier charges received by the Settlement Body is the total amount of supplier charges received in respect of the standstill collection period to make capacity payments in respect of all capacity agreements; and
- (b) the total amount of capacity payments payable to capacity providers is the total amount of capacity payments payable to capacity providers in respect of all capacity agreements.

(12) In paragraph (9)—

- (a) “full residual amount” means the residual amount attributable to capacity providers in respect of all capacity agreements; and
- (b) the total amount of residual capacity payments payable to all capacity providers includes residual capacity payments payable in respect of all capacity agreements.

(13) In this regulation—

“all capacity agreements” means—

- (a) capacity agreements which existed on 15th November 2018; and
- (b) in respect of the delivery year commencing on 1st October 2019, capacity agreements awarded through the conditional agreement auction;

“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; and

“standstill collection period” has the meaning given in regulation 2(1) of the Supplier Payment Regulations.””.

Commencement Information

17 Reg. 13 in force at 10.4.2019, see [reg. 1\(2\)](#)

Capacity provider penalty charges: modifications **E+W+S**

14. Regulation 41 (capacity provider penalty charges) of the Principal Regulations applies as if—

- (a) at the beginning of paragraph (2), there were inserted “Subject to paragraph (2A),”; and
- (b) after paragraph (2), there were inserted—

“(2A) If month M is a standstill month, the reference in paragraph (2) to “the 21st working day after the end of month M” is to be construed as a reference to “the 21st working day after the month following the month in which the deferred capacity payment trigger event occurs””.

Commencement Information

18 Reg. 14 in force at 10.4.2019, see [reg. 1\(2\)](#)

Over-delivery payments: modifications **E+W+S**

15. Regulation 42 (over-delivery payments) of the Principal Regulations applies as if—
- (a) at the beginning of paragraph (3), there were inserted “Subject to paragraph (3A),”; and
 - (b) after paragraph (3), there were inserted—

“(3A) If year X includes a standstill month (in whole or in part), the reference in paragraph (3) to “the 28th working day after the end of year X” is to be construed as a reference to “the 28th working day after the end of year X (if the deferred capacity payment trigger event occurs before the last month of year X) or otherwise as soon as reasonably practicable after the deferred capacity payment trigger event occurs”.”.

Commencement Information

I9 Reg. 15 in force at 10.4.2019, see [reg. 1\(2\)](#)

Termination fees: modifications **E+W+S**

16. Regulation 43 (termination fees) of the Principal Regulations applies as if—
- (a) at the beginning of paragraph (2), there were inserted “Subject to paragraph (2A),”; and
 - (b) after paragraph (2), there were inserted—

“(2A) If the Settlement Body—

- (a) receives a notice during a standstill month that a capacity agreement has been terminated; or
- (b) received a notice of the termination of a capacity agreement before 15th November 2018 but had not fulfilled the requirements in paragraph (2) by that date,

the reference in paragraph (2) to “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” is to be construed as a reference to “as soon as reasonably practicable after the deferred capacity payment trigger event occurs (if the Settlement Body receives the notice before the trigger event occurs)”.”.

Commencement Information

I10 Reg. 16 in force at 10.4.2019, see [reg. 1\(2\)](#)

Non-completion fees: modifications **E+W+S**

17. Regulation 43A (non-completion fee) of the Principal Regulations applies as if—
- (a) at the beginning of paragraph (3), there were inserted “Subject to paragraph (3A),”; and
 - (b) after paragraph (3), there were inserted—

“(3A) If the Settlement Body—

- (a) receives a notice during a standstill month that a non-completion fee has been imposed; or
- (b) received a notice that a non-completion fee had been imposed before 15th November 2018 but had not fulfilled the requirements in paragraph (3) by that date,

the reference to paragraph (3) to “as soon as reasonably practicable after receiving notice in accordance with capacity market rules of the imposition of a non-completion fee” is to be construed as a reference to “as soon as reasonably practicable after the deferred capacity payment trigger event occurs (if the Settlement Body receives the notice before the trigger event occurs)”.

Commencement Information

I11 Reg. 17 in force at 10.4.2019, see [reg. 1\(2\)](#)

Repayment of capacity payments: modifications **E+W+S**

18.—(1) Regulation 43B (repayment of capacity payments: termination) of the Principal Regulations applies as if—

- (a) at the beginning of paragraph (2), there were inserted “Subject to paragraph (2A),”; and
- (b) after paragraph (2), there were inserted—

“(2A) If the Settlement Body—

- (a) receives final notice during a standstill month that a capacity agreement has been terminated; or
- (b) received final notice of the termination of a capacity agreement before 15th November 2018 but had not fulfilled the requirements in paragraph (2) by that date,

the reference in paragraph (2) to “as soon as reasonably practicable after receiving final notice of termination of the capacity agreement” should be construed as a reference to “as soon as reasonably practicable after the deferred capacity payment trigger event occurs (if the Settlement Body receives the notice before the trigger event occurs)”.

(2) Regulation 43C (repayment of capacity payments: metering fault) of the Principal Regulations applies as if—

- (a) at the beginning of paragraph (2), there were inserted “Subject to paragraph (3A),”; and
- (b) after paragraph (3), there were inserted—

“(3A) If the “relevant date” in paragraph (2)—

- (a) occurs during a standstill month; or
- (b) occurred before 15th November 2018 but the Settlement Body had not fulfilled the requirements in paragraph (2) by that date,

the reference in paragraph (2) to “as soon as reasonably practicable after the relevant date” should be construed as a reference to “as soon as reasonably practicable after the deferred capacity payment trigger event occurs (if the relevant date occurs before the trigger event occurs)”.

Commencement Information

I12 Reg. 18 in force at 10.4.2019, see [reg. 1\(2\)](#)

Non-payment register: modifications **E+W+S**

19. Regulation 47 (non-payment register) of the Principal Regulations applies as if—

- (a) in paragraph (4), after sub-paragraph (a), there were inserted—
- “(aa) relating to—
- (i) a payment of standstill collection period supplier charge; or
- (ii) a mutualisation payment (including a supplementary mutualisation payment) in respect of a standstill collection period,
- which is not fully paid (including any late payment interest due in respect of that charge or payment), after the last scheduled annual reconciliation run under Part 5 of the Supplier Payment Regulations for the delivery year in respect of which the entry was made;”;
- (b) for paragraph (7) there were substituted—
- “(7) In this regulation—
- “late payment interest” has the meaning given in regulation 11(3) of the Supplier Payment Regulations;
- “mutualisation payment” has the meaning given in regulation 7A(4) of the Supplier Payment Regulations;
- “payer” means a person to whom an invoice is issued under these Regulations or the Supplier Payment Regulations;
- “scheduled annual reconciliation run” has the meaning given in regulation 18(1)(b) of the Supplier Payment Regulations; and
- “standstill collection period supplier charge” has the meaning given in regulation 2(1) of the Supplier Payment Regulations.”.

Commencement Information

I13 Reg. 19 in force at 10.4.2019, see [reg. 1\(2\)](#)

Applicant credit cover: modifications **E+W+S**

20.—(1) The modifications in paragraph (2) do not apply in relation to an obligation to maintain applicant credit cover in respect of the conditional agreement auction.

(2) Regulation 59 (requirement to provide applicant credit cover) of the Principal Regulations applies as if—

- (a) in paragraph (1), after “paragraph (1B)” there were inserted “ and (1C) ”;
- (b) after paragraph (1B), there were inserted—
- “(1C) During the standstill period, an applicant who would otherwise be required to provide —
- (a) applicant credit cover under paragraph (1); or
- (b) increased credit cover under paragraph (4),
- is not required to do so, but may nevertheless provide and maintain such cover during the whole or part of that period.”;
- (c) at the end of paragraph (3), there were inserted “unless paragraph (5A) applies”;
- (d) at the end of paragraph (5), there were inserted “unless paragraph (5A) applies”; and
- (e) after paragraph (5), there were inserted—
- “(5A) If the deferred capacity payment trigger event occurs, an applicant to whom paragraph (1C) applies must provide applicant credit cover in the amount determined in

accordance with paragraph (2)(a) or (4) (as the case may be) within 40 working days after receiving a notice [^{F4}from] the Delivery Body that the applicant must provide applicant credit cover under paragraph (1).”.

Textual Amendments

F4 Word in reg. 20(2)(e) substituted (18.7.2019) by [The Electricity Capacity \(No. 2\) Regulations 2019 \(S.I. 2019/1139\)](#), regs. 1(2), 3(4)

Commencement Information

I14 Reg. 20 in force at 10.4.2019, see reg. 1(2)

Credit obligation period: modifications **E+W+S**

21. Regulation 60 of the Principal Regulations (credit obligation period) applies as if after paragraph (4), there were inserted—

“(4A) Paragraphs (1) to (4) are subject to paragraph (4B).

(4B) An applicant who is not required to provide credit cover during the standstill period by virtue of regulation 59(1C) is not required to maintain any credit cover during the standstill period, but may nevertheless maintain such cover during that period.”.

Commencement Information

I15 Reg. 21 in force at 10.4.2019, see [reg. 1\(2\)](#)

Draw down of credit cover: modifications **E+W+S**

22. Regulation 61 of the Principal Regulations (draw down of credit cover) applies as if—

- (a) at the beginning of paragraph (2), there were inserted “Subject to paragraph (2A),”; and
- (b) after paragraph (2), there were inserted—

“(2A) If the Settlement Body is required to draw down applicant cover under paragraph (2) in respect of an applicant to whom regulation 59(5A) applies, the Settlement Body must draw down the credit cover as soon as reasonably practicable after the day by which regulation 59(5A) requires A to have provided the credit cover.”.

Commencement Information

I16 Reg. 22 in force at 10.4.2019, see [reg. 1\(2\)](#)

Effect of non-compliance: modifications **E+W+S**

23. Regulation 62 of the Principal Regulations (effect of non-compliance) applies as if—

- (a) regulation 62 were renumbered as paragraph (1) of that regulation;
- (b) at the beginning of paragraph (1) as so renumbered, there were inserted “Subject to paragraph (2),”; and
- (c) after paragraph (1) as so renumbered, there were inserted—

“(2) A is to be treated as having complied with this Part if—

- (a) at any time during the standstill period, A has not provided credit cover in accordance with regulation 59;
- (b) regulation 59(1C)^{M4} applies to A; and
- (c) A provides applicant credit cover in accordance with regulation 59(5A)^{M5}.”.

Commencement Information

I17 Reg. 23 in force at 10.4.2019, see [reg. 1\(2\)](#)

Marginal Citations

M4 [Regulation 59\(1C\)](#) is read into the Principal Regulations as a modification to the application of those regulations made by regulation 20.

M5 [Regulation 59\(5A\)](#) is read into the Principal Regulations as a modification to the application of those regulations made by regulation 20.

Changes to legislation:

There are currently no known outstanding effects for the The Electricity Capacity (No. 1) Regulations 2019, PART 3.