

2024 No. 434

ELECTRICITY

**The Electricity Capacity (Supplier Payment etc.) (Amendment
and Excluded Electricity) Regulations 2024**

Made - - - - - *20th March 2024*

Coming into force *1st April 2024*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 27(1) and (5), 28, 30, 32, 33(1) and 40(1) of the Energy Act 2013 (“the Act”)(a).

The Secretary of State has before making these Regulations—

- (a) consulted the persons listed in section 40(2)(a) and (b) of the Act and such other persons as the Secretary of State considered it appropriate to consult;
- (b) in accordance with section 5(1)(d) had regard to the matters in section 5(2) of the Act.

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

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity Capacity (Supplier Payment etc.) (Amendment and Excluded Electricity) Regulations 2024.

(2) These Regulations come into force on 1st April 2024.

(3) These Regulations extend to England and Wales and Scotland.

Interpretation

2.—(1) In these Regulations—

“the Balancing and Settlement Code” means the code for governance of electricity balancing and settlement in Great Britain, as amended from time to time, which is maintained in accordance with the conditions of licences granted under section 6(1)(b) of the Electricity Act 1989 (b);

(a) 2013 c. 32.

(b) 1989 c. 29; section 6(1)(b) was substituted by the Energy Act 2004 (c. 20), section 136(1). There are other amendments to section 6 but none is relevant. The code is accessible on the website of Elexon Limited at <https://www.elexon.co.uk/bsc->

“the BSCCo” means ELEXON Limited (or any successor to that company acting in the capacity of the BSCCo within the meaning given in the Balancing and Settlement Code);

“BSC volume allocation run” means any one of the following—

- (a) an Initial Volume Allocation Run,
- (b) an Interim Information Volume Allocation Run, or
- (c) a Reconciliation Volume Allocation Run (including a Final Reconciliation Volume Allocation Run or a Post-Final Volume Allocation Run);

“CfD counterparty” means the person or persons designated from time to time as a counterparty for contracts for difference in accordance with section 7 of the Act;

“CM EII excluded electricity” means any amount of electricity determined as such in accordance with regulation 3;

“EII certificate” means a certificate obtained pursuant to and maintained in accordance with Chapter 2 of Part 2 of the Excluded Electricity Regulations;

“EII correction notice” means a notice issued by the Secretary of State pursuant to regulation 12A of the Excluded Electricity Regulations;

“electricity supplier” means—

- (a) a person supplying electricity to premises in Great Britain under a supply licence; or
- (b) a person who has supplied electricity to premises in Great Britain under a supply licence and who, by virtue of regulation 16 of the Supplier Payment Regulations, is liable to make or entitled to receive a payment following the termination of that supply licence;

“Excluded Electricity Regulations” means the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015(a);

“Final Reconciliation Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“Initial Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“Interim Information Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“Post-Final Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“Principal Regulations” means the Electricity Capacity Regulations 2014(b);

“Reconciliation Volume Allocation Run” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“relevant arrangements” has the meaning given by regulation 4;

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

“Supplier Payment Regulations” means the Electricity Capacity (Supplier Payment etc.) Regulations 2014(c);

(2) Any reference in these Regulations to a supply of electricity is a reference to its supply in Great Britain, and “supply” or “supplied” is to be construed in accordance with section 4(4) of the Electricity Act 1989(d).

and-codes/ (their postal address is 4th Floor, 350 Euston Road London NW1 3AW; their email address is bscservicedesk@cgi.com).

- (a) S.I. 2015/721; relevant amending instruments are S.I. 2017/1051, 2020/130, 2023/415.
- (b) S.I. 2014/2043, amended by S.I. 2014/3354, 2015/875, 2015/1974, 2016/742, 2017/1053, 2019/530, 2019/862, 2019/1139, 2020/697, 2020/1470, 2021/901, 2023/860.
- (c) S.I. 2014/3354, amended by S.I. 2015/875, 2016/742, 2017/1053, 2022/401; there are other amendments and modifications, but none is relevant.
- (d) Section 4(4) was substituted by the Energy Act 2004 (c. 20), section 179(1). There are other amendments to section 4 but none is relevant.

PART 2

CM EII Excluded Electricity

Determination of CM EII excluded electricity

3.—(1) The relevant proportion of electricity which is measured by a meter in respect of which an EII certificate is in force is CM EII excluded electricity, where relevant arrangements apply in relation to that meter.

(2) For the purposes of paragraph (1) the relevant proportion in relation to a meter in respect of which an EII certificate is in force is—

- (a) where no EII correction notice in relation to that certificate has effect, the proportion specified in that EII certificate; or
- (b) where an EII correction notice has effect in relation to that certificate, the proportion specified in that EII correction notice.

(3) Where the Settlement Body makes a determination under the Supplier Payment Regulations which requires the determination or calculation of the amount of electricity supplied which is CM EII excluded electricity, it must, where possible, base that determination or calculation on information derived from the BSC volume allocation run carried out by the BSCCo most recently before the day on which the electricity was supplied.

Relevant Arrangements

4.—(1) For the purposes of regulation 3, “relevant arrangements” means arrangements which are approved by the Settlement Body under paragraph (2) or (3)(a), to enable the provision of information to the Settlement Body about the amount of electricity measured by meters in respect of which CM EII certificates are in force.

(2) The Settlement Body must, by 1st July 2024, approve arrangements which it considers will enable the provision of information about the amount of electricity measured by meters in respect of which CM EII certificates are in force.

(3) The Settlement Body must keep the relevant arrangements under review and may—

- (a) approve alternative relevant arrangements; or
- (b) withdraw approval for relevant arrangements provided that—
 - (i) it has given six months’ notice or more of the withdrawal of approval to electricity suppliers; and
 - (ii) it has ensured that, after the withdrawal of approval of those arrangements, there are relevant arrangements which are approved.

(4) The Settlement Body may not approve arrangements as relevant arrangements unless it is satisfied that every electricity supplier is able to participate in such arrangements.

(5) Where the Settlement Body approves relevant arrangements it must publish, in such manner as it considers appropriate for the purpose of bringing it to the attention of electricity suppliers, a document which describes those arrangements.

Information sharing

5.—(1) If the CfD counterparty receives from the Secretary of State any EII correction notice or any notice of issue or revocation of an EII certificate or of a specific occurrence pursuant to regulation 12 or regulation 13 of the Excluded Electricity Regulations, it must provide a copy of that notice to the Settlement Body as soon as reasonably practicable after it receives that notice.

(2) The CfD counterparty may share information with the Settlement Body for the purpose of facilitating the performance of the Settlement Body’s functions under these Regulations.

(3) The Settlement Body and the CfD counterparty may share information with each other for the purpose of ensuring consistency between the operation of these Regulations and the Excluded Electricity Regulations.

(4) The Settlement Body may share information with the Secretary of State for the purpose of facilitating the performance of the Secretary of State's functions under these Regulations, the Act and the Principal Regulations.

(5) The Settlement Body may share information with the Authority for the purpose of facilitating the performance of the Authority's functions under the Principal Regulations.

(6) The Settlement Body may share information received pursuant to the relevant arrangements for the purpose of facilitating the performance of its functions under these Regulations, the Supplier Payment Regulations and the Principal Regulations.

PART 3

Amendment of the Supplier Payment Regulations

Amendment of the Supplier Payment Regulations

6. The Supplier Payment Regulations are amended in accordance with regulations 7 to 12.

Regulation 2 (interpretation)

7. In regulation 2(1)—

(a) in the appropriate places insert the following definitions—

““CM EII excluded electricity” means any amount of electricity determined as such in accordance with regulation 3 of the CM Excluded Electricity Regulations;

“CM Excluded Electricity Regulations” means the Electricity Capacity (Supplier Payment etc.) (Amendment and Excluded Electricity) Regulations 2024;”;

““relevant arrangements” means arrangements which are approved by the Settlement Body under paragraph (2) or (3)(a) of regulation 4 of the CM Excluded Electricity Regulations;

“relevant demand” in relation to an electricity supplier (“S”) means the amount of electricity (expressed in MWh) supplied by S to premises in Great Britain;”;

(b) omit the definition of “gross demand”.

Regulation 3 (the supplier settlement calculations)

8. In regulation 3(3), after “capacity market rules” insert “or is provided to the Settlement Body pursuant to the relevant arrangements”.

Regulation 4 (forecast of gross demand)

9. In regulation 4—

(a) in the heading, for “gross demand”, substitute “relevant demand and CM EII excluded electricity”;

(b) in paragraph (2)—

(i) in sub-paragraph (a) for “gross demand” substitute “relevant demand”;

(ii) omit the “and” after that sub-paragraph;

(iii) after that sub-paragraph insert—

- “(aa) forecast the amount of CM EII excluded electricity that it will supply through meters in respect of which an EII certificate is in force during periods of high demand in year X; and”;
- (c) in sub-paragraph (b), for “forecast” substitute “forecasts”.

Regulation 6 (capacity market supplier charge)

10. For regulation 6(3), substitute—

“Where, under regulation 4, S provided to the Settlement Body forecasts for year X of—

- (a) relevant demand (other than a forecast of zero relevant demand), and
- (b) CM EII excluded electricity,

S must make a monthly payment to the Settlement Body in each month of year X on account of its liability under paragraph (1) (a “monthly capacity market supplier charge”).”.

Regulation 19 (recalculation of payments: general)

11. In regulation 19—

- (a) omit the “and” after paragraph (a);
- (b) after paragraph (a) insert—

“(aa) make use of any revised or additional data provided to the Settlement Body pursuant to the relevant arrangements in respect of CM EII excluded electricity, in place of the data previously used or estimates made to make a calculation or determination;”.

Schedule 1 (calculation of amounts)

12. In Schedule 1—

- (a) in paragraph 2(5), for the definition of $FSSPD_{sx}$ substitute—

““ $FSSPD_{sx}$ ” means the amount of the relevant demand forecast by S for year X under regulation 4(2)(a) and given to the Settlement Body under regulation 4(2)(b) less the CM EII excluded electricity forecast by S for year X under regulation 4(2)(aa) and given to the Settlement Body under regulation 4(2)(b).”;

- (b) in paragraph 3—

- (i) in sub-paragraph (1) for “gross demand” substitute “relevant demand and CM EII excluded electricity”;
- (ii) in sub-paragraph (5), for the definition of $ASSPD_{sx}$ substitute—

““ $ASSPD_{sx}$ ” means the actual relevant demand of S during periods of high demand in year X less the actual CM EII excluded electricity supplied by S during periods of high demand in year X.”;

- (c) in paragraph 7(4), for the definition of $ASSPD_{sy}$ substitute—

““ $ASSPD_{sr}$ ” means—

- (a) subject to paragraph (b), the actual relevant demand of S during periods of high demand (“AD”) in the relevant months less the actual CM EII excluded electricity supplied by S during periods of high demand (“AEE”); or
- (b) if, at the date on which the calculation in sub-paragraph (2) is to be made, the Settlement Body does not have the data necessary to calculate AD or AEE for all suppliers for one or more of the relevant months, AD in the relevant months for which data is available to the Settlement Body less AEE in the same relevant months.”;

- (d) in paragraph 8(4) for the definitions of $ASSPD_{sy}$ and $\sum_t ASSPD_{ly}$ substitute—

““ $ASSPD_{sy}$ ” means the actual relevant demand of S during periods of high demand in year Y less the actual CM EII excluded electricity supplied by S during periods of high demand in year Y;

“ $\sum_t ASSPD_{ly}$ ” means the sum of the actual relevant demand of every electricity supplier who is liable to pay the settlement costs levy in the relevant month less the sum of the actual CM EII excluded electricity supplied by every electricity supplier who is liable to pay the settlement costs levy in the relevant month.”.

20th March 2024

Nusrat Ghani
Minister of State
Department for Business and Trade

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under the Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354, the “Supplier Payment Regulations”), electricity suppliers make payments (based on the amounts of electricity they supply) to fund payments to electricity capacity providers under the Capacity Market (provided for in Regulations and Rules made under Chapter 3 of Part 2 of the Energy Act 2013). These Regulations exclude from the calculation of these payments, electricity (“CM EII excluded electricity”) that is supplied to industrial customers who have been issued with “EII certificates” under the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 (S.I. 2015/721, the “Excluded Electricity Regulations”).

Regulation 2 contains definitions, in particular it defines CM EII excluded electricity and EII certificates.

Regulation 3 makes provision about CM EII excluded electricity. It provides that CM EII excluded electricity is a proportion of electricity measured by certified meters, where there is a mechanism in place for providing supply data from those meters to the Settlement Body. Regulation 4 describes that mechanism.

Regulation 5 makes provision about the sharing of information between industry bodies to facilitate the calculations required by the Supplier Payment Regulations (as amended by these Regulations) and other functions that they have under related legislation.

Part 3 makes amendments to the Supplier Payment Regulations.

Regulation 7 includes definitions in the Supplier Payment Regulations to reflect these Regulations.

Regulation 8 amends regulation 3 of the Supplier Payment Regulations so that data provided pursuant to the mechanism provided for in regulation 4 of these Regulations is included in the “required data” that is used by the Settlement Body to carry out its calculations.

Regulations 9, 10 and 11 make amendments to provide for CM EII excluded electricity to be forecast by electricity suppliers and taken into account in various calculations for payments under Schedule 1 to the Supplier Payment Regulations.

Regulation 12 makes amendments to certain formulae in Schedule 1 to the Supplier Payment Regulations to ensure that CM EII excluded electricity is deducted from suppliers’ relevant demand for the purposes of calculating payments to be made.

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

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