

Draft Regulations laid before Parliament under section 40(5) of the Energy Act 2013, for approval by resolution by each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2017 No.

ELECTRICITY

The Electricity Capacity (Amendment) Regulations 2017

Made - - - - *******

Coming into force in accordance with regulation 1

The Secretary of State has before making these Regulations—

- (a) consulted the persons listed in section 40(2)(a) and (b) of the Energy Act 2013(1) and such other persons as the Secretary of State considered it appropriate to consult; and
- (b) had regard to the matters in section 5(2) of that Act.

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 31, 36(4), and 40(1) of the Energy Act 2013, makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Capacity (Amendment) Regulations 2017.

(2) These Regulations, apart from regulations 3 and 4(2) and (3) and Schedule 2, come into force on the day after the day on which they are made.

(3) Regulations 3 and 4(2) and (3) and Schedule 2 come into force on 1st January 2018.

Amendment of the Electricity Capacity Regulations 2014

2.—(1) The Electricity Capacity Regulations 2014(2) are amended as set out in Schedule 1.

(2) Any reference in that Schedule to a numbered regulation is to the regulation so numbered in those Regulations.

(1) 2013 c.32.

(2) S.I. 2014/2043 as amended by S.I. 2014/3354, S.I. 2015/875, S.I. 2015/1974, and S.I. 2016/742.

Amendment of the Supplier Payment Regulations

3.—(1) The Electricity Capacity (Supplier Payment etc.) Regulations 2014⁽³⁾ (“the Supplier Payment Regulations”) are amended as set out in Schedule 2.

(2) Any reference in that Schedule to a numbered regulation is to the regulation so numbered in those Regulations.

Transitional provisions

4.—(1) The amendment to regulation 60(2)(a) of the Electricity Capacity Regulations 2014 made by paragraph 6(4) of Schedule 1 to these Regulations, does not affect the level of credit cover required in relation to any capacity agreement awarded before that paragraph comes into force.

(2) This paragraph applies in relation to any calculation required to be made or other thing required to be done in respect of—

(a) any capacity year, delivery year or financial year which commenced before 1st January 2018; or

(b) any period forming part of such a year.

(3) Where paragraph (2) applies, the Supplier Payment Regulations continue to apply on and after 1st January 2018 as if they had not been amended by Schedule 2.

(4) In this regulation—

“capacity agreement”, “capacity year”, “credit cover”, and “delivery year” have the meanings given in regulation 2(1) of the Electricity Capacity Regulations 2014; and

“financial year” has the meaning given in regulation 2(1) of the Supplier Payment Regulations.

Date

Name
Minister for Energy and Industry
Department for Business, Energy & Industrial
Strategy

(3) [S.I. 2014/3354](#) as amended by [S.I. 2015/875](#), [S.I. 2016/363](#), and [S.I. 2016/742](#).

SCHEDULE 1

Regulation 2

Amendments to the Electricity Capacity Regulations 2014

Regulation 2 (interpretation)

1. In regulation 2(1)—
 - (a) after the definition of “the capacity market” insert—

““capacity market notice” has the meaning given in the Rules;”;
 - (b) omit the definition of “capacity market warning”;
 - (c) omit the definition of “DSR bid capacity”; and
 - (d) in the definition of “relevant settlement period”, for “capacity market warning” substitute “capacity market notice”.

Regulation 25 (notification of results)

2. In regulation 25(2)(d)(i), omit the words “, and, in the case of a demand side response CMU, its DSR bid capacity if different”.

Regulation 30 (capacity agreements)

3. In regulation 30(2)(a), omit the words from “in the case of a generating CMU” to the end.

Regulation 32 (termination fee rates)

4. In regulation 32(4) and (5), omit the words “or DSR bid capacity”.

New regulation 49A

5. After regulation 49 insert—

“Reducing capacity payments: offsetting relevant expenditure

49A.—(1) This regulation 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 relevant expenditure has been incurred, or is expected to be incurred, in respect of the capacity committed CMU for which C is responsible.

(2) If this regulation applies, the Settlement Body must ensure that the credit otherwise payable to C is reduced—

- (a) by the amount of any outstanding relevant expenditure; or
- (b) to nil, if the amount of any outstanding relevant expenditure 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.

(4) This regulation applies to a credit note issued in respect of a transferred part as it applies to a credit note issued in respect of a capacity agreement, and where a capacity agreement has been transferred pursuant to regulation 30A(1)(b) or regulation 30(2)(b), the reduction in the amount payable to C 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.

(5) In this regulation—

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

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

Regulation 60 (credit obligation period)

6.—(1) For regulation 60(1)(a), substitute—

“(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;”.

(2) In regulation 60(1)(f), for each occurrence of “unproven DSR capacity” substitute “de-rated capacity”.

(3) For regulation 60(1)(g), substitute—

“(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;”.

(4) In regulation 60(2)(a), for the words “DSR bid capacity” substitute “de-rated capacity”.

(5) In regulation 60(5), in the formula, for “UC” substitute “DC”.

(6) In regulation 60(6)—

(a) before the definition of “PC” insert—

““DC” means CMU i’s de-rated capacity;” and

(b) omit the definition of “UC”.

Regulation 61 (draw down of applicant credit cover)

7. In regulation 61—

(a) in paragraph (1)(a)(ii), for “unproven DSR capacity” substitute “de-rated capacity”;

(b) omit paragraph (1)(b);

(c) in paragraph (2)(a) omit the words “or (b)”; and

(d) omit paragraph (5).

Regulation 73 (consequences of successful review or appeal)

8. In regulation 73—

(a) in paragraph (6)(b)—

(i) at the end of paragraph (i), omit “or”; and

(ii) omit paragraph (ii); and

(b) for paragraph (6A), substitute—

“(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.”.

Regulation 87 (transitory provisions: the first T-4 auction)

9. In regulation 87—
- (a) in paragraph (2), omit “, (5)”;
 - (b) omit paragraphs (5), (6) and (8).

Regulation 87A (transitory provisions: the second T-4 auction)

10. For regulation 87A(2) substitute—
- “(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.”.

SCHEDULE 2

Regulation 3

Amendments to the Supplier Payment Regulations

Regulation 2 (interpretation)

- 1.—(1) In regulation 2(1)—
- (a) after the definition of “financial year” insert—
““gross 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 “net demand”.
- (2) Omit regulation 2(3) and (4).
- (3) In regulation 2(5), omit ““the Balancing and Settlement Code;”” and ““GB transmission system;””.

Regulation 4 (forecast of net demand)

2. In regulation 4—
- (a) in the heading, for “net demand” substitute “gross demand”; and
 - (b) in paragraph (2)(a), for “net demand” substitute “gross demand”.

Regulation 6 (capacity market supplier charge)

3. In regulation 6(3), for each occurrence of “net demand” substitute “gross demand”.

Amendments to Schedule 1 (calculation of amounts)

- 4.—(1) Schedule 1 is amended as follows.
- (2) In paragraph 3, for each occurrence of “net demand” substitute “gross demand”.
 - (3) In paragraph 7(4)(a), for “net demand” substitute “gross demand”.

- (4) In paragraph 8(4), for each occurrence of “net demand” substitute “gross demand”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend in various respects the Electricity Capacity Regulations 2014 ([S.I. 2014/2043](#)) (“the Principal Regulations”).

The Principal Regulations make provision for the purpose of enabling consumers’ demands for electricity in Great Britain to be met, by establishing a system (“the Capacity Market”) whereby those who offer to make electricity capacity available can (as the result of an auction) be awarded capacity agreements, which confer rights and impose obligations on those awarded the agreement (“capacity providers”). Those rights and obligations consist principally of the right to receive “capacity payments” from a settlement body established for that purpose, these being payments 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.

There are three kinds of capacity market units (“CMUs”) that can be used to participate in the Capacity Market: generating CMUs, demand side response (“DSR”) CMUs, and interconnector CMUs. The Principal Regulations and the Electricity Capacity (Supplier Payment etc.) Regulations 2014 (“the Supplier Payment Regulations”) also impose obligations on persons who supply electricity in Great Britain pursuant to an electricity supply licence under section 6 of the Electricity Act 1989 (c. 29). Those obligations consist principally of requirements to make payments to the settlement body. Further detailed and technical provision is made by the Capacity Market Rules 2014 (“the Rules”)(4).

The amendments are set out in the Schedules to these Regulations.

Schedule 1 amends the Principal Regulations.

Paragraphs 1(c), 2 to 4, 6(1) and (2), 6(4)-(6), 7(a) and 8 make amendments connected to the de-rating of DSR CMUs. The arrangements for de-rating the capacity of CMUs are set out in the Rules and these amendments reflect changes being made to the arrangements for DSR CMUs.

Paragraph 5 makes provision for the settlement body to make deductions from the amount of credit payable to a capacity provider where a capacity provider has made a declaration under the Rules that relevant expenditure funded by certain risk finance schemes has been incurred, or is expected to be incurred, in respect of the capacity committed CMU for which the capacity provider is responsible.

Paragraphs 6(3), 7(b) -(d), 9 and 10 clarify the drafting in the Principal Regulations to put beyond doubt the requirement to maintain applicant credit cover until a CMU has achieved all of the requirements against which applicant credit cover has been lodged and for which a failure to meet would otherwise result in its capacity agreement being terminated under the Rules. The changes also correct an unintended double liability on capacity providers as regards to their applicant credit cover and termination fee exposure.

Schedule 2 amends the Supplier Payment Regulations so that the capacity market supplier charge and settlements costs levy will be collected based on “gross demand”, instead of “net demand”, in

(4) The Capacity Market Rules 2014, and subsequent amending Rules are available here: <https://www.gov.uk/government/publications/capacity-market-rules>

relation to delivery years and financial years (respectively) from 2018 onwards. “Gross demand” means the amount of electricity (expressed in MWh) supplied by an electricity supplier (“S”) to premises in Great Britain, whereas “net demand” means the difference (expressed in MWh) between that amount and the amount of generated electricity for which S is responsible, except that where that difference is a negative amount the net demand is zero.