
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make various amendments and modifications to the application of the Electricity Capacity Regulations 2014 (S.I. 2014/2043) (“the Principal Regulations”) and the Electricity Capacity (Supplier Payments etc.) Regulations 2014 (S.I. 2014/3354) (“the Supplier Payment Regulations”), collectively referred to as “the Capacity Market regulations”.

The Principal Regulations make provision for the purpose of meeting consumers’ demands for electricity in Great Britain by establishing a Capacity Market (“the scheme”) under which those who make capacity available (“capacity providers”) can be awarded capacity agreements, which give them rights to receive capacity payments and impose obligations on them. The Supplier Payment Regulations impose obligations on licensed electricity suppliers to make payments to the Capacity Market Settlement Body to fund capacity payments and the Settlement Body’s costs.

These Regulations modify the application of the Capacity Market regulations to adjust the operation of the scheme following the annulment of the scheme’s State aid approval by a judgment of the General Court of the Court of Justice of the European Union (Case T-793/14). These modifications include providing for a new kind of auction (a “conditional agreement auction”) which will award conditional capacity agreements (which will not give a right to capacity payments until they become capacity agreements at such time as it would be in accordance with State aid law for such payments to be made).

Part 1: Regulation 2 contains definitions of terms used in these Regulations. This regulation also clarifies how words read into the Principal Regulations and Supplier Payment Regulations as modifications to the application of each of those regulations should be interpreted.

Part 2: Regulation 3 defines the “standstill period”, which begins on 15th November 2018 (the date of the General Court judgment) and ends on the date on which the “deferred capacity payment trigger event” or the “agreement termination trigger event” occurs.

Regulations 4 to 6 make provision for the circumstances in which a “trigger event” in the form of a notification by the Secretary of State must occur and its consequences. If it is in accordance with State aid law to make capacity payments, then depending on whether capacity payments can be made in respect of capacity agreements that existed on 15th November 2018 and agreements awarded to successful bidders in the conditional agreement auction, the “deferred capacity payment trigger event” in regulation 4 and the “conditional capacity agreement trigger event” in regulation 5 will occur. However, if there is no reasonable prospect that by 1st October 2020 it would be in accordance with State aid law to make capacity payments, the “agreement termination trigger event” in regulation 6 will occur and the agreements specified in the Secretary of State’s notification will be terminated immediately and without entitlement to capacity payments.

Part 3: Chapter 1 provides for supplier charge to be paid to, and held by, the Settlement Body during the standstill period, which is to be either used to fund capacity payments or repaid to suppliers, depending on the trigger event that occurs. Regulation 7 provides for the Settlement Body to hold supplier charge and other payments it receives from electricity suppliers (which are not returned on a supplier’s request) to fund capacity payments that were prevented from being paid by the law relating to State aid during the standstill period (“deferred payments”).

Regulation 8 provides that, if the deferred capacity payment trigger event occurs, the Settlement Body will use the supplier charge and other payments it holds on the day on which the trigger

event occurs to fund those deferred payments in respect of capacity agreements that existed on 15th November 2018.

Regulation 9 provides that, if the T-1 capacity agreement trigger event occurs, the Settlement Body will use the supplier charge and other payments it holds on the day on which the trigger event occurs to fund those deferred payments in respect of conditional capacity agreements that became capacity agreements when the T-1 capacity agreement trigger event occurred.

Regulation 10 provides that, if the agreement termination trigger event occurs, the Settlement Body must return the supplier charge and other payments it holds on the day on which the trigger event occurs to the electricity suppliers who have made those payments.

Chapter 2 modifies how the Principal Regulations apply in respect of capacity agreements that existed on 15th November 2018. Regulation 12 modifies the interpretation provision of the Principal Regulations to insert new definitions for terms used in the modifications.

Regulation 13 modifies the Principal Regulations by inserting a new regulation 40A which provides for the making of capacity payments in respect of a “standstill month” of a delivery year (a month of a delivery year where State aid law does not allow capacity payments to be made, and the month after the month in which State aid approval is obtained). If the amount of each capacity payment must initially be reduced because of a shortfall in the supplier charge collected to fund those payments, an additional payment (a “residual capacity payment”) will be paid to the capacity provider.

Regulations 14 to 18 modify the application of regulations 41, 42, 43, 43A, 43B and 43C of the Principal Regulations so that various payments paid by or paid to capacity providers are suspended until after the end of the standstill period (if the deferred capacity trigger event occurs). These modifications relate to capacity provider penalty charges, over-delivery payments, termination fees, non-completion fees and repayment of capacity payments.

Regulation 19 modifies the application of regulation 47 of the Principal Regulations so that the non-payment register maintained by the Settlement Body operates to record non-payment by suppliers of additional kinds of payments (standstill collection period supplier charge and mutualisation payments) which will be payable after the end of the standstill period.

Regulations 20 to 23 modify how credit cover requirements in regulation 59 to 62 of the Principal Regulation apply to capacity providers who were required immediately before 15th November 2018 to provide and maintain credit cover. These capacity providers will not be required to provide or maintain credit cover until after the end of the standstill period, and will be treated as having met the credit cover requirements if they do so.

Part 4: Chapter 1 makes enduring amendments to the Principal Regulations. Regulation 24 amends regulation 43A of the Principal Regulations to apply regulation 33 as specified so that the issue of a non-completion notice (payable by new build interconnector capacity market units that have not met the completion requirements specified in capacity market rules) can be the subject of written representations to the Secretary of State to exercise the discretion to direct the withdrawal of the notice. Regulation 25 amends regulation 68 of the Principal Regulations to make the issue of a non-completion notice a decision that is reviewable by the Delivery Body and to which Part 10 of those Regulations applies.

Chapter 2 modifies the application of the Secretary of State’s discretion in regulation 33 of the Principal Regulations (“the Secretary of State’s discretion”) in dealing with termination notices and non-completion notices given to capacity providers during the standstill period. Regulation 26 modifies the Secretary of State’s discretion to include a discretion to direct the Delivery Body to withdraw a termination notice in respect of a capacity agreement that existed on 15th November 2018 and instead terminate the agreement on a termination ground specified in the capacity market rules that it would involve undue financial hardship to require the capacity provider to pay a termination fee. As modified, the discretion also includes extending the date by which a capacity provider must meet a specific requirement by 12 months after the date on which the termination notice was given. Regulation 27 modifies the application of regulation 43A of the Principal Regulations so that, when

the Secretary of State's discretion (as modified by regulation 26) is applied to the consideration of a non-completion notice, it includes the discretion to direct the Delivery Body to withdraw the non-completion notice.

Part 5: Chapter 1 modifies how the Principal Regulations apply in respect of the conditional agreement auction and agreements awarded through this auction.

Regulation 29 modifies the application of regulations 2 and 5 of the Principal Regulations to insert new definitions for terms used in other modifications and modify existing defined terms to make them compatible with other modifications.

Regulation 30 modifies the application of regulations 14, 23, 26 and 28 of the Principal Regulations. Regulation 28 is modified to allow the Secretary of State to direct the Delivery Body to allow pre-qualified CMUs to withdraw from an auction as part of a direction to rearrange a suspended auction. Regulation 14 is modified to provide that CMUs which are withdrawn from an auction (through a process set out in the Rules) are not pre-qualified to participate in this auction. Regulation 23 is modified to require the Delivery Body to notify the Secretary of State of various matters following the completion of the withdrawal process. Regulation 26 is modified to alter the circumstances in which an auction which is subject to the modifications in Part 5 must be suspended by the Secretary of State if it would not be in accordance with the law relating to state aid.

Regulation 31 modifies regulation 30 of the Principal Regulations to define "conditional capacity agreements" and provide for the conversion of conditional capacity agreements into capacity agreements. Conditional capacity agreements are awarded to bidders who are successful in the conditional agreement auction. These agreements become capacity agreements if the T-1 capacity agreement trigger event occurs.

Regulation 32 modifies regulation 30A of the Principal Regulations to allow for the transfer of conditional capacity agreements.

Regulation 33 modifies regulation 31 of the Principal Regulations to require the Delivery Body to record information relating to conditional capacity agreements on the capacity market register, and to update the register if conditional capacity agreements become capacity agreements.

Regulation 35 extends the modifications regulation 26 makes to the Secretary of State's discretion in regulation 33 of the Principal Regulations (other than the modification to the length of time a termination notice may be extended) to agreements awarded through the conditional agreement auction.

Regulations 38 and 48 modify the Principal Regulations by changing regulations 40 and 48 and inserting regulation 40A. These modifications provide that capacity providers awarded conditional capacity agreements are not entitled to receive capacity payments unless the T-1 capacity agreement trigger event occurs, set out a process by which capacity payments may be paid from the start of the delivery year regardless of when this trigger event occurs, and aligns the process by which the Settlement Body determines and pays capacity payments with associated modifications to the Supplier Payment Regulations in respect of the collection of capacity market supplier charge. Regulation 40 modifies regulation 42 to provide that a capacity provider's entitlement to over-delivery payments is also contingent on the T-1 capacity agreement trigger event occurring.

Regulations 39, 41, and 43 to 44 modify the Principal Regulations by changing regulations 41 to 43C and inserting regulation 41A. These modifications provide that capacity providers awarded conditional capacity agreements are not liable to pay capacity provider penalty charges, termination fees and non-completion fees unless and until the T-1 capacity agreement trigger event has occurred, alter the timeframes within which the Settlement Body is required to issue invoices in respect of these charges and fees as well as repayments of capacity payments following a termination or metering fault, and make other changes to clarify how the modified regulations apply in respect of conditional capacity agreements.

Regulations 42 and 49 to 50 modify the Principal Regulations by changing regulations 59 to 61 and inserting regulation 43ZB. These modifications provide that credit cover is not required for the conditional agreement auction, require the Settlement Body to release any credit cover which has been voluntarily maintained in respect of this auction if the T-1 termination trigger event occurs, and replaces penalties imposed in respect of DSR CMUs by way of draw down of credit cover with a DSR unproven capacity fee. The modifications to regulation 43ZA of the Principal Regulations under regulation 41 prevent DSR providers from being double charged when required to pay a DSR unproven capacity fee and termination fee, and makes other minor changes related to credit cover requirements.

Regulation 45 modifies the Principal Regulations by inserting regulations 43D and 43E. These modifications require repayment of overpaid capacity payments and overcharged penalty charges where these payments and charges have been determined based on a DSR CMU's unproven capacity, and the DSR test for this CMU subsequently evidences a lower capacity.

Regulation 47 modifies regulation 47 of the Principal Regulations to support modifications relating to the collection of capacity market supplier charge under the Supplier Payment Regulations by requiring relevant information to be retained on the non-payment register until it is no longer required.

Regulations 34, 36, 37, 46, 51 and 52 modify regulations 32, 35, 36, 45, 68 and 72 of the Principal Regulations, and paragraphs 3, 4, 6 and 7 of Schedule 1 to the Principal Regulations, to clarify how these provisions apply in relation to conditional capacity agreements, and incorporate references to other modifications to the Principal Regulations.

Part 6: Part 6 modifies how the Supplier Payment Regulations apply in respect of capacity agreements that existed on 15th November 2018 and agreements awarded through the conditional agreement auction.

Regulation 54 modifies the application of the interpretation provision of the Supplier Payment Regulations to insert new definitions for terms used in the modifications and modify existing definitions to make them compatible with the modifications.

Regulation 55 modifies regulation 3 of the Supplier Payment Regulations to clarify how this provision applies in respect of conditional capacity agreements.

Regulations 56 and 57 modify the application of the Supplier Payment Regulations by changing regulation 6 and 7 and inserting new regulations 6A and 7A. These modifications relate to payments of capacity market supplier charge ("supplier charge") by electricity suppliers in respect a month of a delivery year where there is no State aid approval for the scheme, and the month after the month in which State aid approval is obtained (a "standstill month"). Where these modifications apply, payments by electricity suppliers in respect of standstill months are postponed until after a "payment trigger event" occurs (the deferred capacity agreement trigger event occur in respect of agreements that existed on 15th November 2018; or the T-1 capacity agreement trigger event in respect of agreements awarded through the conditional agreement auction). The obligation to pay supplier charge in respect of such months is conditional on the occurrence of a payment trigger event. The Settlement Body is required to provide electricity suppliers with a schedule of supplier charge payments that will become payable following this trigger event. Electricity suppliers can make voluntary advance payments to the Settlement Body based on the amounts in this schedule.

If a payment trigger event occurs, the Settlement Body is required to invoice electricity suppliers for outstanding supplier charge in respect of the standstill months of a delivery year (collectively the "standstill collection period"). Credit cover is not required in respect of supplier charge payments for the standstill collection period; where a supplier defaults on this payment, the Settlement Body is required to invoice non-default suppliers for mutualisation payments to make up this shortfall. The Settlement Body must also collect supplementary mutualisation payments from non-defaulting suppliers if capacity payments in respect of the standstill collection period are reduced because the full amount of supplier charge needed to make these payments has not been collected. Supplementary

mutualisation payments are used by the Settlement Body to make residual capacity payments to capacity providers whose standstill collection period capacity payments have been reduced. Electricity suppliers who make mutualisation payments and supplementary mutualisation payments will be entitled to receive mutualisation credits if the amount of supplier charge collected in respect of the standstill collection period exceeds the amount required to make capacity payments for this period.

Regulations 58 to 60 modify how regulations 8, and 12 to 16 of the Supplier Payment Regulations apply so that the calculation and processing of certain payments to be paid by or paid to electricity suppliers is suspended until after the end of the standstill period (if a payment trigger event occurs). These modifications relate to penalty residual supplier amounts, draw down of supplier credit cover after supplier non-payment, credit payments to suppliers and withholding those payments.

Regulations 59 and 60 also modify how regulations 15 and 16 of the Supplier Payment Regulations apply if both termination trigger events have occurred. A supplier will be paid any withheld credit payments and will not be liable to pay supplier charge for any month in the delivery year following the month in which the trigger event occurs.

Regulation 61 creates a new standstill collection period reconciliation process by modifying the Supplier Payment Regulations to insert a new regulation 20A allowing for standstill collection period reconciliation runs, and modifying the application of regulations 17 to 22 to accommodate these reconciliation runs into existing reconciliation processes. These regulations also make minor modifications to the reconciliation process to accommodate changes to the supplier charge mutualisation process.

Regulation 62 removes the requirement for suppliers to provide supplier credit cover in respect of the standstill collection period by modifying the application of regulation 24, 27 and 28 of the Supplier Payment Regulations.

Regulation 63 modifies the application of Schedule 1 to the Supplier Payment Regulations by inserting a new paragraph 5A setting out how mutualisation and supplementary mutualisation payments are calculated in respect of a standstill collection period. Minor modifications to the application of other paragraphs are also made to clarify how other calculations are made in respect of the standstill period.