
STATUTORY INSTRUMENTS

2014 No. 2043

The Electricity Capacity Regulations 2014

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.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Energy Act 2013;

“EA 1989” means the Electricity Act 1989(1);

“the Rules” means the Capacity Market Rules 2014(2);

“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;

(1) 1989 c.29.

(2) 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.

“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(3);

“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 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;

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

“capacity market warning” has the meaning given in the Rules;

“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;

(3) 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.

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

“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; or
- (b) a demand side response 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;

“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(4);

“connection capacity”, in relation to 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 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;

“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, 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

(4) 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.

- (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(5);

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

“DSR bid capacity” means, in relation to a demand side response CMU, the amount of capacity bid into a capacity auction by a bidder in respect of that CMU, being the de-rated capacity of that CMU or, if less, the capacity nominated by the applicant in accordance with the Rules;

“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” has the meaning given in regulation 29(1);

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

(5) 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.

- “electricity interconnector” has the meaning given in section 4(3E) of EA 1989(6);
- “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(7));
- “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;
- “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(8);
- “group of companies” means a company and all the subsidiaries of that company within the meaning of section 1159 of the Companies Act 2006(9);
- “half hourly meter” means a meter which measures import or export of electricity on a half hourly basis;
- “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;

(6) 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.

(7) 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).

(8) 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.

(9) 2006 c.46.

“interconnected capacity” means capacity provided by the transmission of electricity to Great Britain through an electricity interconnector;

“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” 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;

“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⁽¹⁰⁾;

“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;

⁽¹⁰⁾ 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.

“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;

“price duration equivalence” has the meaning given in regulation 11(3);

“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;

“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;

“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 capacity market warning 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⁽¹¹⁾;
- (b) in relation to Scotland, the Renewables Obligation (Scotland) Order 2009⁽¹²⁾;

“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;

“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;

⁽¹¹⁾ 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.

⁽¹²⁾ 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.

“T-4 auction” means, subject to regulation 87(1), 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 is terminated;

“TF1” means a termination fee payable under regulation 43(3);

“TF2” means a termination fee payable under regulation 43(4);

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

“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(13).

(4) Where anything is required or permitted by these Regulations to be done on or by a working day—

- (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.

“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, 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.

(2) For the purposes of section 28(3) of the Act and these Regulations, “electricity supplier” means a person supplying electricity to customers in Great Britain under a licence granted or treated as granted under section 6(1)(d) of EA 1989(14).

“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—

(13) 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.

(14) 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.

- (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 and 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.
- (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, registered in accordance with the Balancing and Settlement Code; and

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

(9) In this regulation the following expressions have the same meanings as in the Balancing and Settlement Code as it was in force on 1st April 2014—

“base trading unit”;

“BM unit”;

“central meter registration service”;

“metering system”; and

“trading unit”.

“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) 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.

(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.

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) it 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).

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;
 - (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—
- (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—
 - (i) generating CMUs in each generating technology class; and
 - (ii) demand side response CMUs,for the purposes of capacity auctions held in the following auction window.

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; 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.

(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.

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 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;
- (g) price duration equivalences for each possible clearing price in the capacity auction; and
- (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 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 to be eligible to bid for a capacity obligation for a period of 2 or 3 delivery years;

a “price duration equivalence” means the price at which a bid for a capacity obligation for a specified duration of 2 or more delivery years is to be treated as equivalent to a bid for a capacity obligation for one delivery year, for the purposes of determining—

- (a) in respect of which bids capacity obligations are to be awarded; and

- (b) the capacity cleared price applying to those capacity obligations.

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
- (b) determine whether price duration equivalences are to apply in that capacity auction and, if so, determine those price duration equivalences.

(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;
- (b) the reliability standard; and
- (c) the matters specified in section 5(2) of the Act.

(6) If the target capacity determined by the Secretary of State is different from a recommendation in the electricity capacity report, 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.

Adjustment of auction parameters following prequalification

13.—(1) 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.

(2) The Secretary of State must make any decision under paragraph (1), and give notice of any adjustments to the Delivery Body, within 5 working days after receiving the notification from the Delivery Body.

CHAPTER 3

Eligibility criteria and prequalification

Eligibility to bid in capacity auctions

14.—(1) 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.

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.

(4) The second condition is that the connection capacity of the CMU is equal to or greater than 2MW (the “minimum capacity threshold”).

(5) The third condition is that the CMU is not an CMU which, by virtue of regulations 16 to 18, the Delivery Body must not prequalify for a capacity auction.

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(15) 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(16);

“low carbon exclusion” means—

- (a) an accreditation under—
 - (i) the FIT Order;
 - (ii) the RHI Regulations; or
 - (iii) the ROO; or

(15) 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.

(16) S.I. 2012/2782, amended by S.I. 2013/1099.

(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⁽¹⁷⁾;

“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.

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—

“relevant grant” means a grant under a relevant scheme, 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

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

(a) NER 300;

(b) section 1(1) of the Energy Act 2010⁽¹⁸⁾ 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⁽¹⁹⁾ 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](#)⁽²⁰⁾.

⁽¹⁷⁾ S.I. 2011/2860, amended by S.I. 2012/1999, S.I. 2013/1033, S.I. 2013/2410 and S.I. 2013/3179.

⁽¹⁸⁾ 2010 c.27.

⁽¹⁹⁾ 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.

⁽²⁰⁾ 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.

Excluded capacity: long term STOR CMUs

18.—(1) The Delivery Body must not prequalify a CMU (“CMU i”) that is the subject of a relevant STOR contract unless the applicant has provided to it, by the close of the prequalification window, a withdrawal declaration.

(2) In this regulation, “relevant STOR contract” means a contract entered into pursuant to a tender by the national system operator for short term operating reserve—

- (a) between the national system operator and a person responsible for CMU i;
- (b) which relates to CMU i, or to one or more generating units or demand side response CMU components comprised in CMU i; and
- (c) where—
 - (i) the contract is entered into before the date on which this regulation comes into force; and
 - (ii) the expiry date of the contract is after the start of that delivery year.

(3) For the purposes of paragraph (2), a contract for short term operating reserve—

- (a) is entered into on the date on which the national system operator notifies its acceptance of a tender; and
- (b) expires on the date specified in or determined in accordance with the contract.

(4) In paragraph (1), a “withdrawal declaration” means a declaration in writing by an applicant that, if the applicant is awarded a capacity obligation for CMU i, it will offer to the national system operator to withdraw from or terminate the relevant STOR contract with effect from a date no later than the start of the delivery period.

Regulations 16 to 18: interpretation

19. In regulations 16 to 18, “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.

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, as determined by the Delivery Body 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.

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, 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 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.

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, and, in the case of a demand side response CMU, its DSR bid capacity if different; 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.

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—

- (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.

(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.

(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

(b) regulation 23 applies as if paragraphs (1)(c) and (2) to (4) were omitted.

(11) In this regulation, “non-CMRS distribution CMU” means a CMU consisting of one or more non-CMRS distribution units, within the meaning given in regulation 5(8).

PART 5

Capacity agreements, capacity market register and termination

Capacity agreements

30.—(1) A “capacity agreement” is the term used to describe 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 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) the de-rated capacity of the CMU in the case of a generating CMU, or the DSR bid capacity of the CMU in the case of a demand side response CMU;

(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.

(4) The capacity cleared price is—

(a) subject to sub-paragraphs (b) and (c), the auction clearing price;

(b) in the case of a multi-year capacity obligation awarded in a capacity auction in which price duration equivalences are used, the price which is equivalent to the auction clearing price for the duration of the capacity obligation;

- (c) 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, a capacity agreement remains in force until the expiry of the period of delivery years for which it is issued.

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;
 - (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 rates at which TF1 and TF2 are 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.

Termination fee rates

32.—(1) In this regulation—

“ *TF1_{rate}* ” 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 that TF1 is payable in the event of the capacity agreement being terminated on that ground;

“ *TF2_{rate}* ” 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 that TF2 is payable in the event of the capacity agreement being terminated on that ground.

(2) *TF1_{rate}* is £5,000/MW.

(3) *TF2_{rate}* is £25,000/MW.

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

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.

(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.

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(21); and
 “unit conversion” has the same meaning as it has in the ROO(22).

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”).

(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.

(21) 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](#).

(22) 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](#).

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;

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

“volume reallocation window” means the period during which capacity providers may submit capacity market volume reallocation notifications under capacity market rules.

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 26th 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 25th 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.

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) $SPPSA_{im}$, 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 $SPPSA_{im}$, 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.

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

Over-delivery payments

42.—(1) A capacity provider is entitled to receive from the Settlement Body an over-delivery payment in respect of a delivery year (“year X”) if any capacity committed CMU (“CMU i”) for which C was the capacity provider over-delivered in any relevant settlement period in year X.

(2) For the purposes of this regulation CMU i over-delivers in a relevant settlement period if, for CMU i, AE_{ij} is greater than $ALFCO_{ij}$ in that settlement period.

(3) The Settlement Body must, by not later than the 26th working day after the end of year X—

- (a) determine the amount, if any, of the over-delivery payment payable to each capacity provider in respect of year X; and
- (b) issue to each capacity provider which is entitled to an over-delivery payment a credit note for the amount determined for it.

(4) The amount payable to C under paragraph (3)(a) is the sum of—

- (a) $TODP_{ix}$, as calculated in accordance with paragraph 7 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 year X; and
- (b) C’s proportion of $TODP_{ix}$, as calculated in accordance with paragraphs 7 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 year X.

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.

(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.

(3) Where capacity market rules specify that TF1 is payable, the amount must be determined in accordance with the formula—

$$TF1 = TF1_{rate} \times CO.$$

(4) Where capacity market rules specify that TF2 is payable, the amount must be determined in accordance with the formula—

$$TF2 = TF2_{rate} \times CO.$$

(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;

“ $TF1_{rate}$ ” means the rate in pounds per MW determined in accordance with regulation 32 and specified in the capacity market register as the rate at which TF1 is payable under the capacity agreement; and

“*TF2_{rate}*” means the rate in pounds per MW determined in accordance with regulation 32 and specified in the capacity market register as the rate at which TF2 is payable under the capacity agreement.

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.

(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 customers 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.

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 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 or 44;

“payer” means a person to whom an invoice is issued under regulation 41, 43 or 44;

“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.

(2) Where this Chapter requires a payer to make a payment by no later than a stated day, the payment must be made by no later than 5.00 p.m. on that day.

(3) A payment made after 5.00 p.m. is to be treated as having been made on the following day.

Payment of invoices and accruing interest

46.—(1) A payer must pay the invoiced amount to the Settlement Body by no later than 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(23) is in force, any equivalent rate determined by the Treasury under that section.

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 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;
- (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.

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 the 29th 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 the 29th working day after the end of the delivery year to which the payment relates.

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.

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.

(3) If C complies with the satisfactory performance requirement during a relevant month, 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; 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 of those capacity payments.

(5) The Settlement Body must—

- (a) if paragraph (2) 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.

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(24); or

(24) The register of rating is available from the following webpage: www.standardandpoors.com/home/en/eu.

- (ii) not less than A3 by Moody's⁽²⁵⁾; 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) 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.

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
 - (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

(25) The register of ratings is available from the following webpage: www.moodys.com/Pages/atc.aspx.

- (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.

(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).

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 8 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.

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) 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).

- (2) The amount of applicant credit cover to be provided is—
- (a) in the case of an application to prequalify for a T-4 auction or a T-1 auction, an amount equal to £5,000 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.
- (3) If A is required to provide credit cover under paragraph (1), A must do so within 5 working days after receiving the conditional prequalification notice.

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—

- (a) where CMU i is an unproven demand side response CMU, A nominates before the capacity auction, in accordance with capacity market rules, a DSR bid capacity for CMU i which is less than the de-rated capacity of CMU i;
- (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;
- (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 unproven DSR capacity; or
 - (ii) a proven DSR capacity less than CMU i’s unproven DSR capacity, but equal to or greater than 90% of that capacity;
- (g) where CMU i is a prospective generating CMU—
- (i) A has achieved its financial commitment milestone in accordance with capacity market rules; and
 - (ii) if CMU i is a distribution CMU in respect of which A did not provide a copy of a distribution connection agreement with its application for prequalification, A has provided a copy of its distribution connection agreement to the Delivery Body in accordance with capacity market rules; or
- (h) the credit cover is drawn down under regulation 61.
- (2) Where paragraph (1)(a) applies, A must thereafter maintain credit cover in an amount equal to £5,000 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.
- (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)—
- “PC” means CMU i’s proven DSR capacity;
- “RA” means the required amount for CMU i as calculated under regulation 59;

“UC” means CMU i’s unproven DSR capacity.

(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.

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 unproven DSR capacity;
 - (b) where CMU i is a prospective generating CMU, the credit obligation period has not ended by the latest of the date in paragraph (i) and such of the dates in paragraphs (ii) and (iii) as are applicable—
 - (i) the date falling 18 months after the date on which A was awarded a capacity agreement in respect of CMU i;
 - (ii) if CMU i is a distribution CMU in respect of which regulation 60(1)(g)(ii) applies, the date 18 months prior to the commencement of the first delivery year of A’s capacity agreement in respect of CMU i;
 - (iii) if the date by which a financial commitment milestone is required by capacity market rules to be met or a copy of a distribution connection agreement is required by capacity market rules to be provided in respect of CMU i is extended under regulation 33(2)(b), the date to which the requirement is extended; or
 - (c) payment of a termination fee has become due pursuant to an invoice issued under regulation 43, and the termination fee is unpaid.
- (2) Where the Settlement Body is required to draw down applicant credit cover—
- (a) under sub-paragraph (a)(i) or (b) 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 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.

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.

(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(26); and

“licence” means a licence under section 6 of EA 1989.

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.

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(27)—

- (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 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.

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.

(26) 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).

(27) 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.

Table

<i>Decision</i>	<i>Person who may bring dispute or appeal</i>
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 a termination notice, or a notice of intention to terminate a capacity agreement.	The capacity provider to whom the notice has been issued.

(3) In the table in paragraph (2), “secondary trading entrant” has the meaning given in the Rules.

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) The Delivery Body must, within 5 working days after receiving a request which complies with paragraph (2)—

- (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 regulation 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—

- (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.

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.

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.
- (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;
 - (b) for 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); and
 - (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.
- (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.

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; or
- (b) except with the approval of the Secretary of State, make any provision in capacity market rules which—
 - (i) confers functions on the Secretary of State; or
 - (ii) confers additional functions on the Authority.

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;
- (c) ensuring the compatibility of capacity market rules with other subordinate legislation under Part 2 of the Act.

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.

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 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).

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; and
 - (ii) the functions conferred on the Authority by capacity market rules;
- (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;
 - (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.

Review of capacity market rules

- 82.**—(1) The Authority must from time to time—
- (a) carry out a review of capacity market rules;
 - (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 the rules;
 - (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 capacity market rules first come into force.
- (4) Reports under this regulation are, after the first report, to be published at intervals not exceeding five years.

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~~(28)~~;
 - (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.

Documents

86. Schedule 2 (documents) has effect.

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), (5) 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).

(5) This paragraph applies in relation to an existing generating CMU which is awarded a capacity obligation in the first T-4 auction, if the capacity provider—

- (a) is required under capacity market rules to provide TEC confirmation in respect of the CMU; and
- (b) did not provide such confirmation with its prequalification application.

(6) Where paragraph (5) applies—

- (a) regulation 60 has effect as if paragraph (1) of that regulation included the following additional sub-paragraph—
 - “(i) where CMU i is a CMU to which regulation 87(5) applies, A has provided TEC confirmation, within the meaning given in regulation 87(8), in respect of CMU i.”; and

(b) regulation 61 has effect as if—

- (i) paragraph (1) of that regulation included the following additional sub-paragraph—
 - “(d) where CMU i is a CMU to which regulation 87(5) applies, the credit obligation period has not ended by the date 18 months before the date on which the delivery period of A’s capacity agreement in respect of CMU i commences.”; and

(ii) in paragraph (2), for “under sub-paragraph (a) or (b)” there were substituted “under sub-paragraph (a), (b) or (d)”.

(7) Regulation 69(5) does not apply in relation to the reconsideration of a prequalification decision for the first T-4 auction.

(8) In this regulation, “TEC confirmation”, in relation to a CMU, means confirmation in accordance with capacity market rules that a grid connection agreement has been entered into which secures transmission entry capacity, within the meaning given in the Grid Code as it was in force on 1st April 2014, for all relevant delivery years for the generating units comprised in that CMU.

Repeal

88. Section 47ZA of EA 1989~~(29)~~ is repealed.

31st July 2014

Amber Rudd
Parliamentary Under-Secretary of State
Department of Energy and Climate Change

(29) 1989 c.29. Section 47ZA was inserted by section 79 of the Energy Act 2011 (c.16).