EXPLANATORY NOTE

(This note is not part of the Regulations)

[M1]These Regulations make provision for the purpose of enabling consumers' demands for electricity in Great Britain to be met. They do so through capacity agreements, instruments which confer rights and impose obligations on those awarded an agreement. These rights and obligations consist principally of the right to receive capacity payments from the Settlement Body for generating (or reducing demand for) electricity at times of system stress, and the liability to make a penalty payment where the capacity agreement is breached. The Regulations also impose obligations on persons who supply electricity in Great Britain pursuant to an electricity supply licence (granted by the Gas and Electricity Markets Authority ("the Authority") under section 6 of the Electricity Act 1989). Those obligations consist principally of requirements to make payments to the settlement body.

Part 1

Regulation 2 contains definitions of terms used in these Regulations, including "the Rules" (i.e. capacity market rules), "the Delivery Body", "the GB transmission system", and "the Settlement Body". It also defines various connected terms concerning the "prequalification" and the "de-rating" of generating stations in respect of which capacity agreements may be issued.

[M2]Regulation 3 explains what is meant by the terms "providing electricity", "reducing demand for electricity" and "electricity supplier" in sections 27, 28 and 30 of the Energy Act 2013 .

Regulation 4 defines a "generating Capacity Market Unit" (a "CMU"), and regulation 5 a "demand side response" (a "DSR") CMU – both terms used in the Regulations – for the purpose of identifying those who are to be eligible to compete for a capacity agreement in a capacity auction.

Part 2

Regulation 6 deals with the reliability standard. The reliability standard is set by the Secretary of State to provide an indication of the acceptable level of security of supply for the GB transmission system, bearing in mind the likely cost of providing that level of security, and is used to inform a decision as to whether a capacity auction is to be held and the auction parameters for such a capacity auction. The reliability standard will be 3 hours of expected loss of load per capacity year.

Part 3

Regulation 7 requires the Delivery Body, before the 1st June in 2015 and in each subsequent year, to deliver an annual electricity capacity report to the Secretary of State. This report will contain an assessment, taking into account a range of forecasts, of the amount of capacity that is needed for a delivery year, which runs from 1 October to 30 September, to meet the reliability standard.

The report will include recommendations as to the target capacity that should be used in capacity auctions held four years ahead of a delivery year ("T-4") and the target capacity that should be used in capacity auctions held one year ahead of a delivery year ("T-1"). It will also include the de-rating factors that should be applied to both generating CMUs and DSR CMUs in capacity auctions.

Part 4

Regulation 10 identifies when the Secretary of State must decide whether or not a capacity auction is to be held. A specific timeframe is laid down for the first capacity auction and then all subsequent T-4 auctions, and from 2017, T-1 and T-4 auctions. The regulation also makes provision to allow the Secretary of State not to hold a T-1 auction and the reasons for when this provision may apply.
Regulation 11 makes provision for the Secretary of State to determine the auction parameters which are to apply in a capacity auction. These are to be set before a capacity auction and include the target capacity to be obtained and the maximum price that can be paid at auction. Regulations 12 and 13 make further provision concerning auctions, including the circumstances in which auction parameters can be adjusted.
Regulation 14 sets out the eligibility of the applicant to bid in capacity auction for a CMU following the prequalification of the CMU. Regulation 15 details the general eligibility criteria which a CMU has to meet.
Regulations 16 to 18 confirm which CMUs should be excluded from participating in a capacity auction, and regulation 19 defines relevant terms used in those regulations.
Regulation 20 establishes the general duty of the Delivery Body, where a capacity auction is to be held, to exercise the functions conferred on it by regulations 21 to 28 and by capacity market rules.
Regulation 21 sets out that the Delivery Body must publish auction guidelines before the start of a prequalification window and these are to include information on when the auction is to start, details on how to apply to prequalify, the timetable and the de-rating factor of each generating technology class set out in the capacity market rules.
Regulation 22 makes provision for the Delivery Body to determine the prequalification of all applications and notify each applicant of its decision in accordance with the capacity market rules. The regulation requires the Delivery Body to reconsider its prequalification decision if requested by the applicant.
Regulation 23 sets out that following the prequalification decisions, the Delivery Body is required to notify the Secretary of State of various matters. Regulation 24 confers responsibility for holding the capacity auction on the Delivery Body in accordance with the capacity market rules and the auction guidelines. The Regulations make provision for the Delivery Body to conduct the capacity auction itself, or to arrange for another person to do so, although the Delivery Body remains responsible for running the auction.
Regulation 25 requires the Delivery Body, following the completion of a capacity auction, to notify the results to the Secretary of State and each bidder, and to publish the auction results.
Regulation 26 sets out the circumstances in which a capacity auction can be cancelled, postponed or stopped by either the Secretary of State or the Delivery Body.
Regulation 27 gives the Secretary of State the power to annul a capacity auction within 7 working days of being notified of the auction result, if the Secretary of State has reasonable grounds to suspect that there was an irregularity in the capacity auction that affected either the clearing price or the CMUs successful in the capacity auction. If a decision is taken to annul a capacity auction, the Secretary of State must publish the decision immediately and within 4 weeks publish the reasons for it.
Regulation 28 sets out what is to happen if the Secretary of State rearranges a capacity auction, and regulation 29 provides for DSR transitional auctions to be held in the auction window commencing 1st September 2015 (for the 2016-17 delivery year) and in the auction window commencing 1st September 2016 (for the 2017-18 delivery year).

Part 5

Regulation 30 defines “capacity agreement”. Capacity agreements are awarded to those bidders successful at a capacity auction.

Regulation 31 requires the Delivery Body to set up and maintain a capacity market register. The register is required to contain the details of (amongst other things) each capacity agreement that is awarded following a capacity auction.
Regulation 32 sets out how termination fees ("TF1" and "TF2") are calculated and the grounds on which a termination fee is payable by a capacity provider. It also confirms that for the first auction, TF1 will be £5,000/MW and TF2 will be £25,000/MW.
Regulation 33 makes provision for the Secretary of State to direct the Delivery Body to withdraw a termination notice issued by the Delivery Body or to extend the date by which a capacity provider must meet a specific requirement.
Regulation 34 sets out that the circumstances in which a capacity provider awarded a capacity agreement at a T-4 capacity auction can withdraw from the capacity agreement.
Regulation 35 provides that, should a capacity agreement be awarded in circumstances where the capacity provider did not meet the general eligibility criteria, the capacity agreement will be null and void.

Part 6

Regulation 36 requires the Settlement Body to make settlement calculations. Regulation 37 requires the Settlement Body to issue a "data default notice" to a capacity provider who fails to comply with a requirement to provide information under the capacity market rules. Such a notice will prevent a capacity provider receiving payment from the Settlement Body.
Regulation 38 deals with invoices and credit notes issued by the Settlement Body.
Regulation 39 requires the Settlement Body to determine, in accordance with the capacity market rules, various matters for each capacity committed CMU.
Regulation 40 provides for each capacity provider to be entitled to receive from the Settlement Body a capacity payment in each month of a delivery year. Regulation 41 sets out the circumstances in which a capacity provider must pay to the Settlement Body a capacity provider penalty charge in respect of any month of a delivery year. And regulation 42 makes provision for a capacity provider to receive from the Settlement Body an over-delivery payment in respect of a delivery year in which the capacity provider's CMU over-delivered its obligation in the delivery year.
Regulation 43 sets out that a capacity provider must pay to the Settlement Body a termination fee if a capacity agreement is terminated on a ground specified in the capacity market rules.
Regulation 44 provides for the Settlement Body to levy electricity suppliers for the first levy period from 1st August 2014 to 31st March 2015 to enable the Settlement Body to covers its costs for this period.
Regulation 45 contains various defined terms.
Regulation 46 sets out that invoices issued by the Settlement Body must be paid no later than the payment due date. If the invoice is not paid in full by the payment due date, interest will be payable at 5 per cent per annum over the Bank of England base rate on the outstanding balance. Provision is given to allow a payer to dispute an invoiced amount.
Regulation 47 requires the Settlement Body to establish and maintain a "non-payment register" to list any payer who does not pay an invoice by the payment due date.
Regulation 48 sets out the time by which the Settlement Body must deal with credit notes and over-delivery payment credit notes, while regulations 49 and 50 make provision for the Settlement Body to reduce capacity payments if a capacity provider is liable for any unpaid capacity provider penalty charges or has failed to demonstrate satisfactory performance.
Regulation 51 makes provision for the Settlement Body to withhold making capacity payments to capacity providers if a capacity provider has been issued a data default notice or if the capacity provider is insolvent.
Regulation 52 sets out the process for the Settlement Body paying withheld credit, and makes provision for the Settlement Body to deduct all or part of the withheld credit to a capacity provider who is insolvent.

Part 7

Regulation 53 sets out that Part 7 of the Regulations is applicable to prospective generating CMUs or unproven DSR CMUs as well as those CMUs who have received a "conditional prequalification notice" from the Delivery Body.
Regulation 54 sets out how a person can provide credit cover and the permissible forms of credit support.
Regulation 55 sets out how the Settlement Body must determine whether the credit support can be approved.
Regulation 56 requires credit cover equal to or more than the required amount to be maintained by the applicant at all times during the specified credit obligation period.
Regulation 57 requires an applicant to notify the Settlement Body if the bank issuing a letter of credit is downgraded and, within eight days, to provide replacement credit cover.
Regulation 58 sets out the circumstances in which the credit cover can be released by the Settlement Body back to the applicant.
Regulation 59 makes provision for the Settlement Body to draw down the credit cover from an unproven DSR CMU or a prospective generating CMU if specific requirements are not met. This also applies if a termination fee is due but is not paid.
Regulation 60 makes further provision concerning an applicant's credit cover. An applicant who is required to provide credit cover must do so within 5 working days on receipt of a conditional prequalification notice.
Regulation 61 confirms the period for which credit cover must be maintained by the applicant and the circumstances in which the period ends or the credit cover amount can be altered.
Regulation 62 provides that, where an applicant fails to maintain the required credit cover, the applicant will not be eligible for participation in the capacity auction.

Part 8

Regulation 63 enables the Secretary of State, the Authority and auction monitors to require information to be provided to them from identified persons for specified purposes. For example, the Secretary of State can require information from suppliers and owners of CMUs for the purpose of reviewing the capacity market.
Regulation 64 makes provision for certain protected items not to be disclosed on receipt of a request for information under regulation 63.
Regulation 65 puts in place provisions on protection of information, and regulation 66 confirms that section 33(3) of the Energy Act 2013 applies in relation to the disclosure of information required in the capacity market rules.

Part 9

Regulation 67 identifies those requirements which are to be enforceable by the Authority as if they were relevant requirements for the purposes of section 25 of the Electricity Act 1989.

Part 10

Regulation 68 sets out which decisions made by the Delivery Body under the capacity market rules may be reviewed, and by whom a dispute or appeal can be brought.
Regulation 69 sets out the process for making a request to the Delivery Body to reconsider a decision and requires the Delivery Body, on receipt of a request, to reconsider its decision and notify the person of the outcome of the reconsideration and the reasons for the reconsidered decision.
Regulation 70 allows an affected person who disputes the Delivery Body's reconsidered decision to apply to the Authority to resolve the dispute.

Regulation 71 sets out the process for the Authority to determine applications it receives to resolve a dispute and the options open to the Authority in making a determination.
Regulation 72 makes provision for an affected person to appeal to the court against a determination made by the Authority. An appeal to the court may only be made on a point of law and must be brought within 28 days after the date of the Authority's determination.
Regulation 73 sets out the consequences of a successful review or appeal depending on when the outcome of a successful review or appeal is made.
Regulation 74 makes provision for a dispute on a calculation or determination made by the Settlement Body under Parts 6 or 7 of the Regulations to be brought.
Regulation 75 sets out that a disputing party may give a notice to the Settlement Body of a dispute setting out the matter giving rise to the dispute and the outcome sought.
Regulation 76 sets out the process for determining a dispute, for which the Settlement Body must decide whether to uphold the disputed calculation or determination or substitute it with a different calculation or determination.

Part 11

Regulation 77 grants the Authority, the day after the first full capacity auction results are published, the power to make capacity market rules which are concerned with the operation and administration of the capacity market. This includes the power to amend, add to, revoke or substitute any provision of the capacity market rules. Any change to the capacity market rules which confers functions on the Secretary of State or confers additional functions on the Authority can only be made with the approval of the Secretary of State.
Regulation 78 sets out the objectives to which the Authority must have regard when making capacity market rules in addition to its principal objective and general duties.
Regulation 79 sets out the procedure the Authority must follow before making capacity market rules.

Part 12

Regulation 80 makes provision for the Secretary of State to appoint a person to be the Settlement Body once these Regulations come into force.
Regulation 81 requires the Secretary of State to review both the Regulations and the functions conferred on the Authority by capacity market rules within 5 years of these Regulations coming into force and thereafter at intervals not exceeding 5 years.
Regulation 82 requires the Authority to review the capacity market rules within 5 years of the capacity market rules first coming into force and thereafter at intervals not exceeding 5 years.
Regulation 83 requires the Authority to provide the Secretary of State with an annual report on the operation of the capacity market and the Delivery Body's performance of its functions in relation to the capacity market. The first report must be provided to the Secretary of State by no later than 6 months after the completion of the first capacity auction and thereafter no later than 6 months after the completion of each T-4 auction.
Regulation 84 requires the Settlement Body to produce an annual report, no later than 3 months after the end of the capacity year to which the report relates, on its performance of its functions.

Part 13

Regulation 85 sets out restrictions on the Delivery Body's liability in damages for anything done or omitted to be done in the exercise of its functions under these Regulations or capacity market rules.

Part 14

Regulation 87 sets out the transitory provisions for the first T-4 auction.

Regulation 88 confirms that section 47ZA of the Electricity Act 1989 is repealed.

Schedules

Schedule 1 sets out the detailed settlement calculations to be made by the Settlement Body, including capacity payments, capacity provider penalty charges, over-delivery payments and the settlement costs levy for the first levy period.
Schedule 2 makes general provision concerning documents.
A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London, SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Electricity Capacity Regulations 2014. Any changes that have already been made by the team appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

- Sch. 1 para. 3(1) words substituted by S.I. 2024/434 reg. 12(b)(i)
- Sch. 1 para. 3(5) words substituted by S.I. 2024/434 reg. 12(b)(ii)
- Sch. 1 para. 7(4) words substituted by S.I. 2024/434 reg. 12(c)
- Sch. 1 para. 8(4) words substituted by S.I. 2024/434 reg. 12(d)
- reg. 2(1) words inserted by S.I. 2024/434 reg. 7(a)
- reg. 2(1) words omitted by S.I. 2024/434 reg. 7(b)
- reg. 4 heading words substituted by S.I. 2024/434 reg. 9(a)
- reg. 4(2) word omitted by S.I. 2024/434 reg. 9(b)(ii)
- reg. 4(2)(a) words substituted by S.I. 2024/434 reg. 9(b)(i)
- reg. 6(3) substituted by S.I. 2024/434 reg. 10
- reg. 19 word omitted by S.I. 2024/434 reg. 11(a)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:
Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 para. 2(5) words substituted by S.I. 2024/434 reg. 12(a)
- reg. 3(3) words inserted by S.I. 2024/434 reg. 8
- reg. 4(b) word substituted by S.I. 2024/434 reg. 9(c)
- reg. 4(2)(aa) inserted by S.I. 2024/434 reg. 9(b)(iii)
- reg. 19(aa) inserted by S.I. 2024/434 reg. 11(b)