STATUTORY INSTRUMENTS

2019 No. 862

ELECTRICITY

The Electricity Capacity (No. 1) Regulations 2019

Made - - - - 9th April 2019

Coming into force in accordance with regulation 1(2)

The Secretary of State has before making these Regulations—

(a) consulted the persons listed in section 40(2)(a) and (b) of the Energy Act 2013(**1**) and such other persons as the Secretary of State considered it appropriate to consult; and

(b) had regard to the matters in section 5(2) of that Act.

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

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 27 to 33, 36 and 40(1) of that Act, makes the following regulations:

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Capacity (No. 1) Regulations 2019.

(2) These Regulations come into force on the day after the day on which they are made.

Interpretation

2.—(1) Subject to paragraph (2), in these Regulations—

"the Rules" mean the Capacity Market Rules 2014(**2**);

"agreement termination trigger event" means a notification by the Secretary of State under regulation 6(1)(a) or 6(2)(a) in respect of capacity agreements which existed on 15th November 2018, and occurs on the date on which the notification is given;

(**1**) 2013 c.32.

(**2**) A consolidated version of the Capacity Market Rules 2014 are at https://www.ofgem.gov.uk/publications-and-updates/publication-consolidated-capacity-market-rules-2018. Copies are available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.

"capacity agreement" (except in regulation 5(**3**)) has the meaning given in regulation 30(1) of the Principal Regulations;

"capacity market supplier charge" means the charge payable by electricity suppliers to the Settlement Body under regulation 6(1) of the Supplier Payment Regulations;

"capacity obligation" has the meaning given in regulation 2(1) of the Principal Regulations;

"capacity payment" has the meaning given in regulation 2(1) of the Principal Regulations;

"capacity provider" has the meaning given in regulation 2(1) of the Principal Regulations;

"conditional agreement auction" means the T-1 auction for the delivery year commencing on 1st October 2019;

"conditional capacity agreement" has the meaning given in regulation 2(1) of the Principal Regulations (as modified by Part 5);

"deferred capacity payment trigger event" means a notification by the Secretary of State under regulation 4(1), and occurs on the date on which the notification is given;

"Delivery Body" has the meaning given in regulation 2(1) of the Principal Regulations;

"delivery year" has the meaning given in regulation 2(1) of the Principal Regulations;

"electricity supplier" has the meaning given in regulation 2(1) of the Supplier Payment Regulations;

"Principal Regulations" means the Electricity Capacity Regulations 2014(**4**);

"relevant authority" means—

(a) the Commission of the European Union;

(b) the European Court(**5**); or

(c) the Competition and Markets Authority(**6**);

"Settlement Body" has the meaning given in regulation 2(1) of the Principal Regulations;

"standstill month" means—

(a) October 2018;

(b) any month included (wholly or partly) in the standstill period; and

(c) the month after the last month included (wholly or partly) in the standstill period;

"standstill period" has the meaning given in regulation 3;

"Supplier Payment Regulations" means the Electricity Capacity (Supplier Payment etc.) Regulations 2014(**7**);

"T-1 termination trigger event" means a notification by the Secretary of State under regulation 6(1)(b) or 6(2)(b) in respect of conditional capacity agreements, and occurs on the date on which the notification is given;

"T-1 auction" has the meaning given in regulation 2(1) of the Principal Regulations; and

"T-1 capacity agreement trigger event" means a notification by the Secretary of State under regulation 5(1), and occurs on the date on which the notification is given.

(2) Words read into—

(**3**) In regulation 5, "capacity agreement" has the meaning given in regulation 2(1) of the Principal Regulations as modified by Part 5.

(**4**) S.I. 2014/2043, amended by S.I. 2014/3354, 2015/875, 2015/1974, 2016/742 and 2017/1053.

(**5**) The term "European Court" is defined to mean the Court of Justice of the European Union in the European Communities Act 1972 (c. 68), Schedule 1, Part II, which applies through the Interpretation Act 1978 (c. 30) (section 5 and Schedule 1) to all other UK legislation.

(**6**) The Competition and Markets Authority is established by section 25 of the Enterprise and Regulatory Reform Act 2013 (c. 24).

(**7**) S.I. 2014/3354; relevant amending instruments are S.I. 2016/363, 2016/742, 2017/502 and 2017/1053.

(a) the Principal Regulations as modifications to the application of those regulations under regulations 12 to 23—

(i) have the meaning given in the Principal Regulations as modified by regulations 12 to 23; and

(ii) where defined with reference to the Supplier Payment Regulations, have the meaning given in the Supplier Payment Regulations as modified by regulations 54 to 63;

(b) the Principal Regulations as modifications to the application of those regulations under regulations 29 to 52—

(i) have the meaning given in the Principal Regulations as modified by regulations 29 to 52; and

(ii) where defined with reference to the Supplier Payment Regulations, have the meaning given in the Supplier Payment Regulations as modified by regulations 54 to 63; and

(c) the Supplier Payment Regulations as modifications to the application of those regulations under regulations 54 to 63 have the meaning given in the Supplier Payment Regulations as modified by regulations 54 to 63.

PART 2

Trigger events

Standstill period

3. For the purposes of these Regulations, "standstill period" means the period beginning on 15th November 2018 and ending on the date on which the deferred capacity payment trigger event or the agreement termination trigger event occurs.

Deferred capacity payment trigger event: agreements existing on 15th November 2018

4.—(1) If the Secretary of State is aware of a decision by a relevant authority that has the consequence that the making of capacity payments would be in accordance with the law relating to state aid, the Secretary of State must notify the Settlement Body and the Delivery Body of that decision as soon as reasonably practicable.

(2) If the Settlement Body receives a notification under paragraph (1), it must resume making capacity payments under regulation 40 of the Principal Regulations that were payable during the standstill period (but were prevented from being paid at the time by the law relating to state aid) in respect of capacity agreements that were in existence on 15th November 2018.

(3) A notification by the Secretary of State under paragraph (1) must—

(a) specify the date of the notification;

(b) specify that the notification is given for the purposes of this regulation; and

(c) be published as soon as reasonably practicable after it is given.

Conditional capacity agreement trigger event

5.—(1) If the Secretary of State is aware of a decision by a relevant authority that has the consequence that—

(a) the making of capacity payments to holders of agreements awarded to successful bidders in the conditional agreement auction would be in accordance with the law relating to state aid; or

(b) the making of capacity payments in respect of a portion of the delivery year to which these agreements relate would be in accordance with the law relating to state aid,

the Secretary of State must notify the Settlement Body and the Delivery Body of that decision as soon as reasonably practicable.

(2) On the date on which the Secretary of State gives a notification under paragraph (1), conditional capacity agreements become capacity agreements.

(3) A notification by the Secretary of State under paragraph (1) must—

(a) specify the date of the notification;

(b) specify whether the decision of the relevant authority has the consequence that either or both of the capacity payments described in paragraph (1)(a) or (1)(b) can be made; and

(c) be published as soon as reasonably practicable after it is given.

(4) In this regulation, "capacity agreement" has the meaning given in regulation 2(1) of the Principal Regulations (as modified by Part 5).

Termination trigger events

6.—(1) If the Secretary of State is aware of a decision by a relevant authority after 15th November 2018 that has the consequence that it would not be in accordance with the law relating to state aid for capacity payments to be made to capacity providers in respect of—

(a) a capacity agreement that existed on 15th November 2018; or

(b) a conditional capacity agreement,

the Secretary of State must notify the Settlement Body of that decision as soon as reasonably practicable.

(2) If the Secretary of State is satisfied that there is no reasonable prospect that there will be a decision by a relevant authority before 1st October 2020 that would have the consequence that—

(a) the making of any capacity payments in relation to a capacity agreement that existed on 15th November 2018 would be in accordance with the law relating to state aid; or

(b) the making of any capacity payments to holders of agreements awarded to successful bidders in the conditional agreement auction would be in accordance with the law relating to state aid,

the Secretary of State must notify the Settlement Body and the Delivery Body by 1st October 2020 that that is the case.

(3) A notification by the Secretary of State under paragraph (1) or (2) terminates with immediate effect, and without any entitlement to capacity payments, any agreement of a kind specified in the notification.

(4) A notification by the Secretary of State under paragraph (1) or (2) must—

(a) specify the date of the notification;

(b) specify that the notification is given for the purposes of this regulation;

(c) specify whether the notification relates to either or both of the following kinds of agreement—

(i) capacity agreements that—

(aa) existed on 15th November 2018;

(bb) had not already expired by the effluxion of time, or been terminated, by the date on which the notification is given; and

(cc) contain a capacity obligation applying to the delivery year beginning on 1st October 2018 or any subsequent delivery year; and

(ii) conditional capacity agreements; and

(d) be published as soon as reasonably practicable after it is given.

PART 3

Payments administered by the Settlement Body

CHAPTER 1

Supplier charge payments during standstill period

Settlement Body to hold supplier charge payments

7.—(1) The Settlement Body must hold any capacity market supplier charge and any other payments it receives from electricity suppliers under regulation 6A(7) of the Supplier Payment Regulations(**8**) (unless returned to the electricity supplier which made the payment) to enable it to meet the cost of making capacity payments—

(a) in respect of capacity obligations contained in capacity agreements that existed on 15th November 2018 which were payable in respect of a standstill month (but were prevented by the law relating to state aid from being paid at the time); and

(b) in respect of capacity obligations awarded through the conditional agreement auction in respect of a T-1 standstill month.

(2) In this regulation, "T-1 standstill month" means—

(a) any month included (wholly or partly) in the T-1 standstill period; or

(b) the month after the month in which the T-1 capacity agreement trigger event or T-1 termination trigger event occurs.

(3) For the purposes of paragraph (2), "T-1 standstill period" means any part of the delivery year beginning on 1st October 2019 which falls before the date on which the T-1 capacity agreement trigger event or T-1 termination trigger event occurs.

Supplier charge payments used to make capacity payments: deferred capacity payment trigger event

8. If the deferred capacity payment trigger event occurs, the Settlement Body must use the capacity market supplier charge and any other payments it holds under regulation 7(1) on the day on which the trigger event occurs to meet the cost of making the capacity payments described in regulation 7(1)(a) in accordance with regulation 40 of the Principal Regulations(**9**).

Supplier charge payments used to make capacity payments: T-1 capacity agreement trigger event

9. If the T-1 capacity agreement trigger event occurs, the Settlement Body must use the supplier charge and any other payments it holds under regulation 7(1) on the day on which the trigger event occurs to meet the cost of making capacity payments to capacity providers in respect of capacity

(**8**) Regulation 6A(7) is read into those regulations as modifications to the application of the Supplier Payment Regulations made by regulation 56(2).

(**9**) Regulation 40 applies in respect of those payments as modified by regulation 13.

obligations awarded through the conditional agreement auction in accordance with regulations 40 and 40A of the Principal Regulations(**10**).

Return of supplier charge payments: agreement termination trigger event

10.—(1) If the agreement termination trigger event and T-1 termination trigger event have both occurred, the Settlement Body must, for each electricity supplier ("S"), as soon as reasonably practicable after both trigger events have occurred—

(a) determine the amount of supplier charge and any other payments paid by S which it holds under regulation 7(1) on the day on which the trigger event occurs;

(b) determine the amount of interest payable (if any) on the amount determined under sub-paragraph (a); and

(c) make a payment to S for an amount determined by adding the amounts determined under sub-paragraphs (a) and (b).

(2) In paragraph (1)(b), interest is payable only if there is a legal obligation to pay S interest in respect of the amount determined under paragraph (1)(a), and is only payable to the extent of that legal obligation.

CHAPTER 2

Modifications to application of Principal Regulations: agreements existing on 15th November 2018

Application

11. The modifications to the application of the Principal Regulations in this Chapter apply only in respect of capacity agreements that existed on 15th November 2018.

Interpretation: modifications

12. Regulation 2 (interpretation) of the Principal Regulations applies as if in paragraph (1), in the appropriate places, there were inserted the following definitions—

(a) "conditional agreement auction" has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;

(b) "deferred capacity payment trigger event" has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;

(c) "standstill month" has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019; and

(d) "standstill period" has the meaning given in regulation 3 of the Electricity Capacity (No. 1) Regulations 2019.

Capacity payments: modifications

13.—(1) Regulation 40 (capacity payments) of the Principal Regulations applies as if, after paragraph (7) there were inserted—

"(8) Paragraphs (1) to (7) are subject to regulation 40A".

(2) The Principal Regulations apply as if after regulation 40, there were inserted—

(**10**) Regulations 40 and 40A apply in respect of those payments as modified by regulation 38.

"**Capacity payments: standstill months**

40A.—(1) This regulation applies where regulation 40 relates to capacity payments in respect of a standstill month of a delivery year.

(2) Where this regulation applies, regulation 40 applies as if—

(a) in paragraph (1), after "month of a delivery year" there were inserted "which is a standstill month";

(b) at the end of paragraph (2)(b), there were inserted "in accordance with paragraph (4)(a)";

(c) in paragraph (4)(a), for "month M" there were substituted "the month following the month in which the deferred capacity payment trigger event occurs";

(d) in paragraph (5)—

(i) for "month M", in the first place it occurs, there were substituted "the month following the month in which the deferred capacity payment trigger event occurs"; and

(ii) for "month M", in the second place it occurs, there were substituted "the standstill collection period";

(e) for paragraphs (6) and (7), there were substituted—

"(6) If by the day referred to in paragraph (5) the Settlement Body has received capacity market supplier charges in respect of the standstill collection period for a delivery year ("collection period X") the total of which is less than the sum of MCP_{cm} for all capacity providers for every month within collection period X ("month SM"), the amount of each capacity payment which would otherwise be determined under paragraph (2) in respect of each month SM 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) Where the amount of capacity payments determined under paragraph (2) in respect of months within collection period X is reduced under paragraph (6), the Settlement Body must—

(a) determine the total amount of this reduction (the "residual amount");

(b) determine the portion of the residual amount attributable to each capacity provider ("C") to whom a capacity payment was payable under paragraph (2) in respect of one or more months within collection period X ("residual capacity payment"); and

(c) issue a credit note to C for the amount of the residual capacity payment attributable to C.

(8) The Settlement Body must issue a credit note to C under paragraph (7)(c) by no later than the 28th working day after the date on which invoices for supplementary mutualisation payments are issued under regulation 6A(11) of the Supplier Payment Regulations in respect of the standstill collection period.

(9) If, by the 26th working day after the date on which invoices for supplementary mutualisation payments are issued under regulation 6A(11) of the Supplier Payment Regulations, the Settlement Body has received capacity market supplier charges in respect of the full residual amount the total of which is less than the full residual amount, the amount of each residual capacity payment determined under paragraph (7)(b) must be reduced by the same proportion so that the total amount of residual capacity payments payable to all capacity providers is equal to the total

amount of capacity market supplier charges received in respect of the full residual amount.

(10) A capacity provider's entitlement to receive a residual capacity payment under paragraph (7) is subject to paragraph (9) and regulations 49 to 51.

(11) In paragraph (6)—

(a) the total amount of capacity market supplier charges received by the Settlement Body is the total amount of supplier charges received in respect of the standstill collection period to make capacity payments in respect of all capacity agreements; and

(b) the total amount of capacity payments payable to capacity providers is the total amount of capacity payments payable to capacity providers in respect of all capacity agreements.

(12) In paragraph (9)—

(a) "full residual amount" means the residual amount attributable to capacity providers in respect of all capacity agreements; and

(b) the total amount of residual capacity payments payable to all capacity providers includes residual capacity payments payable in respect of all capacity agreements.

(13) In this regulation—

"all capacity agreements" means—

(a) capacity agreements which existed on 15th November 2018; and

(b) in respect of the delivery year commencing on 1st October 2019, capacity agreements awarded through the conditional agreement auction;

"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; and

"standstill collection period" has the meaning given in regulation 2(1) of the Supplier Payment Regulations.".".

Capacity provider penalty charges: modifications

14. Regulation 41 (capacity provider penalty charges) of the Principal Regulations applies as if—

(a) at the beginning of paragraph (2), there were inserted "Subject to paragraph (2A),"; and

(b) after paragraph (2), there were inserted—

"(2A) If month M is a standstill month, the reference in paragraph (2) to "the 21st working day after the end of month M" is to be construed as a reference to "the 21stworking day after the month following the month in which the deferred capacity payment trigger event occurs".".

Over-delivery payments: modifications

15. Regulation 42 (over-delivery payments) of the Principal Regulations applies as if—

(a) at the beginning of paragraph (3), there were inserted "Subject to paragraph (3A),"; and

(b) after paragraph (3), there were inserted—

"(3A) If year X includes a standstill month (in whole or in part), the reference in paragraph (3) to "the 28th working day after the end of year X" is to be construed as a reference to "the 28th working day after the end of year X (if the deferred capacity payment

trigger event occurs before the last month of year X) or otherwise as soon as reasonably practicable after the deferred capacity payment trigger event occurs”.”.

Termination fees: modifications

16. Regulation 43 (termination fees) of the Principal Regulations applies as if—

(a) at the beginning of paragraph (2), there were inserted “Subject to paragraph (2A),”; and

(b) after paragraph (2), there were inserted—

“(2A) If the Settlement Body—

(a) receives a notice during a standstill month that a capacity agreement has been terminated; or

(b) received a notice of the termination of a capacity agreement before 15th November 2018 but had not fulfilled the requirements in paragraph (2) by that date,

the reference in paragraph (2) to “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” is to be construed as a reference to “as soon as reasonably practicable after the deferred capacity payment trigger event occurs (if the Settlement Body receives the notice before the trigger event occurs)”.”.

Non-completion fees: modifications

17. Regulation 43A (non-completion fee) of the Principal Regulations applies as if—

(a) at the beginning of paragraph (3), there were inserted “Subject to paragraph (3A),”; and

(b) after paragraph (3), there were inserted—

“(3A) If the Settlement Body—

(a) receives a notice during a standstill month that a non-completion fee has been imposed; or

(b) received a notice that a non-completion fee had been imposed before 15th November 2018 but had not fulfilled the requirements in paragraph (3) by that date,

the reference to paragraph (3) to “as soon as reasonably practicable after receiving notice in accordance with capacity market rules of the imposition of a non-completion fee” is to be construed as a reference to “as soon as reasonably practicable after the deferred capacity payment trigger event occurs (if the Settlement Body receives the notice before the trigger event occurs)”.”.

Repayment of capacity payments: modifications

18.—(1) Regulation 43B (repayment of capacity payments: termination) of the Principal Regulations applies as if—

(a) at the beginning of paragraph (2), there were inserted “Subject to paragraph (2A),”; and

(b) after paragraph (2), there were inserted—

“(2A) If the Settlement Body—

(a) receives final notice during a standstill month that a capacity agreement has been terminated; or

(b) received final notice of the termination of a capacity agreement before 15th November 2018 but had not fulfilled the requirements in paragraph (2) by that date,

the reference in paragraph (2) to "as soon as reasonably practicable after receiving final notice of termination of the capacity agreement" should be construed as a reference to "as soon as reasonably practicable after the deferred capacity payment trigger event occurs (if the Settlement Body receives the notice before the trigger event occurs)".".

(2) Regulation 43C (repayment of capacity payments: metering fault) of the Principal Regulations applies as if—

(a) at the beginning of paragraph (2), there were inserted "Subject to paragraph (3A),"; and

(b) after paragraph (3), there were inserted—

"(3A) If the "relevant date" in paragraph (2)—

(a) occurs during a standstill month; or

(b) occurred before 15th November 2018 but the Settlement Body had not fulfilled the requirements in paragraph (2) by that date,

the reference in paragraph (2) to "as soon as reasonably practicable after the relevant date" should be construed as a reference to "as soon as reasonably practicable after the deferred capacity payment trigger event occurs (if the relevant date occurs before the trigger event occurs)".".

Non-payment register: modifications

19. Regulation 47 (non-payment register) of the Principal Regulations applies as if—

(a) in paragraph (4), after sub-paragraph (a), there were inserted—

"(aa) relating to—

(i) a payment of standstill collection period supplier charge; or

(ii) a mutualisation payment (including a supplementary mutualisation payment) in respect of a standstill collection period,

which is not fully paid (including any late payment interest due in respect of that charge or payment), after the last scheduled annual reconciliation run under Part 5 of the Supplier Payment Regulations for the delivery year in respect of which the entry was made;";

(b) for paragraph (7) there were substituted—

"(7) In this regulation—

"late payment interest" has the meaning given in regulation 11(3) of the Supplier Payment Regulations;

"mutualisation payment" has the meaning given in regulation 7A(4) of the Supplier Payment Regulations;

"payer" means a person to whom an invoice is issued under these Regulations or the Supplier Payment Regulations;

"scheduled annual reconciliation run" has the meaning given in regulation 18(1)(b) of the Supplier Payment Regulations; and

"standstill collection period supplier charge" has the meaning given in regulation 2(1) of the Supplier Payment Regulations.".

Applicant credit cover: modifications

20.—(1) The modifications in paragraph (2) do not apply in relation to an obligation to maintain applicant credit cover in respect of the conditional agreement auction.

(2) Regulation 59 (requirement to provide applicant credit cover) of the Principal Regulations applies as if—

(a) in paragraph (1), after "paragraph (1B)" there were inserted "and (1C)";

(b) after paragraph (1B), there were inserted—

"(1C) During the standstill period, an applicant who would otherwise be required to provide —

(a) applicant credit cover under paragraph (1); or

(b) increased credit cover under paragraph (4),

is not required to do so, but may nevertheless provide and maintain such cover during the whole or part of that period.";

(c) at the end of paragraph (3), there were inserted "unless paragraph (5A) applies";

(d) at the end of paragraph (5), there were inserted "unless paragraph (5A) applies"; and

(e) after paragraph (5), there were inserted—

"(5A) If the deferred capacity payment trigger event occurs, an applicant to whom paragraph (1C) applies must provide applicant credit cover in the amount determined in accordance with paragraph (2)(a) or (4) (as the case may be) within 40 working days after receiving a notice by the Delivery Body that the applicant must provide applicant credit cover under paragraph (1).".

Credit obligation period: modifications

21. Regulation 60 of the Principal Regulations (credit obligation period) applies as if after paragraph (4), there were inserted—

"(4A) Paragraphs (1) to (4) are subject to paragraph (4B).

(4B) An applicant who is not required to provide credit cover during the standstill period by virtue of regulation 59(1C) is not required to maintain any credit cover during the standstill period, but may nevertheless maintain such cover during that period.".

Draw down of credit cover: modifications

22. Regulation 61 of the Principal Regulations (draw down of credit cover) applies as if—

(a) at the beginning of paragraph (2), there were inserted "Subject to paragraph (2A),"; and

(b) after paragraph (2), there were inserted—

"(2A) If the Settlement Body is required to draw down applicant cover under paragraph (2) in respect of an applicant to whom regulation 59(5A) applies, the Settlement Body must draw down the credit cover as soon as reasonably practicable after the day by which regulation 59(5A) requires A to have provided the credit cover.".

Effect of non-compliance: modifications

23. Regulation 62 of the Principal Regulations (effect of non-compliance) applies as if—

(a) regulation 62 were renumbered as paragraph (1) of that regulation;

(b) at the beginning of paragraph (1) as so renumbered, there were inserted "Subject to paragraph (2),"; and

(c) after paragraph (1) as so renumbered, there were inserted—

"(2) A is to be treated as having complied with this Part if—

(a) at any time during the standstill period, A has not provided credit cover in accordance with regulation 59;

(b) regulation 59(1C)(**11**) applies to A; and

(c) A provides applicant credit cover in accordance with regulation 59(5A)(**12**).".

PART 4

Capacity agreements: miscellaneous

CHAPTER 1

Amendment of Principal Regulations

Secretary of State's discretion concerning non-completion fees: amendments

24. In regulation 43A (non-completion fee) of the Principal Regulations, after paragraph (5), insert—

"(6) Regulation 33 applies (except for paragraphs (2)(b), (3) and (5)(b)) to a non-completion notice as it applies to a termination notice, and for that purpose, a reference in regulation 33 to—

(a) a "termination fee" is to be construed as a reference to a non-completion fee; and

(b) a "termination notice" is to be construed as a reference to a non-completion notice.".

Delivery Body reviewable decision: amendments

25. In regulation 68 of the Principal Regulations, in paragraph (2), in the table, after "issue of" insert "a non-completion notice,".

CHAPTER 2

Modifications of Principal Regulations

Secretary of State's discretion: modifications

26.—(1) The modifications in paragraph (2) apply only in relation to a capacity agreement that existed on 15th November 2018.

(2) Regulation 33 (termination of capacity agreements: Secretary of State's discretion) of the Principal Regulations applies as if—

(a) in paragraph (2)—

(i) in sub-paragraph (a), "or" were omitted;

(ii) at the end of sub-paragraph (b), for "." there were substituted "; or"; and

(iii) after sub-paragraph (b), there were inserted—

(**11**) Regulation 59(1C) is read into the Principal Regulations as a modification to the application of those regulations made by regulation 20.

(**12**) Regulation 59(5A) is read into the Principal Regulations as a modification to the application of those regulations made by regulation 20.

"(c) if the termination notice is given during the standstill period, direct the Delivery Body to—

(i) withdraw the termination notice given to the capacity provider ("P"); and

(ii) terminate the capacity agreement on the ground specified in capacity market rules that it would involve undue financial hardship to require P to pay a termination fee in respect of the termination of the capacity agreement, owing to the exceptional circumstances of P's particular case arising from the non-payment to P of capacity payments (which were prevented from being paid by the law relating to state aid) during the standstill period.";

(b) in paragraph (3), for "6" there were substituted "12"; and

(c) at the end of paragraph (9), there were inserted ", and "standstill period" has the meaning given in regulation 3 of the Electricity Capacity (No. 1) Regulations 2019".

Non-completion fees: modifications

27.—(1) The modifications in paragraph (2) apply in respect of—

(a) the conditional agreement auction, including the rights and obligations arising out of, or in relation to, this auction; and

(b) capacity agreements that existed on 15th November 2018.

(2) Regulation 43A (non-completion fee) of the Principal Regulations applies as if in paragraph (6)—

(a) in paragraph (a), "; and" were omitted;

(b) in paragraph (b), for "." there were inserted "; and"; and

(c) after paragraph (b), there were inserted—

"(c) if a non-completion notice is issued during the standstill period, a direction to the Delivery Body to withdraw the termination notice and to terminate a capacity agreement on the ground specified in capacity market rules is to be construed as a reference to a direction to the Delivery Body to withdraw the non-completion notice.".

PART 5

Conditional agreement auction

Application

28. The modifications to the application of the Principal Regulations in this Part apply only in relation to the conditional agreement auction, including the rights and obligations arising out of, or in relation to, this auction.

Interpretation: modifications

29.—(1) Regulation 2 (interpretation) of the Principal Regulations applies as if—

(a) in the definition of "auction clearing price", at the end there were inserted ", or the price at which such payments would be payable if the T-1 capacity agreement trigger event occurred";

(b) in the definition of "auction window", for "31st July" there were substituted "30th August";

(c) after the definition of "auction window" there were inserted—

""auction withdrawal notice" has the meaning given in the Rules;";

(d) in the definition of "capacity agreement notice"—

(i) after "about a", there were inserted "conditional"; and

(ii) at the end there were inserted ", or the capacity agreement this conditional capacity agreement becomes under regulation 30(2A) if the T-1 capacity agreement trigger event occurs";

(e) after the definition of "capacity market register", there were inserted—

""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;";

(f) in the definition of "capacity provider", before paragraph (a) there were inserted—

"(za) a conditional capacity agreement;";

(g) in the definition of "capacity provider penalty charge", at the end, there were inserted "and includes an amount that would be payable by a capacity provider under regulation 41 if the T-1 capacity agreement trigger event occurred";

(h) after the second definition of "commissioned", there were inserted—

""conditional agreement auction" means the T-1 auction for the delivery year commencing on 1st October 2019;

"conditional capacity agreement" has the meaning given in regulation 30(1A);";

(i) in the definition of "delivery year", in paragraph (b), for "capacity agreement", in both places it occurs, there were substituted "conditional capacity agreement or capacity agreement";

(j) in the definition of "demand curve", after "which", in the second place it occurs, there were inserted "conditional";

(k) after the definition of "site", there were inserted—

""standstill collection period" means a period made up of the months of a delivery year which are standstill months which begins at the start of the first standstill month in the delivery year and ends at the end of the last standstill month in the delivery year;

"standstill month" means—

(a) any month included (wholly or partly) in the T-1 standstill period; or

(b) the month after the month in which the T-1 capacity agreement trigger event or T-1 termination trigger event occurs;"; and

(l) after the definition of "supplementary auction", there were inserted—

""supplementary mutualisation payment" has the meaning given in regulation 7A(8) of the Supplier Payment Regulations;";

(m) after the definition of "T-1 auction", there were inserted—

""T-1 capacity agreement trigger event" means a notification by the Secretary of State under regulation 5(1) of the Electricity Capacity (No. 1) Regulations 2019, and occurs on the date on which the notification is given;

"T-1 standstill period" means any part of the delivery year beginning on 1st October 2019 which falls before the date on which the T-1 capacity agreement trigger event or T-1 termination trigger event occurs;

"T-1 termination trigger event" means a notification by the Secretary of State under regulation 6(1) or 6(2) of the Electricity Capacity (No. 1) Regulations 2019 in respect of conditional capacity agreements, and occurs on the date on which the notification is given;"; and

(n) in the definition of "termination fee"—

(i) after "where a", there were inserted "conditional capacity agreement,"; and

(ii) at the end, there were inserted ", and includes a fee that would be payable by a capacity provider under regulation 43 if the T-1 capacity agreement trigger event occurred".

(2) Regulation 5 (demand side response CMU) of the Principal Regulations applies as if, in paragraph (1)(c), after "a" there were inserted "conditional capacity agreement or".

Rearrangement of conditional agreement auction: modifications

30.—(1) Regulation 14 (eligibility to bid in capacity auctions) of the Principal Regulations applies as if—

(a) at the start of paragraph (2), there were inserted "Subject to paragraph (2A),"; and

(b) after paragraph (2) there were inserted—

"(2A) A CMU is not prequalified for a capacity auction ("auction A") if the Delivery Body has, in accordance with the Rules, received an auction withdrawal notice withdrawing the CMU from auction A.".

(2) Regulation 23 (notifying prequalification results to the Secretary of State) of the Principal Regulations applies as if—

(a) after paragraph (2) there were inserted—

"(2A) If the Secretary of State gives a direction to the Delivery Body under regulation 28(1)(a) to allow prequalified CMUs to withdraw from the capacity auction, the Delivery Body must, as soon as reasonably practicable after the end of the auction withdrawal window—

(a) notify the Secretary of State of the aggregated de-rated capacity of—

(i) the CMUs referred to in paragraph (1)(a) and (b);

(ii) CMUs in respect of which the Delivery Body has received an auction withdrawal notice; and

(iii) generating CMUs, or interconnector CMUs, in respect of which the Delivery Body received—

(aa) an opt-out notification or auction withdrawal notice stating that the CMU will be closed down, decommissioned or otherwise non-operational by the commencement of the delivery year;

(bb) an opt-out notification or auction withdrawal notice stating that the CMU will be temporarily non-operational for all the winter of the delivery year but will be operational thereafter; or

(cc) an opt-out notification or auction withdrawal notice stating that the CMU will remain operational during the delivery year; and

(b) at the same time, provide the advice and recommendation referred to in paragraph (2) using this data.";

(b) in paragraph (3), after "recommendation" there were inserted "under paragraph (2) or (2A)"; and

(c) for paragraph (4), there were substituted—

"(4) In this regulation, "auction withdrawal window" and "opt-out notification" have the meaning given in the Rules.".

(3) Regulation 26 (cancellation, postponement or stopping of capacity auction) of the Principal Regulations applies as if—

(a) in paragraph (3)(a)—

(i) after "awarding of", there were inserted "conditional"; and

(ii) "or making of capacity payments" were omitted; and

(b) in paragraph (5)(a)—

(i) after "awarding of" there were inserted "conditional"; and

(ii) "and making of capacity payments" were omitted.

(4) Regulation 28 (rearranged capacity auctions) of the Principal Regulations applies as if for paragraph (2), there were substituted—

"(2) Directions under paragraph (1)(a) may include—

(a) a direction to re-open prequalification for the capacity auction, and must include such a direction if any of the auction parameters are adjusted; and

(b) a direction to allow prequalified CMUs (including CMUs which have prequalified subject to satisfaction of a further requirement) to withdraw from the capacity auction.".

Capacity agreements: modifications

31. Regulation 30 (capacity agreements) of the Principal Regulations applies as if—

(a) after paragraph (1) there were inserted—

"(1A) A "conditional capacity agreement" comprises the rights and obligations accruing to a capacity provider under or by virtue of capacity regulations and capacity market rules in relation to a particular capacity committed CMU and the delivery year commencing on 1st October 2019, which have accrued through or in relation to the conditional agreement auction.";

(b) in paragraph (2)—

(i) after "distinct", there were inserted "conditional";

(ii) for "a capacity auction", there were substituted "the conditional agreement auction"; and

(iii) in sub-paragraph (b), the words after "held" were omitted;

(c) after paragraph (2), there were inserted—

"(2A) If the T-1 capacity agreement trigger event occurs, each conditional capacity agreement becomes a capacity agreement for the same delivery year, capacity obligation, and capacity cleared price.

(2B) A conditional capacity agreement becomes a capacity agreement under paragraph (2A) on the later of—

(a) the date on which the T-1 capacity agreement trigger event occurs; or

(b) the date on which the conditional capacity agreement accrues to a successful bidder.";

(d) in paragraph (5), after "A" there were inserted "conditional capacity agreement or"; and

(e) in paragraph (6), after "a", in the second place it occurs, there were inserted "conditional capacity agreement or".

Transfer of a capacity agreement: modifications

32. Regulation 30A (transfer of a capacity agreement) of the Principal Regulations applies as if—

(a) in paragraph (1)—

(i) after "A", in the first place it occurs, there were inserted "conditional capacity agreement or"; and

(ii) in sub-paragraph (a), after "which the" there were inserted "conditional capacity agreement or";

(b) after paragraph (1), there were inserted—

"(1A) A transfer of a conditional capacity agreement under paragraph (1) may include the transfer of rights and obligations which would only arise in respect of a CMU under the capacity agreement the conditional capacity agreement would become under regulation 30(2A) if the T-1 capacity agreement trigger event occurred.";

(c) in paragraph (2)(a), after "in the" there were inserted "conditional capacity agreement or";

(d) for paragraph (3) there were substituted—

"(3) For the purposes of this regulation—

(a) a "transferred part" comprises the rights and obligations accruing to the transferee in respect of a CMU where the conditional capacity agreement or capacity agreement ("the related agreement") is transferred under paragraph (1)(b) or (2)(b); and

(b) if a conditional capacity agreement which has been transferred under paragraph (1)(b) or (2)(b) becomes a capacity agreement under regulation 30(2A), this capacity agreement becomes the related agreement to the transferred part."; and

(e) in paragraph (7), after "a", in the third place it occurs, there were inserted "conditional capacity agreement or".

Capacity market register: modifications

33. Regulation 31 (capacity market register) of the Principal Regulations applies as if—

(a) in paragraph (1)—

(i) in sub-paragraph (a)(ii), "and" were omitted;

(ii) before sub-paragraph (b), there were inserted—

"(zb) each conditional capacity agreement; and";

(b) in paragraph (2)—

(i) after "each", there were inserted "conditional";

(ii) in sub-paragraphs (a) to (c), after "the", in the second place it occurs in each sub-paragraph, there were inserted "conditional";

(iii) sub-paragraph (e) were omitted; and

(iv) in sub-paragraph (f), for the words after "payments" there were substituted "which would be payable under the conditional capacity agreement if regulation 40A did not apply";

(c) after paragraph (2), there were inserted—

"(2A) If a conditional capacity agreement becomes a capacity agreement under regulation 30(2A)—

(a) the matters included on the capacity market register in respect of the conditional capacity agreement (including any amendments) apply to this capacity agreement; and

(b) the Delivery Body must, as soon as reasonably practicable, update the capacity market register to reflect this change."; and

(d) in paragraph (3)—

(i) after "of the", there were inserted "conditional capacity agreement or"; and

(ii) in sub-paragraph (c)(iii), after "of" there were inserted "conditional capacity agreements or".

Termination fee rates: modifications

34. Regulation 32 (termination fee rates) of the Principal Regulations applies as if—

(a) in paragraph (1), in the definition of "TFx_{rate}"—

(i) in sub-paragraph (a), after "a", in the first place it occurs, there were inserted "conditional capacity agreement or"; and

(ii) in sub-paragraph (b), after "the" there were inserted "conditional capacity agreement or";

(b) in paragraph (4), for "capacity agreement" there were substituted "conditional capacity agreement, or the capacity agreement this conditional capacity agreement has become under regulation 30(2A),"; and

(c) in paragraph (5)—

(i) after "a", in the second place it occurs, there were inserted "conditional capacity agreement or"; and

(ii) for "capacity agreement", where it occurs after the words "which the", substitute "conditional capacity agreement, or the capacity agreement it has become under regulation 30(2A),".

Secretary of State's discretion: modifications

35. Regulation 33 of the Principal Regulations applies as if—

(a) in paragraph (2)—

(i) in sub-paragraph (a), "or" were omitted;

(ii) at the end of sub-paragraph (b), for "." there were inserted "; or"; and

(iii) after sub-paragraph (b), there were inserted—

"(c) if paragraph (3A) applies, direct the Delivery Body to—

(i) withdraw the termination notice given to the capacity provider ("P"); and

(ii) terminate the conditional capacity agreement on the ground specified in capacity market rules that it would involve undue

financial hardship to require P to pay a termination fee in respect of the termination of the capacity agreement, owing to the exceptional circumstances of P's particular case arising from the non-payment to P of capacity payments (which were prevented from being paid by the law relating to state aid) during the standstill period."; and

(b) after paragraph (3), there were inserted—

"(3A) This paragraph applies if the termination notice is given by the Delivery Body to a capacity provider under the Rules during the period that begins on the day on which this regulation comes into force and ends on the day on which the T-1 capacity agreement trigger event or T-1 termination trigger event occurs.".

Null and void capacity agreements: modifications

36. Regulation 35 (null and void capacity agreements) of the Principal Regulations applies as if—

(a) in paragraph (1)—

(i) after "Any" there were inserted "conditional";

(ii) after "agreement", in the first place it occurs, there were inserted ", or capacity agreement this conditional capacity agreement has become under regulation 30(2A),"; and

(iii) after "which the", there were inserted "conditional"; and

(b) in paragraph (2)—

(i) after "that a", there were inserted "conditional capacity agreement or"; and

(ii) in sub-paragraphs (a) and (b), after "the" in each sub-paragraph, there were inserted "conditional capacity agreement or".

Settlement calculations: modifications

37. Regulation 36 (settlement calculations) of the Principal Regulations applies as if, after paragraph (2) there were inserted—

"(2A) Where, by the time a settlement calculation is to be made, the T-1 capacity agreement trigger event has not occurred, the calculation must be made using details of conditional capacity agreements included on the capacity market register in place of any details of capacity agreements required to make the calculation.".

Capacity payments: modifications

38.—(1) Regulation 40 (capacity payments) of the Principal Regulations applies as if—

(a) in paragraph (1), after "regulations" there were inserted "40A, and"; and

(b) paragraph (7) were omitted.

(2) The Principal Regulations apply as if, after regulation 40 there were inserted—

"**Conditional capacity payments**

40A.—(1) Regulation 40(1) to (4) does not apply if a month of a delivery year is a standstill month.

(2) The Settlement Body must—

(a) after the end of each standstill month, determine the amount of the capacity payment which would have been payable to a capacity provider ("C") in respect of this month under regulation 40 if paragraph (1) did not apply ("MCP_{cm}"); and

(b) calculate MCP_{cm} in accordance with paragraph 4 of Schedule 1.

(3) If the T-1 capacity agreement trigger event has occurred—

(a) 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 standstill month ("month SM") for the capacity committed CMUs for which C was the capacity provider during month SM; and

(b) the Settlement Body must—

(i) determine the amount of the capacity payment which is payable to C in respect of month SM which is, subject to paragraphs (5) and (6) and to regulations 49 to 51, the amount determined under paragraph (2) in respect of month SM; and

(ii) issue a credit note to C for this amount.

(4) The Settlement Body must issue a credit note to C under paragraph (3)(b)(ii)—

(a) by no later than the 28th working day after the end of the month after the month in which the T-1 capacity agreement trigger event occurred; but

(b) if C is liable to pay a capacity provider penalty charge in respect of month SM, not earlier than the day after the day by which C is required to pay that charge.

(5) Paragraphs (3) and (4) do not apply in relation to month SM unless by the 26th working day after the end of the month after the month in which the T-1 capacity agreement trigger event occurred the Settlement Body has received capacity market supplier charges in respect of the standstill collection period.

(6) If by the day referred to in paragraph (5) the Settlement Body has received capacity market supplier charges in respect of the standstill collection period for a delivery year ("collection period X") the total of which is less than the sum of MCP_{cm} for all capacity providers for every month within collection period X, the amount of each capacity payment which would otherwise be determined under paragraph (2) in respect of each month SM 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) Where the amount of capacity payments determined under paragraph (2) in respect of months within collection period X is reduced under paragraph (6), the Settlement Body must—

(a) determine the total amount of this reduction (the "residual amount");

(b) determine the portion of the residual amount attributable to each capacity provider ("C") to whom a capacity payment was payable under paragraph (2) in respect of one or more months within collection period X ("residual capacity payment"); and

(c) issue a credit note to C for the amount of the residual capacity payment attributable to C.

(8) The Settlement Body must issue a credit note to C under paragraph (7)(c) by no later than the 28th working day after the date on which invoices for supplementary mutualisation payments are issued under regulation 6A(11) of the Supplier Payment Regulations in respect of the standstill collection period.

(9) If, by the 26th working day after the date on which invoices for supplementary mutualisation payments are issued under regulation 6A(11) of the Supplier Payment Regulations, the Settlement Body has received capacity market supplier charges in respect of the full residual amount the total of which is less than the full residual amount, the amount of each residual capacity payment determined under paragraph (7)(b) must be reduced by the

same proportion so that the total amount of residual capacity payments payable to all capacity providers (including capacity providers to whom residual capacity payments are payable in respect of a capacity agreement which existed on 15th November 2018) is equal to the total amount of capacity market supplier charges received in respect of the full residual amount.

(10) A capacity provider's entitlement to receive a residual capacity payment under regulation (7) is subject to paragraph (9) and regulations 49 to 51.

(11) In this regulation—

(a) in paragraph (6)—

(i) the total amount of capacity market supplier charges received by the Settlement Body is the total amount of supplier charges received in respect of the standstill collection period to make capacity payments in respect of all capacity agreements; and

(ii) the total amount of capacity payments payable to capacity providers is the total amount of capacity payments payable to capacity providers in respect of all capacity agreements;

(b) in paragraph (9)—

(i) "full residual amount" means the residual amount attributable to capacity providers in respect of all capacity agreements; and

(ii) the total amount of residual capacity payments payable to all capacity providers, includes residual capacity payments payable in respect of all capacity agreements.

(12) In paragraph (11) "all capacity agreements" means—

(a) capacity agreements awarded through the conditional agreement auction; and

(b) capacity agreements which existed on 15th November 2018.".

Capacity provider penalty charges: modifications

39.—(1) Regulation 41(1) (capacity provider penalty charges) of the Principal Regulations applies as if, at the start there were inserted "Subject to regulation 41A,".

(2) The Principal Regulations apply as if, after regulation 41 there were inserted—

"**Conditional capacity provider penalty charges**

41A.—(1) Subject to paragraph (2), paragraphs (1) to (3) of regulation 41 do not apply in relation to a standstill month.

(2) If the T-1 capacity agreement trigger event has occurred, regulation 41 applies in relation to each standstill month (including standstill months prior to the month in which the T-1 capacity agreement trigger event occurred) as if in paragraph (2), for "month M", in the second place it occurs, there were substituted "the month after the month in which the T-1 capacity agreement trigger event occurred"."

Over delivery payments: modifications

40. Regulation 42(1) (over-delivery payments) of the Principal Regulations applies as if, at the start, there were inserted "If the T-1 capacity agreement trigger event has occurred,".

Termination fees: modifications

41.—(1) Regulation 43 (termination fees) of the Principal Regulations applies as if—

(a) in paragraph (1)—

(i) for sub-paragraphs (a) and (b), there were substituted—

"(a) a conditional capacity agreement or 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 conditional capacity agreement or capacity agreement being terminated on that ground.";

(b) in paragraph (1A), after "the", in the first and fifth place it occurs, there were inserted "conditional capacity agreement or";

(c) after paragraph (1A), there were inserted—

"(1B) Where a conditional capacity agreement is terminated, any termination fee which would be payable under paragraph (1) in respect of this termination only becomes payable if the T-1 capacity agreement event occurs.";

(d) in paragraph (2)—

(i) at the start, there were inserted "Subject to paragraph (2A),";

(ii) after "termination of a", there were inserted "conditional capacity agreement or"; and

(iii) in sub-paragraph (a), after "payable" there were inserted "(or which would be payable if the T-1 capacity agreement trigger event occurred)";

(e) after paragraph (2), there were inserted—

"(2A) An invoice under paragraph (2)(b) must only be issued on or after the date on which the T-1 capacity agreement trigger event occurred.";

(f) in paragraph (5)—

(i) for the definition of "CO", there were substituted—

""CO" means the capacity obligation in MW for which the conditional capacity agreement was issued (and applying to the capacity agreement which the conditional capacity agreement has become under regulation 30(2A)), as specified in the capacity market register);"; and

(ii) in the definition of "TF_{xrate}", after "under the", there were inserted "conditional capacity agreement or"; and

(g) in paragraph (6), after "a", in the first place it occurs, there were inserted "conditional capacity agreement or".

(2) Regulation 43ZA (termination fees: adjustment for DSR providers) of the Principal Regulations applies as if—

(a) in paragraph (1)—

(i) for sub-paragraph (b), there were substituted—

"(b) before that termination fee became payable the DSR provider has paid a DSR unproven capacity fee in accordance with regulation 43ZB;";

(ii) in sub-paragraph (c), for "applicant credit cover" there were inserted "DSR unproven capacity fee"; and

(iii) for sub-paragraph (d), there were substituted—

"(d) the termination fee and the DSR unproven capacity fee relate to the same unproven demand side response CMU; and";

(b) in paragraph (2), for "credit cover drawn down", there were substituted "DSR unproven capacity fee paid"; and

(c) after paragraph (2), there were inserted—

"(3) In this regulation, draw down of applicant credit cover in respect of the DSR unproven capacity fee by the Settlement Body under regulation 61(1)(c) is treated as payment of that fee by the relevant DSR provider.".

DSR unproven capacity fee

42. The Principal Regulations apply as if, after regulation 43ZA (termination fees: adjustment for DSR providers) there were inserted—

"**DSR unproven capacity fee**

43ZB.—(1) A capacity provider ("C") in respect of a demand side response CMU ("CMU i") must pay to the Settlement Body a fee (a "DSR unproven capacity fee"), by way of financial penalty, if C has in accordance with capacity market rules provided to the Delivery Body a DSR test certificate which evidences CMU i's proven DSR capacity is an amount less than CMU i's de-rated capacity.

(2) Where a DSR unproven capacity fee would be payable by C before the T-1 capacity agreement trigger event has occurred, this fee only becomes payable if the T-1 capacity agreement trigger event occurs.

(3) Subject to paragraph (4), the Settlement Body must, as soon as reasonably practicable after receiving notice from the Delivery Body that C has provided a DSR test certificate which gives rise to a DSR unproven capacity fee—

(a) determine the amount in pounds of the DSR unproven capacity fee that is payable (or which would be payable if the T-1 capacity agreement trigger event occurred); and

(b) issue to the capacity provider an invoice for that amount.

(4) An invoice under paragraph (3)(b) must only be issued on or after the date on which the T-1 capacity agreement trigger event occurred.

(5) The DSR unproven capacity fee payable by C in respect of CMU i is—

(a) where CMU i's proven DSR capacity is less than 90% of CMU i's de-rated capacity, UCF 1; and

(b) where CMU i's proven DSR capacity is equal to or greater than 90% of CMU i's de-rated capacity, UCF 2.

(6) In this regulation—

"UCF 1" means an amount equal to £5000 per MW of the amount of the de-rated capacity of CMU i; and

"UCF 2" means an amount calculated in accordance with the formula—

$$UCF\ 2 = UCF\ 1 \times ((DC - PC)/DC))$$

(7) In paragraph (6)—

"DC" means CMU i's de-rated capacity; and

"PC" means CMU i's proven DSR capacity.".

Non-completion fee: modifications

43. Regulation 43A (non-completion fee) of the Principal Regulations applies as if—

(a) in paragraph (1), after "of the" there were inserted "conditional capacity agreement or";

(b) after paragraph (2), there were inserted—

"(2A) Where a capacity provider would be required to pay a non-completion fee before the T-1 capacity agreement trigger event has occurred, this fee only becomes payable if the T-1 capacity agreement trigger event occurs.";

(c) in paragraph (3)—

(i) at the start, there were inserted "Subject to paragraph (3A),"; and

(ii) in sub-paragraph (a), after "payable" there were inserted "(or which would be payable if the T-1 capacity agreement trigger event occurred)"; and

(d) after paragraph (3), there were inserted—

"(3A) An invoice under paragraph (3)(b) must only be issued on or after the date on which the T-1 capacity agreement trigger event occurred.".

Repayment of capacity payments: modifications

44.—(1) Regulation 43B (repayment of capacity payments: termination) of the Principal Regulations applies as if—

(a) in paragraph (1)—

(i) in sub-paragraph (a), after "a", in the first place it occurs, there were inserted "conditional capacity agreement or"; and

(ii) in sub-paragraph (b), after "of the" there were inserted "conditional capacity agreement or";

(b) in paragraph (2)—

(i) at the start, there were inserted "Subject to paragraph (2A),"; and

(ii) after "the", in the second place it occurs, there were inserted "conditional capacity agreement or";

(c) after paragraph (2), there were inserted—

"(2A) If the Settlement Body receives final notice during a standstill month that a conditional capacity agreement or capacity agreement has been terminated the reference in paragraph (2) to "as soon as reasonably practicable" should be construed as a reference to "as soon as reasonably practicable after the T-1 capacity agreement trigger event occurs (if the Settlement Body receives the notice before the trigger event occurs).";

(d) in paragraph (3)—

(i) in sub-paragraphs (a) and (b), after "relevant" in each sub-paragraph, there were inserted "conditional capacity agreement or"; and

(ii) in sub-paragraph (c), after "relevant", in the second place it occurs, there were inserted "conditional capacity agreement or";

(e) in paragraph (4)—

(i) in sub-paragraph (a), "and" were omitted;

(ii) in sub-paragraph (b), for "." there were substituted ";"; and

(iii) after sub-paragraph (b), there were inserted—

"(c) in paragraph (3)(c), if any capacity payments were made under regulation 40A in relation to the relevant capacity agreement, the period referred to in that paragraph begins at the start of the period in respect of which the first payment was made."; and

(f) in paragraph (5), after "a", in the second place it occurs, there were inserted "conditional capacity agreement or".

(2) Regulation 43C (repayment of capacity payments: metering fault) of the Principal Regulations applies as if—

(a) in paragraph (2), at the start there were inserted "Subject to paragraph (3A),"; and

(b) after paragraph (3), there were inserted—

"(3A) If the "relevant date" in paragraph (2) occurs during a standstill month the reference in paragraph (2) to "as soon as reasonably practicable" should be construed as a reference to "as soon as reasonably practicable after the T-1 capacity agreement trigger event occurs.".

Payments and penalties: adjustments for DSR providers

45. The Principal Regulations apply as if, after regulation 43C (repayment of capacity payments: metering fault) there were inserted—

"**Reducing capacity payments: recovery of overpayments to DSR providers**

43D.—(1) This regulation applies where a capacity provider ("C") in respect of a demand side response CMU ("CMU i")—

(a) has been issued a credit note for a capacity payment in respect of CMU i;

(b) had not, at the time the amount in this credit note was determined by the Settlement Body, provided to the Delivery Body, in accordance with capacity market rules, a DSR test certificate in respect of CMU i evidencing CMU i's proven DSR capacity; and

(c) has subsequently provided the Delivery Body with a DSR test certificate which evidences CMU i's proven DSR capacity is an amount less than CMU i's unproven DSR capacity.

(2) Where this regulation applies—

(a) C is liable to pay to the Settlement Body the amount of capacity payment overpaid to C in respect of CMU i (the "overpaid amount"); and

(b) the Settlement Body must, as soon as reasonably practicable after this regulation becomes applicable in respect of C—

(i) determine the overpaid amount; and

(ii) issue C with an invoice for the overpaid amount.

(3) The overpaid amount must be calculated in accordance with the following formula—

$$Overpaid\ amount = A - B$$

(4) In paragraph (3)—

"A" means the amount of capacity payment paid to C in respect of CMU i pursuant to the credit note in paragraph (1)(a);

"B" means the amount of capacity payment which would have been payable to C in respect of CMU i for the period to which the credit note referred to in paragraph (1)(a) relates if the DSR test certificate referred to in paragraph (1)(c) had been provided before the amount in this credit note was determined.

(5) C is not liable to pay the overpaid amount under paragraph (2)(a) if C has repaid the capacity payment in respect to which the credit note referred to in paragraph (1)(a) was issued under regulation 43B or 43C.

Capacity provider penalty charges: repaying overcharged DSR providers

43E.—(1) This regulation applies where a capacity provider ("C") in respect of a demand side response CMU ("CMU i")—

(a) has been issued an invoice for a capacity provider penalty charge in respect of CMU i;

(b) had not, at the time the amount in this invoice was determined by the Settlement Body, provided to the Delivery Body, in accordance with capacity market rules, a DSR test certificate in respect of CMU i evidencing CMU i's proven DSR capacity; and

(c) has subsequently provided the Delivery Body with a DSR test certificate which evidences CMU i's proven DSR capacity is an amount less than CMU i's unproven DSR capacity.

(2) Where this regulation applies the Settlement Body must, as soon as reasonably practicable after this regulation becomes applicable in respect of C—

(a) determine the amount of capacity provider penalty charge repayable to C in respect of CMU i (the "repayable amount"); and

(b) issue to C a credit note for the repayable amount.

(3) The repayable amount must be calculated in accordance with the following formula—

$$Repayable\ amount = AP \times ((UC - PC)/UC))$$

(4) In paragraph (3)—

"AP" means the amount of capacity provider penalty charge paid by C in respect of CMU i pursuant to the invoice referred to in paragraph (1)(a);

"PC" means CMU i's proven DSR capacity;

"UC" means CMU i's unproven DSR capacity at the time the amount of capacity provider penalty charge payable under the invoice referred to in paragraph (1)(a) was determined.".

Payment and non-payment (interpretation): modifications

46. Regulation 45(1) (general) of the Principal Regulations applies as if—

(a) in the definition of "invoiced amount", after "43" there were inserted ", 43ZB, 43D"; and

(b) in the definition of "payer", after "43" there were inserted ", 43ZB, 43D".

The non-payment register: modifications

47. Regulation 47 (the non-payment register) of the Principal Regulations applies as if—

(a) in paragraph (4), after sub-paragraph (a), there were inserted—

"(aa) relating to—

(i) a payment of standstill collection period supplier charge; or

(ii) a mutualisation payment (including a supplementary mutualisation payment) in respect of a standstill collection period,

which is not fully paid (including any late payment interest due in respect of that charge or payment), after the last scheduled annual reconciliation run under Part

5 of the Supplier Payment Regulations for the delivery year in respect of which the entry was made;"; and

(b) for paragraph (7), there were substituted—

"(7) In this regulation—

"late payment interest" has the meaning given in regulation 11(3) of the Supplier Payment Regulations;

"mutualisation payment" has the meaning given in regulation 7A(4) of the Supplier Payment Regulations;

"payer" means a person to whom an invoice is issued under these Regulations or the Supplier Payment Regulations;

"scheduled annual reconciliation run" has the meaning given in regulation 18(1)(b) of the Supplier Payment Regulations; and

"standstill collection period supplier charge" has the meaning given in regulation 2(1) of the Supplier Payment Regulations.".

Payment of credit notes: modifications

48. Regulation 48 (payment of credit notes) of the Principal Regulations applies as if, for sub-paragraph (a) there were substituted—

"(a) each capacity provider issued with a credit note for a capacity payment, by no later than—

(i) the end of the 33rd working day after the end of the month to which the payment relates; or

(ii) in the case of a capacity payment under regulation 40A, the end of the 33rd working day after the end of the month after the month in which the T-1 capacity agreement trigger event occurred; and".

Credit cover: modifications

49.—(1) Regulation 59 (requirement to provide applicant credit cover) of the Principal Regulations applies as if—

(a) in paragraph (1), for "paragraph (1B)" there were substituted "paragraphs (1B) and (1C)"; and

(b) after paragraph (1B), there were inserted—

"(1C) An applicant is not required to provide applicant credit cover to prequalify for the conditional agreement auction in respect of CMU i.".

(2) Regulation 60 (credit obligation period) of the Principal Regulations applies as if—

(a) in paragraph (1)(e), after "its" there were inserted "conditional capacity agreement or";

(b) paragraph (3) were omitted;

(c) after paragraph (4) there were inserted—

"(4A) Paragraphs (1) to (4) are subject to paragraph (4B).

(4B) An applicant ("X") is not required to maintain credit cover which has been provided to prequalify for the conditional agreement auction in respect of CMU i if X is not required to provide applicant credit cover in respect of CMU i because regulation 59(1C) applies.

(4C) If the T-1 termination trigger event has occurred, the Settlement Body must, as soon as reasonably practicable after the date on which this trigger event occurred, release the full amount of any credit cover voluntarily maintained by X in relation to the conditional agreement auction to X.

(4D) Regulation 58(3) applies in relation to the release of credit cover to X under paragraph (4C) as if X were A.”; and

(d) paragraphs (5) and (6) were omitted.

Draw down of applicant credit cover: modifications

50. Regulation 61 (draw down of applicant credit cover) of the Principal Regulations applies as if—

(a) in paragraph (1)—

(i) sub-paragraphs (a) and (b) were omitted; and

(ii) in sub-paragraph (c)—

(aa) after “termination fee”, in both places it occurs, there were inserted “, DSR unproven capacity fee,”; and

(bb) after “regulation 43”, there were inserted “, 43ZB,”;

(b) in paragraph (2)(c), after “termination fee”, there were inserted “, DSR unproven capacity fee,”; and

(c) after paragraph (2) there were inserted—

“(2A) Where the Settlement Body is required to draw down applicant credit cover under sub-paragraph (c) of paragraph (1) in respect of an unpaid DSR unproven capacity fee for an amount determined in accordance with regulation 43ZB(5)(b), the Settlement Body must only draw down part of the credit cover equal to the amount of this fee and any interest payable in respect of the fee.”.

Dispute resolution and appeals: modifications

51.—(1) Regulation 68 (delivery body reviewable decisions) applies as if—

(a) in paragraph (2), in the table, after “terminate a” there were inserted “conditional capacity agreement,”; and

(b) after paragraph (2), there were inserted—

“(2A) If the T-1 capacity agreement trigger event occurs—

(a) a delivery body reviewable decision about a conditional capacity agreement is deemed to be a decision about the capacity agreement this conditional capacity agreement has become under regulation 30(2A); and

(b) a dispute or appeal in relation to a delivery body reviewable decision about a conditional capacity agreement (whether ongoing or concluded) is deemed to be a dispute or appeal about the capacity agreement this conditional capacity agreement has become under regulation 30(2A).”.

(2) Regulation 72(6)(b) (appeals to the court) applies as if, after “a” there were inserted “conditional capacity agreement or”.

(3) Regulation 73 (consequences of successful review or appeal) applies as if, after paragraph (7) there were inserted—

"(8) References to a capacity agreement in paragraphs (5) to (7) must be read as references to a conditional capacity agreement if the T-1 capacity agreement trigger event has not occurred.".

Schedule 1 settlement calculations: modifications

52. Schedule 1 (settlement calculations) to the Principal Regulations applies as if—

(a) in paragraph 3—

(i) in sub-paragraph (1), for "by no later than 3 months before the commencement of a delivery year ("year X")" there were substituted "before the commencement of a delivery year ("year X"), and as soon as reasonably practicable after the necessary information is available"; and

(ii) in sub-paragraph (1)(a), after "regulations" there were inserted "40A and";

(b) in paragraph 4(1), after "regulations" there were inserted "40A and";

(c) in paragraph 6—

(i) after sub-paragraph (2A), there were inserted—

"(2B) In sub-paragraph (2A)(a), a capacity provider penalty charge is incurred in respect of a CMU in a relevant settlement period even if this charge will only become payable if the T-1 capacity agreement trigger event occurs."; and

(ii) in sub-paragraph (6), in the definitions of "F_y" and "G_y", after "issue of the" in each definition, there were inserted "conditional"; and

(d) in paragraph 7(5), in the definition of "TPR_x", at the end there were inserted "after any repayments of overcharged penalty charge by the Settlement Body under regulation 43E are subtracted".

PART 6

Modifications to Supplier Payment Regulations

Modifications to the application of the Supplier Payment Regulations

53. The modifications to the application of the Supplier Payment Regulations in this Part apply in relation to—

(a) the conditional agreement auction, including the rights and obligations arising out of, or in relation to, this auction; and

(b) capacity agreements that existed on 15th November 2018.

Interpretation: modifications

54. Regulation 2 (interpretation) of the Supplier Payment Regulations applies as if—

(a) in paragraph (1)—

(i) after the definition of "the Principal Regulations" there were inserted—

""agreement termination trigger event" has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;";

(ii) after the definition of "capacity market supplier charge" there were inserted—

""conditional agreement auction" has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;";

(iii) after the definition of "creditor" there were inserted—

""deferred capacity payment trigger event" has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;";

(iv) in the definition of "invoiced amount"—

(aa) after "6", there were inserted ", 6A"; and

(bb) after "20" there were inserted ", 20A";

(v) in the definition of "mutualisation credit", after ""mutualisation credit"" there were inserted ", in relation to a month of a delivery year,";

(vi) after the definition of "mutualisation credit" there were inserted—

""mutualisation credit", in relation to a standstill collection period, has the meaning given in regulation 7A(12);

"non-payment register" means the register maintained by the Settlement Body under regulation 47 of the Principal Regulations;";

(vii) in the definition of "payer"—

(aa) after "6" there were inserted ", 6A"; and

(bb) after "20" there were inserted ", 20A";

(viii) after the definition of "payment due date" there were inserted—

""payment trigger event" means—

(a) in respect of conditional capacity agreements awarded through the conditional agreement auction (including the capacity agreements these conditional capacity agreements become), the T-1 capacity agreement trigger event; or

(b) in respect of capacity agreements that existed on 15th November 2018, the deferred capacity payment trigger event;";

(ix) after the definition of "period of high demand" there were inserted—

""post-standstill collection month" means the second month after the month in which a payment trigger event occurs;

"post-standstill payment default" has the meaning given by paragraph (2A);";

(x) after the definition of "settlement costs levy" there were inserted—

""standstill collection period" means a period made up of the months of a delivery year which are standstill months which begins at the start of the first standstill month in the delivery year and ends at the end of the last standstill month in the delivery year;

"standstill collection period supplier charge" means charge payable by electricity suppliers to the Settlement Body under regulation 6A(5)(a);

"standstill month", in respect of capacity agreements that existed on 15th November 2018, means—

(a) October 2018;

(b) any month included (wholly or partly) in the standstill period; or

(c) the month after the last month (wholly or partly) included in the standstill period;

"standstill month", in respect of conditional capacity agreements awarded through the conditional agreement auction (including the capacity agreements these conditional capacity agreements become), means—

(a) any month included (wholly or partly) in the T-1 standstill period; or

(b) the month after the month in which the T-1 capacity agreement trigger event or T-1 termination trigger event occurs;

"standstill period" has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;"; and

(xi) after the definition of "supply licence" there were inserted—

""T-1 capacity agreement trigger event" has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;

"T-1 standstill period" means any part of the delivery year beginning on 1st October 2019 which falls before the date on which the T-1 capacity agreement trigger event or T-1 termination trigger event occurs;

"T-1 termination trigger event" has the meaning given in regulation 2(1) of the Electricity Capacity (No. 1) Regulations 2019;

"termination trigger event" means—

(a) in respect of conditional capacity agreements awarded through the conditional agreement auction (including the capacity agreements these conditional capacity agreements become), the T-1 termination trigger event; or

(b) in respect of capacity agreements that existed on 15th November 2018, the agreement termination trigger event.";

(b) after paragraph (2), there were inserted—

"(2A) For the purposes of these Regulations an electricity supplier ("S") is in post-standstill payment default in relation to the standstill collection period of a delivery year ("collection period X"), if—

(a) an entry in respect of S has been made on the non-payment register in respect of an invoice issued under regulation 6A(5)(c), 6A(6) or 6A(11) in respect of collection period X; and

(b) this entry does not record the payment to which this invoice relates (including any late payment interest due in respect of this payment) as fully paid.";

(c) in paragraph (5)—

(i) at the start, there were inserted "Subject to paragraph (5A),";

(ii) after "Principal Regulations" there were inserted (as modified by Part 5 of the Electricity Capacity (No. 1) Regulations 2019)";

(iii) after "capacity year;", there were inserted—

""conditional capacity agreement;"; and

(d) after paragraph (5), there were inserted—

"(5A) In these Regulations, the following expressions, when used in respect of capacity agreements that existed on 15th November 2018, have the meanings given in regulation 2(1) of the Principal Regulations (as modified by Chapter 2 of Part 3 of the Electricity Capacity (No. 1) Regulations 2019)—

"capacity agreement";

"capacity provider penalty charge".".

Supplier settlement calculations: modifications

55. Regulation 3 (supplier settlement calculations) of the Supplier Payment Regulations applies as if—

(a) after paragraph (2), there were inserted—

"(2A) Where, by the time a supplier settlement calculation is to be made in respect of the delivery year beginning on 1st October 2019 the T-1 capacity agreement trigger event has not occurred, the calculation must be made using details of conditional capacity agreements included on the capacity market register in place of any details of capacity agreements awarded through the conditional agreement auction required to make the calculation."; and

(b) for paragraph (3) there were substituted—

"(3) In this regulation—

"capacity market register" has the meaning given in regulation 2(1) of the Principal Regulations;

"required data" means data which is required to be provided to the Settlement Body under these Regulations, the Principal Regulations or capacity market rules.".

Capacity market supplier charge: modifications

56.—(1) Regulation 6 (capacity market supplier charge) of the Supplier Payment Regulations applies as if—

(a) after paragraph (4), there were inserted—

"(4A) The Settlement Body must, as soon as reasonably practicable after the date on which the calculations in paragraph 2 of Schedule 1 are made in respect of year X—

(a) determine the amount of monthly capacity market supplier charge which would be payable by each electricity supplier in respect of each month of year X which is, or may become, a standstill month as part of a supplier's payment of standstill collection period supplier charge in respect of year X;

(b) provide the determination for each electricity supplier in the form of a schedule (a "schedule of post-standstill payments"); and

(c) give a notice to each electricity supplier of the schedule of post-standstill payments which applies to it.

(4B) The Settlement Body must, as soon as reasonably practicable after the date on which the calculations in paragraph 3 of Schedule 1 are made in respect of year X—

(a) make a revised determination of the amount of monthly capacity market supplier charge which would be payable by electricity suppliers in respect of each month of year X which is, or may become, a standstill month as part of a supplier's payment of standstill collection period supplier charge in respect of year X;

(b) produce a revised schedule of post-standstill payments for each electricity supplier; and

(c) give a notice to each electricity supplier of the revised schedule of post-standstill payment which applies to it.";

(b) in paragraph (7)—

(i) after "monthly capacity market supplier charges" there were inserted "and standstill collection period supplier charge"; and

(ii) for "and each month", there were substituted "the standstill collection period of year X (if any) and each non-standstill month"; and

(c) after paragraph (8) there were inserted—

"(9) Paragraphs (3) to (4) and (5) to (6) are subject to regulation 6A.

(10) If both termination trigger events have occurred, S is not required to pay a monthly capacity market supplier charge in respect of a month which is a standstill month.".

(2) The Supplier Payment Regulations apply as if after regulation 6, there were inserted—

"**Supplier charge: post-standstill collection**

6A.—(1) This regulation applies where a supplier ("S") is required to pay a capacity market supplier charge to the Settlement Body in respect of a standstill month.

(2) Where this regulation applies, paragraphs (3) to (13) apply in respect of capacity market supplier charge payable in respect of a standstill month of a delivery year ("year X").

(3) Where, under regulation 4, S provided to the Settlement Body a forecast of gross demand for year X (other than a forecast of zero gross demand) S must make a payment to the Settlement Body in respect of each standstill month of year X on account of its liability under regulation 6(1) (a "monthly capacity market supplier charge").

(4) Where, in respect of year X—

(a) S supplies electricity as mentioned in regulation 6(1), but

(b) S did not provide to the Settlement Body a forecast as mentioned in paragraph (3) because it was not an electricity supplier on the 1st June before the start of year X,

S must pay a monthly capacity market supplier charge to the Settlement Body in respect of each month of year X for which the calculation of such charges is carried out using actual supplier shares.

(5) If a payment trigger event has occurred, the Settlement Body must,by no later than 12 working days before the commencement of the post-standstill collection month—

(a) determine the amount of standstill collection period supplier charge which is payable by each electricity supplier in respect of the standstill collection period of year X ("collection period X");

(b) determine the amount of standstill collection period supplier charge which remains payable by each electricity supplier in respect of collection period X; and

(c) issue to each electricity supplier ("S")—

(i) where the amount determined for S under sub-paragraph (b) is a positive amount, an invoice for the amount determined; or

(ii) where the amount determined for S under sub-paragraph (b) is a negative amount, a credit note for the amount determined (as a positive amount); or

(iii) where the amount determined for S under sub-paragraph (b) is 0, a notice informing the supplier a standstill collection period supplier charge payment is not required.

(6) The Settlement Body must, by no later than the tenth working day of the post-standstill collection month, issue an invoice to each electricity supplier required to make a mutualisation payment in respect of the collection period X under regulation 7A(4) for the amount determined for that supplier under regulation 7A(5) in respect of collection period X.

(7) Unless a payment trigger event has occurred, where S has been given notice of a schedule of post-standstill payments in respect of year X in accordance with regulation 6(4A)

or (4B), S may pay some or all of the capacity market supplier charge in respect of a standstill month of year X ("month SM") by paying an amount equal to or less than the amount specified in the schedule in respect of month SM to the Settlement Body.

(8) A payment of monthly capacity market supplier charge to the Settlement Body by S in respect of month SM before the date S was given notice of a schedule of post-standstill payments which included month SM is treated as a payment by S under paragraph (7) in respect of month SM.

(9) Interest (if any) which accrues in respect of a payment under paragraph (7) (including a payment to which paragraph (8) applies) is treated as a payment by S under paragraph (7) in respect of month SM.

(10) A payment under paragraph (7) in respect of a standstill month ("month SM") does not discharge S's obligation to pay any amount determined under regulation 7A or to make a reconciliation payment for a standstill collection period or delivery year which includes month SM.

(11) If the Settlement Body is required to reduce the amount of capacity payments payable in respect of collection period X because the total amount of capacity payments payable in respect of this period exceeds the total amount of capacity market supplier charges collected in respect of this period, the Settlement Body must, by no later than 40 working days after the date on which it was required to make this reduction, issue to each electricity supplier required to make a supplementary mutualisation payment under regulation 7A(8) an invoice for the amount determined for that supplier under regulation 7A(9) in respect of collection period X.

(12) The standstill collection period supplier charge payable by S under paragraph (5)(a) is determined by—

(a) carrying out the calculations in paragraph 3 of Schedule 1 (where the necessary data is available) to redetermine the amount of monthly capacity market supplier charge payable by each electricity supplier in respect of the standstill collection period (repeating these calculations if they have already been carried out in respect of year X); and

(b) calculating the sum of the amount of MCMSCsm calculated for S under paragraph 4 of Schedule 1 in respect of each month of year X which is a standstill month, substituting the calculations remade under sub-paragraph (a) (if any) for any previous calculations under paragraph 3 of Schedule 1 in respect of these months.

(13) The amount payable under paragraph (5)(b) ("AP") must be calculated in accordance with the following formula—

$$AP = SSPSC - SCP$$

(14) In paragraph (13)—

"SSPSC" means the amount payable by S under paragraph (5)(a); and

"SCP" means the sum of the payments made by S in respect of year X under paragraph (7) which are held by the Settlement Body at the time of the calculation.".

Mutualisation: modifications

57.—(1) Regulation 7 (mutualisation) of the Supplier Payment Regulations applies as if after paragraph (7), there were inserted—

"(8) Paragraphs (1) to (7) are subject to regulation 7A.".

(2) The Supplier Payment Regulations apply as if after regulation 7, there were inserted—

"**Mutualisation: post-standstill collection**

7A.—(1) This regulation applies where a supplier ("S") is required to pay a capacity market supplier charge to the Settlement Body in respect of a standstill month.

(2) Where this regulation applies, paragraphs (3) to (13) apply in respect of capacity market supplier charge payable in respect of a standstill month of a delivery year ("year X").

(3) Paragraphs (4) to (6) apply in respect of the standstill collection period of a delivery year ("collection period X") where an electricity supplier is in post-standstill payment default (a "defaulting supplier").

(4) Where this paragraph applies, each electricity supplier who—

(a) has been issued an invoice, credit note, or notice in respect of collection period X under regulation 6A(5)(c); and

(b) is not a defaulting supplier,

must make an additional payment (a "mutualisation payment") to the Settlement Body in respect of collection period X.

(5) The Settlement Body must, by no later than the tenth working day of the post-standstill collection month—

(a) determine the amount of the mutualisation payment payable by each electricity supplier ("S") who is required to make such a payment in respect of collection period X; and

(b) include that amount in the invoice issued to S in respect of collection period X under regulation 6A(6).

(6) The determination under paragraph (5)(a) must be made in accordance with sub-paragraphs (1) to (3) of paragraph 5A of Schedule 1.

(7) Paragraphs (8) to (10) apply in respect of collection period X where the Settlement Body is required to reduce the amount of capacity payments payable in respect of collection period X because the total amount of capacity payments payable in respect of this period exceeds the total amount of capacity market supplier charges collected in respect of this period.

(8) Where this paragraph applies, each electricity supplier who—

(a) has been issued an invoice, credit note, or notice in respect of collection period X under regulation 6A(5)(c); and

(b) is not a defaulting supplier,

must make a further additional payment (a "supplementary mutualisation payment") to the Settlement Body in respect of collection period X.

(9) The Settlement Body must, by no later 40 working days after the date on which the Settlement Body was required to make the reduction referred to in paragraph (7) in respect of collection period X—

(a) determine the amount of the supplementary mutualisation payment payable by each electricity supplier ("S") who is required to make such a payment in respect of collection period X; and

(b) include that amount in the invoice issued to S in respect of collection period X under regulation 6A(11).

(10) The determination under paragraph (9)(a) must be made in accordance with sub-paragraphs (4) to (6) of paragraph 5A of Schedule 1.

(11) Paragraphs (12) and (13) apply where mutualisation payments (including supplementary mutualisation payments where required) have been made in respect of collection period X and—

(a) the Settlement Body receives payment from a defaulting supplier in relation to collection period X of—

(i) all or part of the standstill collection period supplier charge invoiced to it; and

(ii) late payment interest on such a charge; and

(b) as a result of this payment, the total amount of—

(i) standstill collection period supplier charges;

(ii) late payment interest on such charges,

(iii) mutualisation payments (including any supplementary mutualisation payments), and

(iv) late payment interest on such payments,

received by the Settlement Body exceeds the total amount of capacity payments (including residual capacity payments) payable to capacity providers.

(12) The Settlement Body must calculate the amount of that excess (the "surplus") and each electricity supplier who made a mutualisation payment (including a supplementary mutualisation payment) in respect of collection period X is entitled to be credited with a share of the surplus (a "mutualisation credit"), such that the surplus is distributed between such electricity suppliers in the same proportions as they made mutualisation payments (including supplementary mutualisation payments).

(13) The Settlement Body must calculate the amount of mutualisation credits to be credited to electricity suppliers under paragraph (12), and credit them with those amounts, as part of the next reconciliation run for collection period X or for the delivery year which includes collection period X.

(14) In this regulation "residual capacity payment" means an amount payable to a capacity provider in respect a standstill collection period under—

(a) regulation 40(7)(b) of the Principal Regulations (as modified by Chapter 2 of Part 3 of the Electricity Capacity (No. 1) Regulations 2019); or

(b) regulation 40A(7)(b) of the Principal Regulations (as modified by Part 5 of the Electricity Capacity (No. 1) Regulations 2019).".

Penalty residual supplier amount: modifications

58. Regulation 8 (penalty residual supplier amount) of the Supplier Payment Regulations applies as if—

(a) at the beginning of paragraph (3), there were inserted "Subject to paragraph (3A),"; and

(b) after paragraph (3), there were inserted—

"(3A) If year X is the delivery year beginning on 1st October 2018, the reference in paragraph (3) to "the 28th working day after the end of each delivery year" is to be construed as a reference to "the 28th working day after the end of the delivery year (if a payment trigger event occurs before that date) or otherwise as soon as reasonably practicable after a payment trigger event occurs.".

Non-payment and withheld credit: modifications

59.—(1) Regulation 12(1) (non-payment of invoices: draw down of credit cover) of the Supplier Payment Regulations applies as if, at the end, there were inserted "in respect of a month which is not a standstill month".

(2) Regulation 13 (payment of credit notes) of the Supplier Payment Regulations applies as if at the end of paragraph (a), there were inserted "(unless the penalty residual supplier amount is collected in respect of the delivery year beginning on 1st October 2018 in which case the Settlement Body must pay the amount due no later than the end of the 5th working day after the date on which credit note was issued)".

(3) Regulation 14(1) (withholding credit payments to suppliers) of the Supplier Payment Regulations applies as if, at the end, there were inserted "or post-standstill payment default".

(4) Regulation 15 (payment of withheld credit) of the Supplier Payment Regulations applies as if—

(a) at the end of paragraph (2) there were inserted ", unless paragraph (4) applies";

(b) in paragraph (3)—

(i) after "paragraph (2)" there were inserted "or where paragraph (4) applies"; and

(ii) in sub-paragraph (b), at the end, there were inserted "or post-standstill payment default"; and

(c) after paragraph (3) there were inserted—

"(4) If both termination trigger events have occurred, the Settlement Body must pay any credit withheld from S.".

Consequences of termination of supplier licences: modifications

60. Regulation 16 (consequences of termination of supplier licences) of the Supplier Payment Regulations applies as if in paragraph (2)(b), after "terminated" there were inserted "(unless both termination trigger events have occurred prior to this month)".

Standstill collection period reconciliation: modifications

61.—(1) Regulation 17 (general) of the Supplier Payment Regulations applies as if—

(a) after the definition of "annual reconciliation run", there were inserted—

""collection period X" means the standstill collection period of a delivery year;";

(b) in the definition of "month M", at the end, there were inserted "which is not a standstill month"; and

(c) after the definition of "month M", there were inserted—

""standstill collection period reconciliation run" means a reconciliation run under regulation 20A in respect of payments relating to the standstill collection period of a delivery year;".

(2) Regulation 18 (reconciliation runs) of the Supplier Payment Regulations applies as if—

(a) in paragraph (1)(a)—

(i) after "delivery year", there were inserted "which is not a standstill month"; and

(ii) "and", in the last place it occurs, were omitted;

(b) after paragraph (1)(a), there were inserted—

"(aa) at least 3 standstill collection period reconciliation runs ("scheduled standstill collection period reconciliation runs") in respect of the standstill collection period of a delivery year ("collection period X"), which must be commenced no later than—

(i) 90 working days;

(ii) 160 working days; and

(iii) 295 working days,

after the date by which credit notes for capacity payments in respect of collection period X were required to be issued; and";

(c) in paragraph (2)(a), "and" were omitted;

(d) after paragraph (2)(a), there were inserted—

"(aa) no standstill collection period reconciliation run in respect of collection period X may be commenced more than 28 months after the last day of collection period X; and";

(e) after paragraph (3), there were inserted—

"(3A) The Settlement Body must, as soon as reasonably practicable after a payment trigger event occurs, for a delivery year which includes one or more standstill months ("year X")—

(a) set a timetable for the scheduled standstill collection period reconciliation runs for the standstill collection period of year X; and

(b) publish the timetable.";

(f) in paragraph (5), after "(3)" there were inserted ", (3A)";

(g) for paragraph (6)(a) there were substituted—

"(a) to carry out a scheduled reconciliation run if—

(i) it does not have any data which could affect any calculations or determinations previously made; or

(ii) it cannot make accurate calculations or determinations until after a payment trigger event has occurred; or"; and

(h) in paragraph (7), after "month M", in each place it occurs, there were inserted "or collection period X".

(3) Regulation 19 (recalculation of payments: general) of the Supplier Payment Regulations applies as if—

(a) after "regulations 20", there were inserted ", 20A";

(b) in sub-paragraph (b)(ii), after "7(6) and (7)" there were inserted "or 7A(12) and (13)";

(c) in sub-paragraph (b)(v)—

(i) after "delivery year" there were inserted "(including payments that were prevented from being paid at the time by the law relating to state aid)"; and

(ii) after "of a" there were inserted "conditional capacity agreement or"; and

(d) after sub-paragraph (b), there were inserted—

"(c) in sub-paragraph (b)(v) capacity payments which will be paid or become payable at a later date if a payment trigger event occurs are not considered reduced or forfeited solely because they cannot be paid or are not payable at the time of a recalculation or redetermination.".

(4) Regulation 20 (monthly reconciliation runs) of the Supplier Payment Regulations applies as if, in paragraph (7), after "7(6) and (7)" there were inserted "or 7A(12) and (13)".

(5) The Supplier Payment Regulations apply as if, after regulation 20 there were inserted—

"**Standstill collection period reconciliation runs: recalculation of payments**

20A.—(1) By no later than T-21 the Settlement Body must make a redetermination of the amount of standstill collection period supplier charge payable by each electricity supplier in respect of collection period X.

(2) For the purpose of paragraph (1), the Settlement Body must remake the calculations under paragraphs 2 to 4 of Schedule 1.

(3) For each electricity supplier ("S"), the Settlement Body must calculate the difference between—

(a) the amount of the capacity market supplier charge S has paid in respect of collection period X before the redetermination under paragraph (1) is made ("SCP"); and

(b) the amount redetermined for S under paragraph (1) ("SCRDA").

(4) The Settlement Body must calculate the total amount of reconciliation payments payable by the Settlement Body ("TAP").

(5) TAP must be calculated as the sum of the differences between SCP and SCRDA for each electricity supplier for which SCRDA is less than SCP.

(6) The Settlement Body must, subject to paragraph (7)—

(a) if SCRDA is greater than SCP, issue to S an invoice for the amount of the difference between SCRDA and SCP;

(b) if SCRDA is less than SCP, subject to regulation 24, issue to S a credit note for the amount of the difference between SCRDA and SCP; and

(c) if SCRDA is equal to SCP, give S a notice that no reconciliation payment is due to or from S.

(7) If S is entitled to a mutualisation credit under regulation 7(6) and (7) or 7A(12) and (13), the Settlement Body must adjust the amount of the invoice or credit note to be issued under paragraph (6) by the amount of that credit.".

(6) Regulation 21(5) (annual reconciliation runs) of the Supplier Payment Regulations, applies as if—

(a) in the definition of "TMSC"—

(i) after "monthly capacity market supplier charges", there were inserted "and standstill collection period supplier charges"; and

(ii) at the end, there were inserted "which are not standstill months, or standstill collection period reconciliation runs for the standstill collection period of year X"; and

(b) in paragraph (9), after "7(6) and (7)" there were inserted "or 7A(12) and (13)".

(7) Regulation 22(1) (reconciliation invoices and payment) of the Supplier Payment Regulations applies as if, after "20(6)(a)" there were inserted ", 20A(6)(a)".

Supplier credit cover: modification

62.—(1) Regulation 24 (recalculation of credit amounts) of the Supplier Payment Regulations, applies as if—

(a) in paragraph (1), after "20(5)" there were inserted ", 20A(5)";

(b) in paragraph (2)(a)—

(i) after "regulation 20", there were inserted ", 20A"; and

(ii) after "regulation 20(7)", there were inserted ", 20A(7)"; and

(c) in paragraph (2)(b), after "regulation 20(7)" there were inserted ", 20A(7)".

(2) Regulation 25 (reconciliation credit notes and payment) of the Supplier Payment Regulations applies as if, after "regulation 20,", there were inserted "20A,".

(3) Regulation 27 (calculation of supplier credit cover) of the Supplier Payment Regulations applies as if, after paragraph (3), there were inserted—

"(4) If, at the time the Settlement Body makes a determination under paragraph (1)(a) or (2)(a), a month to which the determination relates is (or may become) a standstill month, the Settlement Body must—

(a) determine the amount of credit cover an electricity supplier would be required to provide for that month if it were not a standstill month; and

(b) record in the notice given to the electricity supplier under paragraph (1)(c) or (2)(c) that the supplier is not required to provide credit cover in respect of a month which is a standstill month.".

(4) Regulation 28 (requirement to provide supplier credit cover) of the Supplier Payment Regulations applies as if, after paragraph (4), there were inserted—

"(5) Paragraphs (1) to (4) are subject to paragraph (6).

(6) An electricity supplier who has been given notice of a schedule of monthly credit cover is not required to provide credit cover to the Settlement Body in respect of a month which is a standstill month.".

Calculation of amounts: modifications

63. Schedule 1 (calculation of amounts) to the Supplier Payment Regulations applies as if—

(a) in paragraph 2 (provisional annual calculations)—

(i) in sub-paragraph (1), "no later than three months" were omitted; and

(ii) in sub-paragraph (5), after "a capacity committed CMU" there were inserted ", including payments that may be prevented from being paid by the law relating to state aid";

(b) in paragraph 3(5), in the definition of "$\sum_i ACCP_{ix}$"—

(i) after "year X" there were inserted "(including payments that have been or may be prevented from being paid by the law relating to state aid)";

(ii) in paragraph (a), after "a" there were inserted "conditional capacity agreement or"; and

(iii) in paragraph (b), at the end there were inserted "(capacity payments which will be paid or become payable at a later date if a payment trigger event occurs are not considered reduced or forfeited solely because they cannot be paid or are not payable at the time of the calculation under this paragraph)";

(c) after paragraph 5 (capacity market supplier charge: mutualisation payments), there were inserted—

"**Standstill collection period: mutualisation payments**

5A.—(1) If, in respect of the standstill collection period of a delivery year ("collection period X"), one or more electricity suppliers is in post-standstill payment default, the Settlement Body must calculate in accordance with sub-paragraphs (2) and (3) the mutualisation payment to be made by each electricity supplier ("S") who is not in such default ("MP_{scp}").

(2) If the calculation date is before the date on which the Settlement Body makes the calculations required by paragraph 3, then MP_{scp} must be calculated in accordance with the formula—

$$MP_{scp} = \left(\sum_d SCPSC_{dcp} \times (PSC_{sx} / \sum_n PSC_{nx}\right)$$

(3) If the calculation date is on or after the date on which the Settlement Body makes the calculations required by paragraph 3, then MP_{scp} must be calculated in accordance with the formula—

$$MP_{scp} = \left(\sum_d SCPSC_{dcp} \times (RSC_{sx} / \sum_n RSC_{nx}\right)$$

(4) If regulation 7A(8) applies in respect of collection period X, the Settlement Body must calculate in accordance with sub-paragraphs (5) and (6) the supplementary mutualisation payment to be made by each electricity supplier ("S") who is not in post-standstill payment default ("SMP_{scp}").

(5) If the calculation date is before the date on which the Settlement Body makes the calculations required by paragraph 3, then SMP_{scp} must be calculated in accordance with the formula—

$$SMP_{scp} = (RA - \sum_d LP) \times (PSC_{sx} / \sum_n PSC_{nx})$$

(6) If the calculation date is on or after the date on which the Settlement Body makes the calculations required by paragraph 3, then SMP_{scp} must be calculated in accordance with the formula—

$$SMP_{scp} = (RA - \sum_d LP) \times (RSC_{sx} / \sum_n RSC_{nx})$$

(7) In this paragraph—

"late payment" means a payment in respect of collection period X by an electricity supplier in post-standstill payment default of—

(a) all or part of the standstill collection period supplier charge invoiced to it;

(b) all or part of the mutualisation payment invoiced to it; or

(c) late payment interest on such a charge or payment;

"$\sum_d LP$" means the sum of all late payments in respect of collection period X from electricity suppliers who—

(a) were in post-standstill payment default when the mutualisation payment in respect of collection period X was calculated; or

(b) entered into post-standstill payment default in respect of this mutualisation payment;

"PSC_{sx}" means the amount calculated under paragraph 2(1)(a) for supplier S and year X;

"$\sum_n PSC_{nx}$" means the sum of the amounts calculated under paragraph 2(1)(a) for year X for every electricity supplier who is not in post-standstill payment default in respect of collection period X;

"RA" means the sum of the residual amounts (if any) determined in respect of collection period X under—

(a) regulation 40(7)(a) of the Principal Regulations (as modified by Chapter 2 of Part 3 of the Electricity Capacity (No. 1) Regulations 2019); and

(b) regulation 40A(7)(a) of the Principal Regulations (as modified by Part 5 of the Electricity Capacity (No. 1) Regulations 2019);

"RSC_{sx}" means the amount calculated under paragraph 3(1)(a) for supplier S and year X (taking into account any revised calculations under this paragraph required by regulation 6A(12)(a));

"$\sum_n RSC_{nx}$" means the sum of the amounts calculated under paragraph 3(1)(a) for year X for every electricity supplier who is not in post-standstill payment default in respect of collection period X (taking into account any revised calculations under this paragraph required by regulation 6A(12)(a));

"$\sum_d SCPSC_{dcp}$" means the sum of the amount determined under regulation 6A(5)(b) for every electricity supplier who is in post-standstill period payment default in respect of the collection period; and

"year X" means the delivery year in which collection period X falls."; and

(d) in paragraph 6(3), in the definition of "TPR_x", at the end there were inserted "(and in respect of the delivery year beginning on 1st October 2019 means this amount after any repayments of overcharged penalty charge by the Settlement Body under regulation 43E of the Principal Regulations (as modified by Part 5 of the Electricity Capacity (No. 1) Regulations 2019) are subtracted)".

Claire Perry
Minister of State for Energy and Clean Growth
Department for Business Energy & Industrial Strategy

9th April 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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