
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Electricity Capacity Regulations 2014

PART 8

Information

Duties to provide information

63.—(1) The Secretary of State may, for the purpose of any review of the capacity market under regulation 81, require—

- (a) an administrative party;
- (b) an electricity supplier; or
- (c) the owner of a CMU (whether or not a capacity provider),

to provide the Secretary of State with any specified information.

(2) The Authority may, for the purpose of exercising its functions under regulation 82 or 83, require—

- (a) an administrative party;
- (b) an electricity supplier; or
- (c) the owner of a CMU (whether or not a capacity provider),

to provide the Authority with any specified information.

(3) A person appointed under capacity market rules as an auction monitor may require—

- (a) any bidder in a capacity auction;
- (b) the Delivery Body; or
- (c) the auctioneer,

to provide it with any specified information relating to the conduct of a capacity auction.

(4) Any requirement on a person to provide information under this regulation must be made by giving notice to the person in writing; and references in this regulation to “specified information” mean information specified in such a notice.

(5) Any person on whom a requirement is made under this regulation must, subject to regulation 64, comply with the requirement as soon as reasonably practicable.

Limitation on duty to provide information

64.—(1) A person may not be required under these Regulations or capacity market rules to produce, disclose or permit the inspection of protected items.

(2) In paragraph (1) “protected items” means—

- (a) communications between a professional legal adviser (“LA”) and LA’s client or any person representing LA’s client which fall within paragraph (3);

- (b) communications between LA, LA's client or any person representing LA's client and any other person which fall within paragraph (3) (as a result of sub-paragraph (b) of that paragraph);
 - (c) items which—
 - (i) are enclosed with, or referred to in, such communications;
 - (ii) fall within paragraph (3); and
 - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this paragraph if it is made—
- (a) in connection with the giving of legal advice to the client; or
 - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

Protection of information

65.—(1) A person who, by virtue of these Regulations or capacity market rules, has obtained information which relates to the affairs of any individual or to any particular business (“protected information”) must not except as provided in paragraphs (2) to (4)—

- (a) use that information for any purpose other than—
 - (i) participating in the capacity market;
 - (ii) exercising capacity market functions; or
 - (iii) providing services to a person exercising capacity market functions; or
 - (b) disclose that information.
- (2) Paragraph (1) does not prohibit a use or disclosure of protected information which is—
- (a) made with the consent of the person to whom the information relates; or
 - (b) required by—
 - (i) an enactment (including capacity market rules);
 - (ii) auction guidelines;
 - (iii) a licence condition (where the person using or disclosing the information is a licence holder);
 - (iv) a condition of an industry code to which the person using or disclosing the information is a party; or
 - (v) an EU obligation.
- (3) Paragraph (1) does not prohibit the use of protected information—
- (a) by the Secretary of State, the Authority or the Delivery Body, for the purpose of exercising any EMR functions;
 - (b) by the Authority, for the purpose of exercising any other statutory functions; or
 - (c) where the Delivery Body is the national system operator, by the national system operator for the purpose of exercising its functions, to the extent that the use of the information is permitted by the conditions of the national system operator's transmission licence.
- (4) Paragraph (1) does not prohibit the disclosure of protected information—
- (a) to a person exercising capacity market functions, to the extent that the disclosure is required to enable that person to carry out those functions;

- (b) by an administrative party to any public authority exercising any functions in relation to competition law, to the extent that the disclosure is required to enable that authority to carry out those functions in relation to the capacity market;
 - (c) by an administrative party to a person providing services to it in connection with its performance of capacity market functions, to the extent that the disclosure is required to enable that person to provide those services;
 - (d) which is already publicly available (other than by reason of a breach of this regulation); or
 - (e) in accordance with an order of a court.
- (5) In this regulation—
- “capacity market functions” means functions conferred by or by virtue of Chapter 3 of Part 2 of the Act;
 - “EMR functions” means functions conferred by or by virtue of Chapter 2, 3 or 4 of Part 2 of the Act;
 - “EU obligation” has the same meaning as in the European Communities Act 1972(1); and
 - “licence” means a licence under section 6 of EA 1989.

Disclosure of information under capacity market rules

66. Section 33(3) of the Act applies in relation to a disclosure of information required by virtue of capacity market rules.

(1) 1972 c.68. The definition of “EU obligation” in Part II of Schedule 1 was amended by the European Union (Amendment) Act 2008 (c.7).