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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Electricity Capacity (No. 1) Regulations 2019**

**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.