
DRAFT STATUTORY INSTRUMENTS

2019 No.

The Electricity Capacity (No. 1) Regulations 2019

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;”;
 - (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;”;
 - (n) in the definition of “termination fee”—
 - (i) after “where a”, there were inserted “conditional capacity agreement;”;
 - (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),”;
- (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 “ $TF_{x_{rate}}$ ”—
 - (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),”.
 - (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—
$$\text{Overpaid amount} = A - B$$
- (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—

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

- (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;”;

- (b) for paragraph (7), there were inserted—

“(7) In this regulation—

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

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

“mutualisation payment” has the meaning given in regulation 7A(4) of 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.”;
 - (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”.