

*This Statutory Instrument corrects errors in S.I. 2019/862 and is being issued free of charge to all known recipients of that Statutory Instrument.*

*Draft Regulations laid before Parliament under section 40(5) of the Energy Act 2013, for approval by resolution of each House of Parliament.*

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## DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

# **ELECTRICITY**

## **The Electricity Capacity (No. 2) Regulations 2019**

*Made - - - - - \*\*\**

*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<sup>(1)</sup> 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. 2) Regulations 2019.
- (2) These Regulations come into force the day after the day on which they are made.

## PART 2

### Amendments

#### Amendments to the Electricity Capacity Regulations 2014

- 2.—(1) The Electricity Capacity Regulations 2014(2) are amended as follows.
- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “T-1 auction” insert—
- ““T-3 auction” means a capacity auction held during the auction window commencing on 1st September 2019 for the delivery year commencing on 1st October 2022;”;
- and
- (b) in the definition of “T-4 auction”, after “87(1)” insert “and 87C(2)(a)”.
- (3) In regulation 7 (annual electricity capacity report), after paragraph (7) insert—
- “(8) The Delivery Body must, as soon as reasonably practicable after the date on which the Electricity Capacity (No. 2) Regulations 2019 come into force—
- (a) prepare an annex to the last electricity capacity report prepared before 1st June 2019; and
- (b) send that annex to the Secretary of State.
- (9) The annex prepared under paragraph (8) must include a recommendation as to the target capacity that should be included in the T-3 auction (if this auction is held).”.
- (4) In regulation 10(1) (determining whether capacity auction is to be held)—
- (a) in sub-paragraph (ba), omit “and”; and
- (b) after sub-paragraph (ba), insert—
- “(bb) as soon as reasonably practicable after the date on which the Electricity Capacity (No. 2) Regulations 2019 come into force, whether the T-3 auction is to be held; and”.
- (5) In regulation 12(5)(a) (determination of auction parameters), after “7(6)” insert “or (8)”.
- (6) In regulation 43B(3) (repayment of capacity payments: termination)—
- (a) in sub-paragraph (c), for “.” substitute “;”; and
- (b) after sub-paragraph (c), insert—
- “(d) the period TP4, the capacity payments that must be repaid are those made in respect of the period beginning on 1st October, and ending on 1st May, of the relevant delivery year.”.
- (7) In regulation 45(1) (general)—
- (a) in the definition of “invoiced amount”, for “or 44” substitute “, 44 or 49A”; and
- (b) in the definition of “payer”, for “or 44” substitute “, 44 or 49A”.
- (8) In regulation 49A (reducing capacity payments: offsetting relevant expenditure)—
- (a) for paragraph (1) substitute—
- “(1) This paragraph applies if, before the time when a credit note is issued to a capacity provider (“C”) for a capacity payment, the Delivery Body has acknowledged receipt of a declaration under the Rules that—
- (a) relevant expenditure has been incurred, or is expected to be incurred; or

- (b) relevant benefit has been received, or is expected to be received, in respect of the capacity committed CMU for which C is responsible (“CMU i”).”;
- (b) in paragraph (2)—
- (i) for “this regulation” substitute “paragraph (1)”;
- (ii) in sub-paragraph (a)—
- (aa) after “the” insert “aggregate”; and
- (bb) after “expenditure” insert “and outstanding relevant benefit”;
- (iii) in sub-paragraph (b)—
- (aa) after “the”, in the first place it occurs, insert “aggregate”; and
- (bb) after “expenditure” insert “and outstanding relevant benefit”; and
- (c) after paragraph (3) insert—
- “(3A) This paragraph applies where—
- (a) the aggregate amount of any outstanding relevant expenditure and outstanding relevant benefit (“aggregate outstanding amount”) in respect of CMU i is greater than nil; and
- (b) there are no further capacity payments in respect of CMU i which the Settlement Body would be required to reduce under paragraph (2) to offset this aggregate outstanding amount.
- (3B) Where paragraph (3A) applies—
- (a) C is liable to pay to the Settlement Body an amount equal to the lesser of—
- (i) the aggregate outstanding amount; or
- (ii) the total amount of all the capacity payments paid to C in respect of CMU i, less the amount of any repayment of these capacity payments by C to the Settlement Body under regulation 43B, 43C or 50; and
- (b) the Settlement Body must, as soon as reasonably practicable after paragraph (3A) becomes applicable, issue to C an invoice for the amount C is liable to pay under sub-paragraph (a).”;
- (d) for paragraph (4) substitute—
- “(4) This regulation applies to a credit note or invoice issued in respect of a transferred part as it applies to a credit note or invoice issued in respect of a capacity agreement, and where a capacity agreement has been transferred pursuant to regulation 30A(1)(b) or (2) (b)—
- (a) the reduction in the amount payable to C pursuant to paragraph (2) is to be calculated so that it is proportionate to the period and part of the capacity obligation held by C during the month to which the credit note relates; and
- (b) the aggregate outstanding amount attributable to C under paragraph (3B)(a) is to be determined by adjusting this amount so that it is proportionate to the period and part of the capacity obligation held by C throughout the duration of the capacity agreement.”; and
- (e) in paragraph (5), in the appropriate places, insert—
- (i) “outstanding relevant benefit” means relevant benefit that has not been deducted from capacity payments pursuant to this regulation; and

(ii) “relevant benefit” has the meaning given in the Rules(3).

(9) After regulation 87B insert—

**“Transitory provisions: the T-3 auction**

**87C.—**(1) This regulation applies if the Secretary of State determines under regulation 10(1)(bb) that the T-3 auction is to be held.

(2) Where this regulation applies—

- (a) references to a T-4 auction in regulations 10(4), 12(2), 31(2)(e), 34(1), 59(2)(a), 60(2)(a) and Schedule 1 are treated as including the T-3 auction;
- (b) regulation 13 (adjustment of auction parameters following prequalification) applies in relation to the T-3 auction and the subsequent T-4 auction as if after paragraph (2) there were inserted—

“(3) After the Secretary of State receives a notification from the Delivery Body under regulation 25(1) in respect of the T-3 auction, the Secretary of State may decide to adjust the demand curve and target capacity for the subsequent T-4 auction (if the Secretary of State has determined this T-4 auction is to be held).

(4) The Secretary of State must make any decision under paragraph (3), and give notice of any adjustments to the Delivery Body, no later than the last working day before the date on which the Delivery Body is required to publish the final version of the auction guidelines for the subsequent T-4 auction under regulation 21(3).”;

(c) regulation 59 (requirement to provide applicant credit cover) applies—

(i) in relation to credit cover provided in respect of the T-3 auction as if—

- (aa) in paragraph (4), for “twelve months” there were substituted “nine months”; and
- (bb) in paragraph (5), for “twelve-month” there were substituted “nine-month”; and

(ii) in relation to credit cover provided in respect of the T-3 auction and the subsequent T-4 auction as if for paragraphs (2A) and (2B) there were substituted—

“(2A) Paragraph (2B) applies where an applicant for the T-3 auction and the subsequent T-4 auction is required to provide applicant credit cover in respect of the same CMU (“CMU i”) for both auctions in accordance with this regulation.

(2B) Where this paragraph applies—

- (a) the applicant may satisfy their obligation to provide credit cover in respect of CMU i for both auctions by providing credit cover of an amount equal to the greater of the amounts determined under paragraph (2)(a) in respect of—
  - (i) the T-3 auction; and
  - (ii) the subsequent T-4 auction;
- (b) credit cover provided in accordance with sub-paragraph (a) may be drawn down under regulation 61(1) in relation to a capacity

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(3) A consolidated version of the Capacity Market Rules 2014 is 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.

- agreement awarded in either of the auctions referred to in sub-paragraph (a); and
- (c) notwithstanding paragraph (1)(h) or (3) of regulation 60, any credit cover drawn down in relation to a capacity agreement awarded in either of the auctions referred to in sub-paragraph (a) must be replaced in accordance with the obligation under regulation 60(1) to maintain credit cover in respect of the other auction.”;
- (d) regulation 60 (credit obligation period) applies in respect of the T-3 auction and the subsequent T-4 auction as if—
- (i) before paragraph (1)(a) there were inserted—
- “(aa) where credit cover provided by A in respect of CMU i for an auction (“auction X”) also satisfies A’s obligation to provide credit cover in respect of CMU i for another auction because regulation 59(2B) applies and an event in sub-paragraph (b) to (h) has occurred in respect of the other auction.”;
- (ii) after paragraph (1) there were inserted—
- “(1A) Where paragraph (1)(aa) applies, A must thereafter maintain credit cover in respect of auction X in an amount equal to—
- (a) the amount calculated under regulation 59(2)(a) in respect of A’s application to prequalify for auction X in respect of CMU i; or
- (b) where paragraph (1)(a) applies, the amount calculated under paragraph (2) in respect of CMU i and auction X,
- until the earliest of the events in sub-paragraphs (b) to (h) of paragraph (1) has occurred in respect of auction X.”; and
- (iii) after paragraph (4) there were inserted—
- “(4C) Paragraphs (1) to (4) are subject to paragraph (4D).
- (4D) Where regulation 59(2B) applies, A is required to maintain credit cover in the amount equal to the greater of the amounts A is required to maintain in respect of CMU i under this regulation in relation to—
- (a) the T-3 auction; and
- (b) the subsequent T-4 auction,
- until the applicant is no longer required to maintain credit cover in respect of CMU i in relation to either auction.”(4); and
- (e) regulation 69(3) applies to requests for review of prequalification decisions for—
- (i) the T-1 auction for the delivery year commencing on 1st October 2020;
- (ii) the T-3 auction; and
- (iii) the subsequent T-4 auction,
- as if for “15” there were substituted “20”.
- (3) In this regulation “subsequent T-4 auction” means the T-4 auction for the delivery year commencing on 1st October 2023.”.

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(4) Inserted regulation 87C(2)(d)(iii) reads paragraphs (4C) and (4D) into regulation 60 of the Electricity Capacity Regulations 2014 because regulation 21 of the Electricity Capacity (No. 1) Regulations 2019 (which is extended to the T-3 auction and subsequent T-4 auction by the amendments made by regulation 3(5) of these Regulations) already reads paragraphs (4A) and (4B) into regulation 60.

### **Amendments to the Electricity Capacity (No. 1) Regulations 2019**

- 3.—(1) The Electricity Capacity (No. 1) Regulations 2019(5) are amended as follows.
- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “standstill period” insert—
- ““subsequent capacity auctions” means—
- (a) the T-1 auction for the delivery year commencing on 1st October 2020;
- (b) the T-3 auction; and
- (c) the T-4 auction for the delivery year commencing on 1st October 2023;”;
- (b) in the definition of “T-1 auction” omit “and”;
- (c) in the definition of “T-1 capacity agreement trigger event”, for “.” substitute “; and”;
- (d) after the definition of “T-1 capacity agreement trigger event” insert—
- ““T-3 auction” has the meaning given in regulation 2(1) of the Principal Regulations; and
- “T-4 auction” has the meaning given in regulation 2(1) of the Principal Regulations.”.
- (3) In regulation 12 (interpretation: modifications)—
- (a) in sub-paragraph (c), omit “and”;
- (b) in sub-paragraph (d), for “.” substitute “; and”; and
- (c) after sub-paragraph (d), insert—
- “(e) “supplementary mutualisation payment” has the meaning given in regulation 7A(8) of the Supplier Payment Regulations.”.
- (4) In regulation 20(2)(e) (applicant credit cover: modifications), in inserted paragraph (5A), for “by” substitute “from”.
- (5) In regulation 41(2)(a)(iii) (termination fees: modifications) for “unproven demand side response CMU; and” substitute “capacity auction.”.
- (6) After regulation 63 (calculation of amounts: modifications), insert—

## “PART 7

### Modifications to application of Principal Regulations: credit cover for subsequent capacity auctions

#### **Subsequent capacity auctions: suspension of credit cover during standstill period**

64.—(1) The modifications to the application of the Principal Regulations in regulations 12(b) and (d), 20(2), and 21 to 23 apply in relation to the subsequent capacity auctions (including the rights and obligations arising out of, or in relation to, those auctions) with the following modifications.

- (2) Regulation 20(2)(e) applies as if—
- (a) after “(2)(a)”, there were inserted “, (2B)”;
- (b) for “40” there were substituted “15”.

### **Subsequent capacity auctions: credit cover arrangements**

65. Regulation 59 (requirement to provide applicant credit cover) of the Principal Regulations applies in relation to the subsequent capacity auctions (including the rights and obligations arising out of, or in relation to, those auctions) and capacity agreements that existed on 15th November 2018 as if, after paragraph (1B), there were inserted—

“(1BA) This paragraph applies where—

- (a) an applicant is required to provide applicant credit cover under paragraph (5A)(6) in respect of an unproven demand side response CMU or an interconnector CMU for a capacity auction which concluded prior to 15th November 2018 (“suspended credit cover”);
- (b) the applicant has provided credit cover in respect of that CMU for—
  - (i) the T-1 auction for the delivery year commencing on 1st October 2020;
  - (ii) the T-3 auction; or
  - (iii) the T-4 auction for the delivery year commencing on 1st October 2023, in accordance with this regulation (“subsequent credit cover”); and
- (c) if the applicant had provided the suspended credit cover before the subsequent credit cover, the applicant would have been eligible to receive an exemption from the requirement to provide some or all of the subsequent credit cover pursuant to paragraph (1B) and capacity market rules.

(1BB) Where paragraph (1BA) applies subsequent credit cover provided by the applicant in respect of the CMU may, to the extent it would not have been required to be provided if an exemption had been obtained pursuant to paragraph (1B) and capacity market rules, instead, at the applicant’s request, and in accordance with capacity market rules, be treated thereafter as applicant credit cover which—

- (a) was provided in relation to the applicant’s obligation to provide suspended credit cover under paragraph (5A) in respect of the CMU; and
- (b) for the purposes of paragraph (1B), existed at the date on which the applicant was required to provide subsequent credit cover in respect of the CMU.””

Date

*Name*  
Minister of State for Energy and Clean Growth  
Department for Business, Energy & Industrial  
Strategy

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(6) Paragraph (5A) is read into regulation 59 of the Electricity Capacity Regulations 2014 by regulation 20(2)(e) of the Electricity Capacity (No. 1) Regulations 2019.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make various amendments to the Electricity Capacity Regulations 2014 ([S.I. 2014/2043](#)) (“the Principal Regulations”) and the Electricity Capacity (No. 1) Regulations 2019 ([S.I. 2019/862](#)) (“the 2019 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 2019 Regulations modify the application of the Principal Regulations and the Electricity Capacity (Supplier Payment etc.) Regulations 2014 ([S.I. 2014/3354](#)) 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 Justice of the European Union (Case T-793/14).

Regulation 2 makes amendments to the Principal Regulations. These amendments: allow a one-off three-year ahead capacity auction for the delivery year commencing on 1st October 2022 (“the T-3 auction”) to be run; modify the application of credit cover requirements for that auction and the four-year ahead capacity auction for the delivery year commencing on 1st October 2023 (“the subsequent T-4 auction”) to avoid unnecessary duplication of credit cover requirements where both auctions are held in the same auction window; expands the circumstances in which capacity payments must be reduced to offset payments under other schemes; and modify the calculations used to determine a capacity provider’s obligation to repay capacity payments following a termination event.

Regulation 3 makes amendments to the 2019 Regulations. These amendments: extend the State aid related modifications to credit cover requirements applicable to capacity agreements which existed on 15th November 2018 (“existing agreements”) with some minor changes to the T-3 auction, the subsequent T-4 auction, and the one year ahead auction for the delivery year commencing on 1st October 2020 (collectively, the “subsequent capacity auctions”); provide for additional modifications to the Principal Regulations to avoid unnecessary duplication of credit cover requirements where credit cover for existing agreements is required to be provided following State aid approval after credit cover for the subsequent capacity auctions is provided; and correct three minor drafting errors in the 2019 Regulations.