
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Nuclear Regulated Asset Base Model
(Revenue Collection) Regulations 2023

PART 4

Miscellaneous

CHAPTER 1

Enforcement and disputes

Enforcement of requirements

25.—(1) Any requirement of an electricity supplier under these Regulations is enforceable by the Authority as if any such requirement was a relevant requirement on a regulated person for the purposes of section 25 of the Electricity Act 1989⁽¹⁾.

(2) Where the revenue collection counterparty determines that an electricity supplier has not complied with any requirement to pay an amount required under these Regulations it may issue a notice to that supplier setting out—

- (a) the amount which the revenue collection counterparty determines that supplier should have paid;
- (b) the basis on which the revenue collection counterparty determined the amount;
- (c) the date on which the amount should have been paid; and
- (d) the rate, if any, of interest which applies to the amount.

(3) Where the revenue collection counterparty determines that an electricity supplier has not complied with a requirement to ensure that the revenue collection counterparty holds sufficient collateral under regulation 19⁽²⁾, it may issue a notice to that supplier which specifies the amount of collateral which the supplier would have to provide to meet that supplier's collateral requirement for the day on which the notice is issued.

(4) Where the revenue collection counterparty has issued a notice to a supplier under paragraph (3) that supplier is required to pay the amount specified in the notice to the revenue collection counterparty in cash by the next working day after the notice has been issued.

(5) Where an electricity supplier makes a payment under paragraph (4) the amount of that payment constitutes collateral held by the revenue collection counterparty for the purposes of regulation 19.

(1) 1989 c. 29. The definition of “regulated person” was amended by S.I. 2011/2704, 2017/493 and 2019/530. The definition of “relevant requirement” was amended by S.I. 2011/2704, 2020/96 and 2020/1016. Other amendments to section 25 of the Electricity Act 1989 were made by section 54(3) of, and Schedule 10 to, the Competition Act 1998 (c. 41); sections 3(2), 60(1) to (5) and 108 of, and Schedule 6 and 8 to, the Utilities Act 2000 (c. 27); section 63(1) of, and Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17); section 51(5) of, and Schedule 14 to, the Enterprise and Regulatory Reform Act 2013 (c. 24); S.I. 2011/2704; and S.I. 2020/96.

- (6) Where the revenue collection counterparty issues a notice to a supplier under paragraph (2) or (3)—
- (a) it must also provide a copy of that notice to the Authority; and
 - (b) it may publish a copy of that notice, or a summary of that notice.

Dispute notices

26.—(1) An electricity supplier may dispute any determination made by the revenue collection counterparty under these Regulations, other than a determination made under or by virtue of regulation 27 of these Regulations, by giving a notice to the revenue collection counterparty setting out—

- (a) the determination the supplier is disputing; and
- (b) the basis on which the supplier disputes the determination.

(2) For the purposes of paragraph (1), a dispute about a determination made by the revenue collection counterparty includes a dispute about the failure of the revenue collection counterparty to make a determination.

- (3) A notice under paragraph (1) must be given by an electricity supplier before the later of—
- (a) the 28th day after the day on which the determination was made by the revenue collection counterparty;
 - (b) in the case of a determination in respect of which the revenue collection counterparty must issue a notice, the 28th day after the day on which that notice was issued;
 - (c) in the case of a dispute about the failure of the revenue collection counterparty to make a determination, the 28th day after the day on which the revenue collection counterparty should have made the relevant determination which is in dispute.

(4) An electricity supplier may not dispute a determination if and to the extent that the dispute is about a determination, made by the BSCCo, of an amount of electricity supplied (whether by that supplier or any other supplier).

(5) Where an electricity supplier has given a notice under paragraph (1) in respect of a determination, that determination still has effect notwithstanding the giving of that notice.

Determination of disputes

27.—(1) Where the revenue collection counterparty receives a notice under regulation 26(1) (“a dispute notice”) about a determination (or a failure to make a determination) under any provision of these Regulations (“a relevant provision”) it must, by the 28th day after the day on which it receives that notice either—

- (a) reject the notice; or
- (b) accept the notice (in full or in part) and make such determination under that provision as it thinks is necessary in consequence.

(2) Whether the revenue collection counterparty rejects or accepts a dispute notice, it must, on the same day, issue a notice (“a decision notice”) to the person who gave that dispute notice, setting out its decision and the reasons for it.

(3) Where the revenue collection counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) it must, on the same day, issue to each electricity supplier who may be affected by the making of that determination a notice which sets out that determination.

(4) Where the revenue collection counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) and—

- (a) that provision requires the determination to be made by a particular time which has passed, that determination has effect notwithstanding that requirement;
- (b) that provision requires something to be done by it by a particular time which has passed, that thing must be done as soon as reasonably practicable after the determination.

(5) Where the revenue collection counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) and that provision requires an electricity supplier to make a payment, that payment must be made (notwithstanding what that provision says about the time by which a payment must be made) by the date specified by the revenue collection counterparty in the notice issued under paragraph (3) to that supplier, that date being no earlier than—

- (a) the date by which, in the opinion of the revenue collection counterparty, it would be reasonably practicable for that electricity supplier to make that payment; or
- (b) the earliest date by which that supplier would have had to have made that payment if the determination had been made at the time the determination which is the subject of the dispute notice was or (in the case where the revenue collection counterparty failed to make a determination) should have been made.

(6) Where an electricity supplier has paid an amount to the revenue collection counterparty, or the revenue collection counterparty has paid an amount to that electricity supplier, and a determination made under a relevant provision by virtue of paragraph (1)(b) means that that amount should not have been paid, that amount must be returned to the person who paid it by—

- (a) the 5th working day after the day on which the notice issued in respect of that determination was issued under paragraph (3);
- (b) where the revenue collection counterparty is of the opinion that it would not be reasonably practicable for that amount to be returned by that date, such later date as the revenue collection counterparty specifies in the notice issued under paragraph (3) to that supplier in respect of that determination.

Duties of the revenue collection counterparty to enforce and notify

28.—(1) The revenue collection counterparty must exercise its functions in the manner best calculated to ensure the collection of all amounts which are required to be paid or provided by electricity suppliers under these Regulations.

(2) If the revenue collection counterparty considers it may be, or become, unable to fulfil its functions, it must promptly notify the Secretary of State and must provide such further details as the Secretary of State may request.

(3) In paragraphs (1) and (2) “functions” includes—

- (a) any function conferred by these Regulations;
- (b) the recovery of any sum as a civil debt by virtue of section 19 of the Act; and
- (c) any duties or obligations of the revenue collection counterparty under any revenue collection contract.

(4) The revenue collection counterparty must take such steps as it considers necessary to ensure that electricity suppliers are—

- (a) informed of their liabilities under these Regulations; and
- (b) provided with information about liabilities which they may incur under these Regulations.

(5) Where the revenue collection counterparty writes-off any debt owed to it by an electricity supplier, it must issue a notice of that fact to every electricity supplier who was required to make a payment under regulation 17(6) in relation to that debt.

(6) The revenue collection counterparty must publish information which relates to its estimates of the liabilities of electricity suppliers arising during three consecutive quarterly obligation periods (“the projection period”).

(7) The revenue collection counterparty must publish information under paragraph (6)—

- (a) no later than 30 days before the start of the first quarterly obligation period to which that information relates; or
- (b) where the revenue collection counterparty reasonably believes that it has received insufficient information from the Authority for the purpose of publishing information under paragraph (6), as soon as reasonably practicable following the receipt of the information the revenue collection counterparty requires.

(8) The information published under paragraph (6) must include—

- (a) an estimate of the interim levy rate (see regulation 5(1)) that would apply to each quarterly obligation period during the projection period; and
- (b) an estimate of the total reserve amount for each quarterly obligation period during the projection period.

Notices and publications

29.—(1) Where the revenue collection counterparty is permitted or required to issue a notice (including a copy of a notice) to a person, that notice must be in writing and is issued if it has been sent (by or on behalf of the revenue collection counterparty) by post or electronic means to that person’s proper address.

(2) In paragraph (1), “proper address” means—

- (a) in the case of a body corporate—
 - (i) the registered or principal office of that person, or
 - (ii) an email address provided (and not withdrawn) by that person;
- (b) in the case of a partnership—
 - (i) the principal office of the partnership, or
 - (ii) an email address provided (and not withdrawn) by—
 - (aa) that partnership,
 - (bb) a partner, or
 - (cc) a person having control or management of the partnership business;
- (c) in the case of any other person, that person’s last known address, which includes an email address (where that email address was provided, and has not been withdrawn, by that person).

(3) So as to enable the revenue collection counterparty to discharge its functions under these Regulations, an electricity supplier must, within 2 working days of first making an electricity supply after the first payment period start date, provide an email address to the revenue collection counterparty at which it can be contacted, and if that supplier subsequently changes that email address it must notify the revenue collection counterparty of that change.

(4) Where the revenue collection counterparty issues a notice to an electricity supplier under regulation 5(3)(a) or (b) it must set out an address and an email address for correspondence in that notice.

(5) An electricity supplier may give a notice to the revenue collection counterparty by sending it by post or electronic means to the address or email address contained in the most recent notice issued to that supplier under regulation 5(3)(a) or (b).

(6) Where the revenue collection counterparty is required to publish any information under these Regulations the revenue collection counterparty must publish that information in such manner as the revenue collection counterparty considers appropriate for the purpose of bringing it to the attention of persons who may be affected by that information.

CHAPTER 2

Effect of payment and interest

Set-off of payments by the revenue collection counterparty

30.—(1) This regulation applies where—

- (a) the revenue collection counterparty is liable to make a payment (“a relevant payment”) to an electricity supplier under these Regulations by a date (“the relevant date”);
- (b) that supplier is liable to pay determined payments; and
- (c) the revenue collection counterparty considers that there is a high degree of likelihood that the electricity supplier will fail to pay a determined payment.

(2) Where this regulation applies the revenue collection counterparty may retain all or part of the relevant payment, subject to paragraph (3).

(3) The maximum amount the revenue collection counterparty may retain under paragraph (2) is the amount equal to the sum of all determined payments which the supplier is liable to pay at the relevant date.

(4) Where the revenue collection counterparty retains all or part of a relevant payment, the amount retained is to be treated as if it was a payment made to it by the supplier on the relevant date.

(5) Where the revenue collection counterparty has retained all or part of a relevant payment under paragraph (2), it must, by the relevant date, issue a notice to the supplier stating the amount which has been retained.

(6) For the purposes of paragraph (1), a determined payment is a payment—

- (a) which a supplier must make to the revenue collection counterparty by virtue of these Regulations within 5 working days of the relevant date;
- (b) which the supplier has not yet made; and
- (c) the amount of which has been determined.

(7) The amount of a payment which a supplier must make by virtue of these Regulations has been determined if—

- (a) in the case of a payment which is calculated by reference to an amount of electricity determined by the BSCCo on the basis of a BSC volume allocation run, the BSCCo has carried out that BSC volume allocation run;
- (b) in the case of a payment where the amount of that payment must be determined by the revenue collection counterparty in accordance with these Regulations, the revenue collection counterparty has determined the amount of that payment;
- (c) in the case of a requirement to pay an amount of interest, the day by which that interest must be paid has passed.

(8) For the purposes of this regulation, a requirement to provide collateral under regulation 19(2) is not a requirement to make a payment by virtue of these Regulations.

Netting of payments by the revenue collection counterparty

31.—(1) This regulation applies where—

- (a) the revenue collection counterparty must pay an amount to an electricity supplier under these Regulations by a certain date (the “counterparty payment”); and
 - (b) that supplier must pay an amount to the revenue collection counterparty by the same date (the “supplier payment”).
- (2) Where the counterparty payment is more than the supplier payment, payment of the counterparty payment less the supplier payment discharges—
- (a) the revenue collection counterparty’s obligation to make the counterparty payment, and
 - (b) the supplier’s obligation to make the supplier payment.
- (3) Where the counterparty payment is less than the supplier payment, payment of the supplier payment less the counterparty payment discharges—
- (a) the supplier’s obligation to make the supplier payment, and
 - (b) the revenue collection counterparty’s obligation to make the counterparty payment.
- (4) Where the counterparty payment is equal to the supplier payment—
- (a) the revenue collection counterparty’s obligation to make the counterparty payment is discharged, and
 - (b) the supplier’s obligation to make the supplier payment is discharged.

Discharge of obligations by payment

32.—(1) This regulation applies where an electricity supplier makes a payment to the revenue collection counterparty for the purpose of discharging its relevant obligations but that payment is insufficient to do so.

- (2) The revenue collection counterparty must use the payment—
- (a) first, to discharge (in whole or in part) any relevant obligation of the supplier arising under regulation 23(1);
 - (b) where part of the payment remains, secondly, to discharge any relevant obligation of the supplier which is not one arising under regulation 23(1); and
 - (c) where part of the payment still remains, thirdly, to discharge any relevant obligation of the supplier to make a payment of interest.
- (3) Where more than one relevant obligation falls within a subparagraph of paragraph (2), the revenue collection counterparty must determine the order in which those obligations are to be discharged.
- (4) On the day on which the revenue collection counterparty uses the payment it must issue a notice to the supplier which sets out the details of—
- (a) any relevant obligation which has been wholly discharged;
 - (b) any relevant obligation which has been partially discharged, and the extent to which it has been discharged; and
 - (c) any relevant obligation which has not been discharged.
- (5) For the purposes of this regulation—
- (a) any amount treated as a payment by an electricity supplier to the revenue collection counterparty by virtue of regulation 21(4) or (5) or regulation 30(4) is to be treated as a payment made by that supplier to the revenue collection counterparty for the purpose of discharging its relevant obligations; and
 - (b) a requirement to provide collateral under regulation 19(2) is not a requirement to make a payment by virtue of these Regulations.

(6) In this regulation—

“payment of interest” means a payment of interest which is required to be made by virtue of regulation 7(6), 8(7), 10(2), 13(7), 16(5), 17(7) or 23(6);

“relevant obligation”, in relation to an electricity supplier, means any obligation of that supplier to make a payment under these Regulations where the date by which that payment should have been made has passed.

Use of payments

33.—(1) Where the revenue collection counterparty receives a payment from an electricity supplier under regulation 23, the revenue collection counterparty may only use that payment for the purposes of meeting its costs.

(2) Where the revenue collection counterparty receives a payment from an electricity supplier under any regulation, other than regulation 23, the revenue collection counterparty may only use that payment for the purposes of—

- (a) making revenue collection counterparty payments;
- (b) making any repayments due to the Secretary of State in relation to any SoS funds which the revenue collection counterparty must repay to the Secretary of State at such time and in such amount as agreed between the Secretary of State and the revenue collection counterparty; or
- (c) making payments to electricity suppliers under these Regulations.

(3) In paragraph (1), “costs” means any costs incurred by the revenue collection counterparty in connection with the performance by it of any function conferred on it by or by virtue of Part 2 of the Act.

Apportioning sums to revenue collection contracts

34.—(1) This regulation applies where the revenue collection counterparty is unable fully to meet its liabilities under, or pursuant to, a revenue collection contract.

(2) The revenue collection counterparty is unable fully to meet its liabilities under, or pursuant to, a revenue collection contract when the total amount held by the revenue collection counterparty at any time is less than the total amount of revenue collection counterparty payments it must pay at that time.

(3) Where this regulation applies, the amount which may be used to make revenue collection counterparty payments in relation to a particular revenue collection contract is the amount given by—

$$AH \times \left(\frac{OG}{OA} \right)$$

where—

AH is the total amount held by the revenue collection counterparty;

OG is the amount of revenue collection counterparty payments owed in relation to that revenue collection contract; and

OA is the total amount of revenue collection counterparty payments which the revenue collection counterparty owes.

(4) An amount is held by the revenue collection counterparty if it is in possession of that amount and—

- (a) it is an amount paid to it by electricity suppliers under these Regulations, other than an amount paid under or by virtue of regulation 23(1) or (6), or provided under regulation 19(2);
- (b) it is an amount treated as a payment by an electricity supplier to the revenue collection counterparty by virtue of regulation 21(4) or (5) or regulation 30(3);
- (c) it is an amount of collateral which was provided in the form of cash and the revenue collection counterparty is entitled to call that collateral by virtue of regulation 21;
- (d) it is an amount received as a RCC party payment by the revenue collection counterparty; or
- (e) it is any other amount provided to the revenue collection counterparty for the purpose of making revenue collection counterparty payments.

Application of apportionment to revenue collection contracts

35.—(1) This regulation applies where a revenue collection contract contains a term that makes reference to amounts allocated pursuant to these Regulations (however that revenue collection contract describes these Regulations).

(2) Where both this regulation and regulation 34 apply, the amount allocated to that revenue collection contract, for the purposes of that term, is the amount calculated under regulation 34(3) which may be used by the revenue collection counterparty to make revenue collection counterparty payments in relation to that revenue collection contract.

(3) In all other cases where this regulation applies, the amount allocated to a revenue collection contract, for the purposes of that term, is the amount which is owed by the revenue collection counterparty in relation to that revenue collection contract.

Interest

36.—(1) For the purposes of regulations 7(6), 8(7), 10(2), 13(7), 16(5), 17(7) and 23(6), the rate of interest is 5 per cent per annum over the relevant Bank of England base rate.

(2) The relevant Bank of England base rate—

- (a) in respect of interest which starts to run on or after 1st January and before 1st July in any year, is the Bank of England base rate in force on 31st December in the previous year; and
- (b) in respect of interest which starts to run on or after 1st July in any year, is the Bank of England base rate in force on 30th June in that year.

(3) Any requirement to pay interest by virtue of these Regulations is a requirement to pay the amount of that interest by the first working day after the day on which that interest has accrued.

(4) In this regulation, “Bank of England base rate” means—

- (a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998(2) is in force, any equivalent rate determined by the Treasury under that section.