

STATUTORY INSTRUMENTS

2014 No. 2043

The Electricity Capacity Regulations 2014

PART 5

Capacity agreements, capacity market register and termination

Capacity agreements

30.—(1) A “capacity agreement” [^{F1}comprises] the rights and obligations accruing to a capacity provider under or by virtue of electricity capacity regulations and capacity market rules in relation to a particular capacity committed CMU and one or more delivery years.

(2) A [^{F2}distinct capacity agreement accrues] to each successful bidder in a capacity auction (unless the capacity auction is annulled under regulation 27), in relation to each CMU for which a successful bid was made, for—

- (a) [^{F3}a capacity obligation equal to] the de-rated capacity of the CMU ^{F4}...;
- (b) the delivery year for which the capacity auction was held in the case of a capacity agreement for a one year capacity obligation, or a period of two or more whole delivery years commencing with that delivery year in the case of a capacity agreement for a multi-year capacity obligation; and
- (c) the capacity cleared price.

(3) The “capacity cleared price” means the price which, subject to any provision for adjustment for inflation, is to be used for the purpose of calculating capacity payments in respect of a capacity obligation.

[^{F5}(4) The capacity cleared price is—

- (a) the auction clearing price; or
- (b) in the case of a time banded capacity obligation awarded in a DSR transitional auction, the percentage of the auction clearing price applicable under regulation 29(7) or (8).]

(5) A capacity agreement—

- (a) may not be disclaimed; and
- (b) may not be transferred or terminated except as provided in these Regulations and capacity market rules.

(6) Unless terminated in accordance with these Regulations or capacity market rules, [^{F6}and subject to any termination of a transferred part in accordance with regulation 30A(4),] a capacity agreement remains in force until the expiry of the period of delivery years for which it is issued.

Textual Amendments

F1 Word in reg. 30(1) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), Sch. 1 para. 21(1) (with reg. 1(4))

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Electricity Capacity Regulations 2014. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F2** Words in reg. 30(2) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 21(2)(a)** (with reg. 1(4))
- F3** Words in reg. 30(2)(a) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 21(2)(b)** (with reg. 1(4))
- F4** Words in reg. 30(2)(a) omitted (2.11.2017) by virtue of The Electricity Capacity (Amendment) Regulations 2017 (S.I. 2017/1053), reg. 1(2), **Sch. 1 para. 3**
- F5** Reg. 30(4) substituted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 50**
- F6** Words in reg. 30(6) inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 21(3)** (with reg. 1(4))

[^{F7}Transfer of a capacity agreement

30A.—(1) A capacity agreement may be transferred in accordance with capacity market rules so as to apply in respect of a CMU—

- (a) for the entire delivery year, or period of delivery years, for which the capacity agreement has effect; or
- (b) only for a specified number of calendar days in such a delivery year (“the transfer period”).

(2) A transfer under paragraph (1) may be made—

- (a) in respect of the entire capacity obligation comprised in the capacity agreement; or
- (b) in respect of a part only of that obligation.

(3) For the purposes of this regulation, a “transferred part” comprises the rights and obligations accruing to the transferee in respect of a CMU where the capacity agreement (“the related agreement”) is transferred under paragraph (1)(b) or (2)(b).

(4) A transferred part may be terminated, in accordance with capacity market rules, so as to extinguish the rights and obligations accruing to the transferee.

(5) But a termination of the transferred part does not—

- (a) in itself amount to the termination of the related agreement; or
- (b) affect any rights and obligations accruing—
 - (i) in a part of a delivery year that is not included in the transfer period; or
 - (ii) in relation to any part of the capacity obligation that is not transferred.

(6) A termination of the related agreement does not in itself amount to the termination of a transferred part [^{F8}and does not extinguish] the rights and obligations accruing in respect of the transferred part.

(7) This regulation applies to the further transfer of a transferred part as it applies to a transfer of a capacity agreement.]

Textual Amendments

- F7** Reg. 30A inserted (14.7.2016) by The Electricity Capacity (Amendment) Regulations 2016 (S.I. 2016/742), reg. 1(2), **Sch. 1 para. 22** (with reg. 1(4))
- F8** Words in reg. 30A(6) substituted (27.7.2021) by The Electricity Capacity (Amendment) Regulations 2021 (S.I. 2021/901), reg. 1(2), **Sch. para. 2**

Capacity market register

31.—(1) The Delivery Body must, in accordance with this regulation and capacity market rules, establish and maintain a capacity market register containing details of—

- (a) in respect of each CMU that is the subject of an application to prequalify for a capacity auction—
 - (i) the prequalification decision; and
 - (ii) the de-rated capacity of the CMU; and
- (b) each capacity agreement.

(2) The Delivery Body must include on the capacity market register in respect of each capacity agreement—

- (a) a description of the CMU in respect of which the capacity agreement is issued;
- (b) the duration of the capacity agreement, and the delivery year or years for which it is issued;
- (c) the capacity obligation for which the capacity agreement is issued;
- (d) the capacity cleared price;
- (e) in the case of a capacity agreement issued following a T-4 auction, the base period applicable for the purpose of calculating capacity payments;
- (f) the annual penalty cap and monthly penalty cap applicable in accordance with the electricity capacity regulations in force at the date of issue of the capacity agreement, expressed respectively as percentages of the annual capacity payment and the monthly capacity payments payable under the capacity agreement;
- (g) whether the capacity provider is subject to a financial commitment milestone and, if so, the date by which that milestone must be met;
- (h) whether the capacity provider is subject to a minimum completion requirement and, if so, the long stop date in respect of that requirement;
- (i) the [^{F9}rate at which each termination fee is payable], which must be determined by the Delivery Body in accordance with regulation 32; and
- (j) such other matters as may be specified in capacity market rules.

(3) The matters referred to in sub-paragraphs (a) to (i) of paragraph (2) apply throughout the duration of the capacity agreement and may not be amended except—

- (a) by the Delivery Body to correct an administrative error;
- (b) in accordance with a direction of the Authority or the court under Chapter 1 of Part 10;
- (c) in accordance with any provision of electricity capacity regulations or capacity market rules for—
 - (i) the adjustment of amounts for inflation;
 - (ii) the extension of a date by which a milestone or other requirement must be met; or
 - (iii) the termination of capacity agreements.

(4) In paragraph (2)(h), “long stop date” and “minimum completion requirement” have the meanings given in the Rules.

Textual Amendments

- F9** Words in reg. 31(2)(i) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), reg. 1(2), [Sch. 1 para. 9](#) (with reg. 1(3))

Termination fee rates

32.—(1) In this regulation—

[^{F10}“TF_xrate” (for any value of x from x = 1 to x = 5) means] the rate at which a termination fee is payable by a capacity provider if—

- (a) a capacity agreement is terminated on a ground specified in capacity market rules; and
- (b) capacity market rules specify [^{F11}that TF_x] is payable in the event of the capacity agreement being terminated on that ground;

^{F12} ...

[^{F13}(2) Those rates are as follows—

TF1_{rate} is £5,000/MW;

TF2_{rate} is £25,000/MW;

TF3_{rate} is £10,000/MW;

TF4_{rate} is £15,000/MW;

TF5_{rate} is £35,000/MW.]

(4) References in this regulation to a rate expressed as £/MW are to that amount in pounds per MW of de-rated capacity ^{F14}... for which the capacity agreement is issued, as specified in the capacity market register.

[^{F15}(5) This regulation applies to the termination of a transferred part as it applies to the termination of a capacity agreement; but in that case, the reference in paragraph (4) to the de-rated capacity ^{F14}... for which the capacity agreement is issued is to be construed as a reference to the capacity obligation comprised in the transferred part.]

Textual Amendments

- F10** Words in [reg. 32\(1\)](#) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 10\(1\)\(a\)](#) (with [reg. 1\(3\)](#))
- F11** Words in [reg. 32\(1\)](#) substituted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 10\(1\)\(b\)](#) (with [reg. 1\(3\)](#))
- F12** Words in [reg. 32\(1\)](#) omitted (14.7.2016) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 10\(1\)\(c\)](#) (with [reg. 1\(3\)](#))
- F13** [Reg. 32\(2\)](#) substituted for [reg. 32\(2\)\(3\)](#) (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 10\(2\)](#) (with [reg. 1\(3\)](#))
- F14** Words in [reg. 32\(4\)\(5\)](#) omitted (2.11.2017) by virtue of [The Electricity Capacity \(Amendment\) Regulations 2017 \(S.I. 2017/1053\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 4](#)
- F15** [Reg. 32\(5\)](#) inserted (14.7.2016) by [The Electricity Capacity \(Amendment\) Regulations 2016 \(S.I. 2016/742\)](#), [reg. 1\(2\)](#), [Sch. 1 para. 23](#) (with [reg. 1\(4\)](#))

Termination of capacity agreements: Secretary of State's discretion

33.—(1) This regulation applies where the Delivery Body gives a termination notice to a capacity provider under capacity market rules.

(2) The Secretary of State may, if the Secretary of State thinks fit, within 3 months of the date on which the termination notice is given—

- (a) direct the Delivery Body to withdraw the termination notice; or

- (b) if the termination notice was given on the ground that the capacity provider has failed to meet a specified requirement, extend the date by which the capacity provider must meet that requirement.
- (3) The date to which a requirement is extended under paragraph (2)(b) must not be later than 6 months after the date on which the termination notice was given.
- (4) A capacity provider may make representations to the Secretary of State requesting the Secretary of State to exercise the discretion in paragraph (2).
- (5) Representations under paragraph (4)—
 - (a) must be made in writing within 20 working days after the date on which the termination notice is given; and
 - (b) if the termination notice was given on the ground that the capacity provider has failed to meet a specified requirement, must specify a cure plan.
- (6) The Secretary of State must consider any representations made in accordance with paragraph (5).
- (7) A capacity provider may not use the procedure in paragraphs (4) and (5) to dispute whether a termination event has occurred, and may only dispute that matter in accordance with Chapter 1 of Part 10.
- (8) In this regulation—
 - (a) a “cure plan” means proposals by the capacity provider demonstrating how and when it will comply with the specified requirement (except as to any provision in capacity market rules about the time for compliance with the specified requirement);
 - (b) a “specified requirement” means a requirement in capacity market rules, the non-compliance with which is specified in capacity market rules as a termination event.
- (9) In this regulation, “termination event” and “termination notice” have the meanings given in the Rules.

Modifications etc. (not altering text)

- C1** Reg. 33 applied (with modifications) (10.4.2019) by [The Electricity Capacity \(No. 1\) Regulations 2019 \(S.I. 2019/862\)](#), reg. 1(2), **26**
- C2** Reg. 33 modified (4.7.2020) by [The Electricity Capacity \(Amendment etc.\) \(Coronavirus\) Regulations 2020 \(S.I. 2020/697\)](#), reg. 1(2), **Sch. 2 para. 2**

[F16]Reduction of the duration of capacity agreements: Secretary of State’s discretion

- 33A.**—(1) This regulation applies where the Delivery Body gives a reduction notice to a capacity provider under the Rules.
- (2) The Secretary of State may, if the Secretary of State thinks fit, within 3 months of the date on which the reduction notice is given—
 - (a) direct the Delivery Body to extend the date by which the capacity provider must meet a specified requirement; or
 - (b) direct the Delivery Body to withdraw the reduction notice.
 - (3) The date to which a requirement is extended by virtue of a direction under paragraph (2)(a) must not be later than 6 months after the date on which the reduction notice is given.
 - (4) If a capacity provider wishes the Secretary of State to exercise the discretion in paragraph (2), the capacity provider must make representations to the Secretary of State.

- (5) Representations under paragraph (4) must—
- (a) be made in writing within 20 working days after the date on which the reduction notice is given;
 - (b) request a direction under paragraph (2);
 - (c) specify the reasons for requesting a direction under paragraph (2); and
 - (d) where a direction under paragraph (2)(a) is requested, specify a cure plan.
- (6) The Secretary of State must consider any representations made in accordance with paragraph (4).
- (7) In this regulation—
- (a) a “cure plan” means proposals by the capacity provider demonstrating how it will comply with the specified requirement;
 - (b) a “specified requirement” means a requirement in the Rules, the noncompliance with which is specified in the reduction notice; and
 - (c) “reduction notice” has the meaning given in the Rules.]

Textual Amendments

F16 Reg. 33A inserted (27.7.2021) by [The Electricity Capacity \(Amendment\) Regulations 2021 \(S.I. 2021/901\)](#), reg. 1(2), [Sch. para. 3](#)

Termination of capacity agreements: CFDs and ROO conversions

34.—(1) The Delivery Body must terminate a capacity agreement (“A”) issued following a T-4 capacity auction where, by no later than 16 months before the start of the delivery period, the Delivery Body receives in respect of A—

- (a) a CFD transfer notice; or
 - (b) a ROO conversion notice.
- (2) The Delivery Body must—
- (a) comply with paragraph (1) immediately it receives the notice; and
 - (b) as soon as reasonably practicable, give a notice that it has terminated A to—
 - (i) the capacity provider in respect of A;
 - (ii) the Settlement Body; and
 - (iii) the CFD counterparty in respect of a CFD transfer notice or the Authority in respect of a ROO conversion notice.

[^{F17}(2A) Subject to paragraph (2B), a CFD transfer notice must include a statement verifying the truth of the statements contained in the CFD transfer notice, which is signed by two directors of the capacity provider or, in the case of a capacity provider which is not a company, by two persons duly authorised by the capacity provider.

(2B) If a capacity provider has a sole director, references to “directors” in paragraph (2A) are to be read as the sole director.]

- (3) In this regulation—
- [^{F18}“allocation round” means an allocation round established by the Secretary of State under regulation 4 of the Contracts for Difference (Allocation) Regulations 2014;]

[^{F19}“CFD transfer notice” means a notice from the capacity provider in respect of CMU i which—

- (a) identifies A;
- (b) states that the capacity provider in respect of CMU i seeks the termination of A in order to become eligible to apply for a CFD in an allocation round;
- (c) identifies the specific allocation round in which the capacity provider intends to apply;
- (d) requests that the Delivery Body terminate A; and
- (e) complies with paragraph (2A);]

“CMU i” means the CMU to which A applies;

“the delivery period” means the delivery year or the period of delivery years for which A imposes a capacity obligation;

“ROO conversion notice” means a notice from the capacity provider in respect of A which—

- (a) identifies A;
- (b) states that the capacity provider intends to claim ROCs in respect of CMU i as a unit conversion or as part of a station conversion for any of the delivery period; and
- (c) includes a written confirmation from the Authority that at least one ROC has been issued in respect of CMU i as a unit conversion or as part of a station conversion since the date A was awarded;

“station conversion” has the same meaning as it has in the ROO ^{M1}; and

“unit conversion” has the same meaning as it has in the ROO ^{M2}.

Textual Amendments

F17 Reg. 34(2A)(2B) inserted (22.7.2023) by [The Electricity Capacity \(Amendment\) Regulations 2023 \(S.I. 2023/860\)](#), regs. 1(2), **4(a)**

F18 Words in reg. 34(3) inserted (22.7.2023) by [The Electricity Capacity \(Amendment\) Regulations 2023 \(S.I. 2023/860\)](#), regs. 1(2), **4(b)(i)**

F19 Words in reg. 34(3) substituted (22.7.2023) by [The Electricity Capacity \(Amendment\) Regulations 2023 \(S.I. 2023/860\)](#), regs. 1(2), **4(b)(ii)**

Marginal Citations

M1 The definition of “station conversion” was inserted into [S.I. 2009/785](#) by [S.I. 2013/768](#), and into [S.S.I. 2009/140](#) by [S.S.I. 2013/116](#).

M2 The definition of “unit conversion” was inserted into [S.I. 2009/785](#) by [S.I. 2013/768](#), and into [S.S.I. 2009/140](#) by [S.S.I. 2013/116](#).

Null and void capacity agreements

35.—(1) Any capacity agreement issued in respect of a CMU which, at the date on which the capacity agreement was issued, did not meet the general eligibility criteria is null and void.

(2) Where the Delivery Body becomes aware that a capacity agreement is null and void by reason of paragraph (1), the Delivery Body must as soon as reasonably practicable give a notice to the capacity provider and the Settlement Body which—

- (a) identifies the capacity agreement; and
- (b) states that the capacity agreement is null and void.

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Electricity Capacity Regulations 2014. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 para. 2(5) words substituted by [S.I. 2024/434 reg. 12\(a\)](#)
- reg. 3(3) words inserted by [S.I. 2024/434 reg. 8](#)
- reg. 4(b) word substituted by [S.I. 2024/434 reg. 9\(c\)](#)
- reg. 4(2)(aa) inserted by [S.I. 2024/434 reg. 9\(b\)\(iii\)](#)
- reg. 19(aa) inserted by [S.I. 2024/434 reg. 11\(b\)](#)