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STATUTORY INSTRUMENTS

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**2021 No. 901**

**ELECTRICITY**

**The Electricity Capacity (Amendment) Regulations 2021**

*Made* - - - - 26th July 2021

*Coming into force* - - 27th July 2021

The Secretary of State has before making these Regulations—

- (a) consulted in accordance with section 40(2) of the Energy Act 2013<sup>(1)</sup>; 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, 28, 31, 32, 36 and 40(1) of the Energy Act 2013, makes the following Regulations:

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Electricity Capacity (Amendment) Regulations 2021.

(2) These Regulations come into force on the day after the day on which they are made.

**Amendments to the Electricity Capacity Regulations 2014**

**2.**—(1) The Electricity Capacity Regulations 2014<sup>(2)</sup> are amended as set out in the Schedule.

(2) Any reference in the Schedule to a numbered regulation is to the regulation so numbered in the Electricity Capacity Regulations 2014.

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<sup>(1)</sup> 2013 c. 32.

<sup>(2)</sup> S.I. 2014/2043; relevant amending instruments are S.I. 2015/875, 2016/742, and 2020/697. S.I. 2019/862 and 2020/697 make relevant modifications to the application of the Electricity Capacity Regulations 2014.

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26th July 2021

*Anne-Marie Trevelyan*  
Minister of State for Energy, Clean Growth and  
Climate Change  
Department for Business, Energy and Industrial  
Strategy

## SCHEDULE

Regulation 2(1)

### Amendments to the Electricity Capacity Regulations 2014

#### PART 1

##### Miscellaneous

#### **Regulation 15 (general eligibility criteria)**

1. In regulation 15(5), for “to 18”, substitute “and 17”.

#### PART 2

##### Effect of termination of a capacity agreement on transferred capacity agreement

#### **Regulation 30A (transfer of a capacity agreement)**

2. In regulation 30A(6), for “, but extinguishes” substitute “and does not extinguish”.

#### PART 3

##### Reduction of the duration of a capacity agreement

#### **New regulation 33A**

3. After regulation 33, insert—

#### **“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

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- (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.”.

## PART 4

### Non-material errors or omissions in applications for prequalification

#### **Regulation 69 (requesting reconsideration by the Delivery Body)**

- 4. In regulation 69—
  - (a) in paragraph (3), for “15” substitute “20”;
  - (b) in paragraph (5), after “Subject to”, insert “paragraph (5A) and.”;
  - (c) after paragraph (5), insert—
    - “(5A) In reconsidering a prequalification decision, the Delivery Body may take into account information or evidence if the Delivery Body determines that:
      - (a) the relevant application for prequalification contained a non-material error or omission; and
      - (b) the information or evidence is capable of rectifying such non-material error or omission.”; and
  - (d) after paragraph (6), insert—
    - “(7) In this regulation—
      - “non-material error or omission” means an error or omission in an application for prequalification which is—
        - (a) manifest, and either inadvertent or the result of an honest mistake;
        - (b) clerical, typographical or trivial in nature; or
        - (c) determined by the Delivery Body to be inconsequential to the affected person’s compliance with, or the enforcement of, any requirement in these Regulations or the Rules to which the error or omission relates.”.

#### **Regulation 70 (appeals to the Authority)**

- 5. In regulation 70(4)—
  - (a) in sub-paragraph (b)(i), omit “and”;
  - (b) at the end of sub-paragraph (b)(ii), insert “and”; and
  - (c) after sub-paragraph (b)(ii), insert—
    - “(iii) any information or evidence submitted in accordance with regulation 69(5A).”.

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## EXPLANATORY NOTE

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

These Regulations make amendments to the Electricity Capacity Regulations 2014 (S.I. 2014/2043). The Electricity Capacity Regulations 2014 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 obtain capacity agreements which give capacity providers rights to receive capacity payments ("capacity payments") and which also impose obligations on capacity providers to provide capacity during one or more specified years ("delivery year"). Following a prequalification process during which applications must be made to the scheme's delivery body (National Grid ESO), capacity agreements are awarded in competitive auctions ("capacity auctions") held four years ahead of a delivery year ("T-4 auction") and one year ahead of a delivery year ("T-1 auction"). Further detailed and technical provision is made by the Capacity Market Rules 2014 ("the Rules")<sup>(3)</sup>.

Regulation 2 and the Schedule to these Regulations make amendments to the Electricity Capacity Regulations 2014 to make technical improvements to the operation of the scheme. In the Schedule, Part 2 prevents the extinguishing of rights and obligations related to a partially transferred capacity obligation in circumstances where the original capacity agreement is terminated. Part 3 concerns a "reduction notice" (defined in the Rules) which is given to a capacity provider to reduce the duration of their capacity agreement for failure to meet a specified requirement under the Rules. It provides the Secretary of State with a discretion to direct the delivery body to extend the date for compliance with, or withdraw, a reduction notice. Part 4 amends the information or evidence which the delivery body and the energy regulator, the Gas and Electricity Markets Authority, may take into account when disputes or appeals are brought by applicants for prequalification. This allows information or evidence that rectifies non-material errors or omissions to be taken into account. Part 1 implements a minor correction.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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(3) A consolidated version of the Capacity Market Rules 2014 are at <https://www.ofgem.gov.uk/publications-and-updates/publication-consolidated-capacity-market-rules-0>. Copies are available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET.