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

DRAFT STATUTORY INSTRUMENTS

2015 No. 0000

ELECTRICITY

The Electricity Capacity (Amendment) Regulations 2015

Made - - - - 2015

Coming into force in accordance with regulation 1

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(**a**) 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 the Energy Act 2013, makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Capacity (Amendment) Regulations 2015.

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

Amendment of the Electricity Capacity Regulations 2014

2.—(1) The Electricity Capacity Regulations 2014(**b**) are amended as set out in Schedule 1.

(2) Any reference in that Schedule to a numbered regulation is to the regulation so numbered in those Regulations.

Amendment of the Electricity Capacity (Supplier Payment etc.) Regulations 2014

3.—(1) The Electricity Capacity (Supplier Payment etc.) Regulations 2014(**c**) are amended as set out in Schedule 2.

(**a**) 2013 c.32.
(**b**) S.I. 2014/2043; amended by S.I. 2014/3354.
(**c**) S.I. 2014/3354.

(2) Any reference in that Schedule to a numbered regulation is to the regulation so numbered in those Regulations.

Name
[Minister of State]
Date Department of Energy and Climate Change

SCHEDULE 1

Regulation 2(1)

Amendments to the Electricity Capacity Regulations 2014

PART 1

Electricity Interconnectors etc.

Regulation 2 (interpretation)

1. In regulation 2(1)—

(a) in the definition of "capacity", after "generating capacity" insert ", interconnected capacity";

(b) in the definition of "CMU", omit "or" after paragraph (a) and after paragraph (b) insert—

"or

(c) an interconnector CMU;";

(c) after the definition of "commissioned" insert—

""commissioned", in relation to an electricity interconnector, means that—

(a) such procedures and tests have been completed as constitute, at the time they are undertaken, industry standards and practices for commissioning an electricity interconnector of that type such that it is capable of operation at its connection capacity; and

(b) the electricity interconnector has not subsequently been decommissioned;";

(d) in the definition of "connection capacity", after "in relation to" insert "an interconnector CMU," and after "of that" insert "interconnector CMU,";

(e) after the definition of "decommissioned" insert—

""decommissioned", in relation to an electricity interconnector, means that the interconnector has permanently been physically disconnected from the GB transmission system;";

(f) in the definition of "Delivery Body", in paragraph (b), after "section 46 of the Act," insert "and to the extent of the functions that have been transferred,";

(g) in the definition of "interconnected capacity", for "capacity provided by the transmission of electricity to Great Britain" substitute "electricity provided to the GB transmission system";

(h) after that definition insert—

""interconnector CMU" has the meaning given in regulation 5A;";

(i) after the definition of "net output" insert—

""net output", in relation to an interconnector CMU, means the amount of electricity transmitted through the CMU into the GB transmission system;"; and

(j) after the definition of "prospective generating unit" insert—

""prospective interconnector CMU" means an interconnector CMU within regulation 5A(1)(b);".

New regulation 5A

2. After regulation 5 (demand side response CMU) insert—

""**Interconnector CMU**"

5A.—(1) An "interconnector CMU" is—

(a) an existing interconnector which meets the conditions in paragraph (3); or

(b) a prospective interconnector which when commissioned (or, as the case may be, recommissioned) will meet the conditions in paragraph (3).

(2) In paragraph (1)—

"existing interconnector" means an electricity interconnector that has been commissioned;

"prospective interconnector" means an electricity interconnector or proposed electricity interconnector that—

(a) has not been commissioned; or

(b) is to be subject to an improvements programme and has not been recommissioned following that improvements programme.

(3) The conditions referred to in paragraph (1) are that—

(a) the electricity interconnector has a connection capacity not less than the minimum capacity threshold; and

(b) the net output of the electricity interconnector is measured by one or more half hourly meters in accordance with capacity market rules.".

Regulation 7 (annual electricity capacity report)

3.—(1) In regulation 7(2)(c)(i), after "capacity" insert ", in relation to each electricity interconnector that has or is likely to have been commissioned before the end of the forecast period concerned".

(2) In regulation 7(4)(c), omit "and" after paragraph (i), and after "CMUs" at the end of paragraph (ii) insert—

"; and

(iii) interconnector CMUs".

Regulation 14 (eligibility to bid in capacity auctions)

4.—(1) In regulation 14(1), for "An applicant" substitute "Subject to paragraph (3), an applicant".

(2) After regulation 14(2) insert—

"(3) In respect of an interconnector CMU, an applicant is not eligible to bid in a capacity auction held for a delivery year commencing before 2019.".

Regulation 21 (auction guidelines)

5. In regulation 21(2)(e), after "class," insert "and for each interconnector CMU," and after "Delivery Body" insert "or the Secretary of State".

Regulation 23 (notifying prequalification results to the Secretary of State)

6. In regulation 23(1)(c), after "generating CMUs" insert ", or interconnector CMUs,".

Regulation 30 (capacity agreements)

7. In regulation 30(2)(a), after "generating CMU" insert "or an interconnector CMU".

New regulation 43A

8. After regulation 43 insert—

"**Non-completion fee**

43A.—(1) A capacity provider in respect of a new build interconnector CMU must pay to the Settlement Body a fee (a "non-completion fee") by way of a financial penalty if, in circumstances specified for the purposes of this regulation by capacity market rules, the capacity provider fails to meet the completion requirements of the capacity agreement.

(2) For the purposes of paragraph (1)—

"completion requirements" are requirements to reach a level of operational capability specified in capacity market rules by the end of a delivery year;

"new build interconnector CMU" means a prospective interconnector CMU which has not been commissioned.

(3) The Settlement Body must, as soon as reasonably practicable after receiving notice in accordance with capacity market rules of the imposition of a non-completion fee—

(a) determine the amount in pounds of the non-completion fee that is payable; and

(b) issue to the capacity provider an invoice for that amount.

(4) Paragraphs (3) to (5) of regulation 43 apply to the determination of the amount of a non-completion fee as they apply to the determination of the amount of a termination fee.

(5) For the purposes of this regulation, references in regulation 32(1)—

(a) to a "termination fee" are to be construed as references to a non-completion fee; and

(b) to termination on a ground specified in capacity market rules are to be construed as references to a failure to meet completion requirements in circumstances so specified.".

Regulation 59 (requirement to provide applicant credit cover)

9.—(1) In regulation 59(1), for "An applicant" substitute "Subject to paragraphs (1A) and (1B), an applicant".

(2) After regulation 59(1) insert—

"(1A) Where an applicant provides applicant credit cover for a capacity auction in respect of an interconnector CMU, the applicant is not required to provide further applicant credit cover for any subsequent capacity auction in respect of that CMU, provided that the credit cover already provided has not been drawn down.

(1B) Where an applicant provides applicant credit cover for a capacity auction in respect of an unproven demand side response CMU, the applicant is not required to provide further applicant credit cover for any subsequent capacity auction in respect of that CMU except in circumstances specified in capacity market rules.".

Regulation 60 (credit obligation period)

10. In regulation 60(1)(g), after "generating CMU" insert "or a prospective interconnector CMU".

Regulation 61 (draw down of applicant credit cover)

11. In regulation 61(1)(b), after "generating CMU" insert "or a prospective interconnector CMU".

PART 2

Demand Side Response, Metering, and other amendments

Regulation 2 (interpretation)

12. In regulation 2(1), for the definition of "half hourly meter" substitute—

""half hourly meter" means a meter which measures import or export of electricity (or, in the case of an electricity interconnector, measures net output)—

(a) on a half hourly basis; or

(b) on a basis which enables meter readings to be aligned with a settlement period;".

Regulation 4 ("generating CMU")

13.—(1) In regulation 4(3)—

(a) in sub-paragraph (b), omit "and owned by the same person"; and

(b) after that sub-paragraph insert—

"(ba) subject to paragraph (4A), the generating units are all owned by the same person; ".

(2) After regulation 4(4) insert—

"(4A) The condition in paragraph (3)(ba) does not apply where the aggregate connection capacity of all the generating units is less than 50 MW.".

(3) In regulation 4(8), in the definition of "registered trading unit", after "base trading unit" insert "or sole trading unit".

(4) In regulation 4(9), after ""metering system";" omit "and" and insert ""sole trading unit";".

Regulation 15 (general eligibility criteria)

14. In regulation 15, for paragraph (4) substitute—

"(4) The second condition is—

(a) in the case of a generating CMU or an interconnector CMU, that the connection capacity of the CMU is equal to or greater than 2MW (the "minimum capacity threshold"); or

(b) in the case of a demand side response CMU, that the DSR capacity of the CMU is equal to or greater than the minimum capacity threshold.".

Regulation 29 (DSR transitional auctions)

15.—(1) After regulation 29(9) insert—

"(9A) The Delivery Body must not prequalify a CMU ("CMU i") for the DSR transitional auction held under paragraph (2)(a) if CMU i is subject to an EDR participant agreement which applies for any of the delivery period.

(9B) The Delivery Body may request an applicant or the Secretary of State to provide it with such information as it may require for the purposes of paragraph (9A) and the applicant or the Secretary of State must, to the extent that it holds the information, comply with such a request as soon as reasonably practicable.".

(2) After regulation 29(10) insert—

"(10A) Regulation 69(5) does not apply in relation to the reconsideration of a prequalification decision for the DSR transitional auctions held by the Delivery Body under paragraph (2).".

(3) For regulation 29(11) substitute—

"(11) In this regulation—

"delivery period" has the meaning given in regulation 19;

"EDR participant agreement" means an agreement entered into between the Secretary of State and the applicant under a pilot scheme for electricity demand reduction established under section 43 of the Act;

"non-CMRS distribution CMU" means a CMU consisting of one or more non-CMRS distribution units, within the meaning given in regulation 4(8).".

New regulations 43B and 43C

16. After regulation 43A (non-completion fee), inserted by paragraph 8, insert—

"**Repayment of capacity payments: termination**

43B.—(1) A capacity provider must repay capacity payments to the Settlement Body if—

(a) a capacity agreement is terminated on a ground specified in capacity market rules; and

(b) capacity market rules specify that capacity payments are repayable in the event of the capacity agreement being terminated on that ground.

(2) The Settlement Body must, as soon as reasonably practicable after receiving final notice of termination of the capacity agreement—

(a) determine the amount in pounds of the capacity payments that are repayable; and

(b) issue to the capacity provider an invoice for that amount.

(3) Where capacity market rules specify that capacity payments are repayable in respect of—

(a) the period TP1, the capacity payments that must be repaid are those made in respect of the period beginning with the date of the termination notice and ending with the date of termination of the relevant capacity agreement;

(b) the period TP2, the capacity payments that must be repaid are those made in respect of the period beginning with the date of the termination event and ending with the date of termination of the relevant capacity agreement.

(4) In this regulation—

(a) "final notice of termination" means a notice given by the Delivery Body in accordance with capacity market rules that the capacity agreement has terminated; and

(b) "termination event" and "termination notice" have the meaning given in the Rules.

Repayment of capacity payments: metering fault

43C.—(1) A capacity provider must repay capacity payments to the Settlement Body if—

(a) a metering test certificate or DSR test certificate is, in accordance with capacity market rules, determined to be invalid on a ground specified in those rules; and

(b) capacity market rules specify that capacity payments are repayable in the event that a metering test certificate or DSR test certificate is determined to be invalid on that ground.

(2) The Settlement Body must, as soon as reasonably practicable after the relevant date—

(a) determine the amount in pounds of the capacity payments that are repayable; and

(b) issue to the capacity provider an invoice for that amount.

(3) In paragraph (2) the "relevant date" means the date on which, in accordance with capacity market rules—

(a) in the case of a metering test certificate, the certificate was determined by the Settlement Body to be invalid; or

(b) in the case of a DSR test certificate, the Settlement Body received notice of the invalidity of the certificate.

(4) Where capacity market rules specify that capacity payments are repayable in respect of—

(a) the period MP1, the capacity payments that must be repaid are those made in respect of the period beginning with the relevant invalidation date and ending with the date on which the relevant metering recovery payment notice is issued;

(b) the period MP2, the capacity payments that must be repaid are those made in respect of the period beginning with the relevant invalidation date and ending with the date on which the relevant completion notice is issued;

(c) the period MP3, the capacity payments that must be repaid are those made in respect of the period beginning with the first day of the relevant delivery year and ending with the date on which the relevant metering recovery payment notice is issued.

(5) In this regulation, "completion notice", "invalidation date", "metering recovery payment notice" and "metering test certificate" have the meaning given in the Rules.".

Regulation 50 (reducing capacity payments: failure to demonstrate satisfactory performance)

17. In regulation 50—

(a) after paragraph (2) insert—

"(2A) If C complies with the satisfactory performance requirement during May in year X, no monthly capacity payment is to be paid in respect of CMU i for that month.";

(b) in paragraph (3), after "relevant month", in the first place in which it occurs, insert "other than May"; and

(c) in paragraph (5)(a), after "paragraph (2)" insert "or paragraph (2A)".

Regulation 69 (requesting reconsideration by the Delivery Body)

18. In regulation 69(5), for "regulation 87(7)" substitute "regulations 29(10A) and 87(7)".

Regulation 73 (consequences of successful review or appeal)

19.—(1) For regulation 73(6)(b) substitute—

"(b) for—

(i) the de-rated capacity of the CMU (which, if not previously determined, must be determined by the Delivery Body in accordance with capacity market rules); or

(ii) in the case of a demand side response CMU, the capacity (if less than that de-rated capacity) nominated by the applicant for the purposes of this paragraph (ii) in accordance with capacity market rules;".

(2) After regulation 73(6) insert—

"(6A) The capacity nominated for the purposes of paragraph (6)(b)(ii) is to be treated as the DSR bid capacity for purposes of regulations 32 and 60.".

New regulation 87A

20. After regulation 87 insert—

"**Transitory provisions: the second T-4 auction**

87A.—(1) Paragraph (2) applies if the Secretary of State determines under regulation 10(1)(b) that a capacity auction is to be held in the auction window starting on 1st September 2015 ("the second T-4 auction").

(2) Where this paragraph applies, paragraphs (5) to (8) of regulation 87 have effect as if both references to the "first T-4 auction" were references to the second T-4 auction.".

SCHEDULE 2

Regulation 3(1)

Amendments to the Electricity Capacity (Supplier Payment etc.) Regulations 2014

Regulation 2 (interpretation)

1. In regulation 2(7), after "is given" insert "or treated as given".

Regulation 9 (settlement costs levy)

2. In regulation 9(2), for "£1,374,000" substitute "£3,891,000".

Regulation 34 (documents)

3. Regulation 34 is revoked.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Part 2, Chapter 3 of the Energy Act 2013 (c. 32) ("the Act"). They amend in various respects the Electricity Capacity Regulations 2014 (S.I. 2014/2043) ("the Principal Regulations"), which have previously been amended by Schedule 2 to the Electricity Capacity (Supplier Payment etc.) Regulations 2014 (S.I. 2014/3354) ("the Supplier Payment Regulations"). They also contain amendments to the Supplier Payment Regulations.

The Principal Regulations make provision for the purpose of enabling consumers' demands for electricity in Great Britain to be met, by establishing a system ("the Capacity Market") whereby those who offer to make electricity capacity available can (as the result of an auction) be awarded capacity agreements, which confer rights and impose obligations on those awarded the agreement. Those rights and obligations consist principally of the right to receive "capacity payments" from a settlement body established for that purpose, these being payments for generating (or reducing demand for) electricity at times of system stress; and the liability to make a penalty payment

where the capacity agreement is breached. The Principal Regulations and the Supplier Payment Regulations also impose obligations on persons who supply electricity in Great Britain pursuant to an electricity supply licence under section 6 of the Electricity Act 1989 (c. 29). Those obligations consist principally of requirements to make payments to the settlement body. Further detailed and technical provision is made by the Capacity Market Rules 2014 ("the Rules").

The amendments are set out in the Schedules to these Regulations.

Part 1 of Schedule 1 makes provision enabling electricity interconnectors to participate in the Capacity Market from 1st September 2015 onwards. For that purpose, the Supplier Payment Regulations have already amended the definition of "providing electricity" given in regulation 3 of the Principal Regulations, so that it includes the provision of electricity through an electricity interconnector—that is to say, an electric line or other electrical plant which subsists to convey electricity between Great Britain and another country or territory (see section 4(3E) of the Electricity Act 1989).

Paragraphs 1 and 2 of Part 1 make provision for other appropriate definitions, adding in particular a definition of an "interconnector CMU" as a third category of Capacity Market Unit which can participate in the system (alongside "generating CMUs" and "demand side response CMUs"). *Paragraphs 3 to 7, 10 and 11* contain corresponding consequential amendments.

Paragraph 8 of Part 1 introduces a new financial penalty, corresponding to the termination penalties already provided for under the Principal Regulations and the Rules, but which can apply where the question of the termination of a capacity agreement does not arise, because the default can be ascertained only after the relevant capacity agreement has already expired. This is relevant to capacity agreements for interconnector CMUs, which will be for a single delivery year.

Paragraph 9 of Part 1 amends regulation 59 of the Principal Regulations to clarify when credit cover that has already been provided by an applicant in order to participate in a capacity auction need not be re-provided. In this case provision is made both for new build interconnector CMUs (new paragraph (1A)) and demand side response CMUs (new paragraph (1B)).

Part 2 of Schedule 1 amends the Principal Regulations to make provision—

(a) for a new definition of "half hourly meter" (amendment to regulation 2);

(b) to disapply the requirement for all generating units comprised in a generating CMU to be owned by the same person where the total connection capacity of those generating units is less than 50 megawatts (amendments to regulation 4);

(c) to clarify that, in the case of a demand side response CMU, the DSR capacity of the CMU must be equal to or greater than 2 megawatts (amendment to regulation 15);

(d) to disapply regulation 69(5) (which prevents the use of certain information in the reconsideration of a prequalification decision) in the case of the first and second DSR transitional auctions, to be held by the Delivery Body in accordance with Regulation 29(2); and to exclude participation in both the Electricity Demand Reduction pilot scheme established under section 43 of the Act and the first DSR transitional auction, where there is any overlap with the relevant delivery period (amendments to regulations 29 and 69);

(e) to require a capacity provider to repay capacity payments to the Settlement Body if a capacity agreement is terminated on a ground specified for this purpose in the capacity market rules (new regulation 43B);

(f) to require a capacity provider to repay capacity payments to the Settlement Body if a metering test certificate or DSR test certificate is held to be invalid on a ground specified for this purpose in the capacity market rules (new regulation 43C);

(g) for a capacity provider to forego at least one month's capacity payment where the capacity provider has failed to demonstrate satisfactory performance (amendments to regulation 50);

(h) to ensure that a successful appellant against a "prequalification" decision can nominate a lower amount of capacity in the case of a demand side reduction CMU (amendments to regulation 73); and

(i) for transitory provisions for the "second T-4 auction" (new regulation 87A).

Schedule 2 amends the Supplier Payment Regulations in order to provide a revised figure for the annual settlement costs levy under regulation 9, and to remove an unnecessary duplication between regulation 34 and regulations 2(7) and 5(4).

A full impact assessment of the effect that this instrument and the Principal Regulations will have on the costs of business and the voluntary sector is available from the Department of Energy and Climate Change at 3 Whitehall Place, London SW1A 2AW and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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