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

D R A F T S T A T U T O R Y I N S T R U M E N T S

2016 No. 0000

ELECTRICITY

The Electricity Capacity (Amendment) Regulations 2016

Made - - - - 2016

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 31, 34(3), 36 and 40(1) of the Energy Act 2013, makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Electricity Capacity (Amendment) Regulations 2016.

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

(3) The amendments made by paragraphs 8, 9, 10, 11, 13, 14, 15, 17(3) and 19 in Part 2 of Schedule 1 do not apply in respect of a capacity agreement awarded as a result of a capacity auction held before these Regulations come into force.

(4) The amendments made by Part 3 of Schedule 1 do not apply in respect of a capacity agreement awarded in a DSR transitional auction.

(5) In this regulation—

"capacity agreement" and "capacity auction" have the meanings given in regulation 2(1) of the Electricity Capacity Regulations 2014(**b**); and

"DSR transitional auction" has the meaning given in regulation 2(1) of those Regulations as amended by paragraph 37 in Part 4 of Schedule 1 to these Regulations.

(**a**) 2013 c.32.
(**b**) S.I. 2014/2043; amended by S.I. 2014/3354, 2015/875 and 2015/1974.

Amendment of the Electricity Capacity Regulations 2014

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

(2) Any reference in that Schedule to a numbered regulation or Schedule is to the regulation or Schedule 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(**a**) are amended as set out in Schedule 2.

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

Name
Secretary of State
Date Department of Energy and Climate Change

SCHEDULE 1

Regulation 2

Amendments to the Electricity Capacity Regulations 2014

PART 1

Supplementary auction

Regulation 2 (interpretation)

1. In regulation 2(1)(**b**), after the definition of "storage facility" insert—

""supplementary auction" has the meaning given in regulation 10(1)(ba);".

Regulation 7 (annual electricity capacity report)

2. After regulation 7(5)(**c**) insert—

"(6) The Delivery Body must before 1st August 2016—

(a) prepare an annex to the last electricity capacity report prepared before 1st June 2016; and

(b) send that annex to the Secretary of State.

(7) The annex prepared under paragraph (6) must include a recommendation as to the target capacity for any supplementary auction that may be held.".

Regulation 10 (determining whether capacity auction is to be held)

3.—(1) In regulation 10(1), omit "and" after sub-paragraph (b) and insert after that sub-paragraph—

(**a**) S.I. 2014/3354, amended by S.I. 2015/875.
(**b**) Regulation 2(1) is also amended by paragraphs 8, 20, 37 and 41 of this Schedule.
(**c**) Paragraph (5) of regulation 7 is inserted by paragraph 43 of this Schedule.

"(ba) by 1st August 2016, whether a T-1 auction is to be held in the auction window starting on 1st September 2016 (a "supplementary auction"); and".

(2) After regulation 10(1), insert—

"(1A) Paragraphs (2), (3) and (4) apply in relation to the determination required by regulation 10(1)(c)(ii).".

Regulation 12 (determination of auction parameters by the Secretary of State)

4. In regulation 12(5)(**a**), insert at the end of sub-paragraph (a) "(including any annex prepared under regulation 7(6))".

Regulation 14 (eligibility to bid in capacity auctions)

5. In regulation 14(3), after "auction" insert "(other than a supplementary auction)".

Regulation 59 (requirement to provide applicant credit cover)

6.—(1) In regulation 59(2)(**b**), for "The amount" substitute "Subject to paragraphs (2A) and (2B), the amount".

(2) After regulation 59(2) insert—

"(2A) Paragraph (2B) applies where an applicant for a supplementary auction is required to provide credit cover in accordance with this regulation.

(2B) Where at the time applicant credit cover must be provided for the supplementary auction the applicant is maintaining applicant credit cover in accordance with regulation 60 for any other capacity auction (including a T-4 auction held in the same auction window as the supplementary auction) in respect of a CMU ("the original credit cover")—

(a) in order to prequalify for the supplementary auction in respect of that CMU, the applicant is not required to provide additional credit cover of an amount exceeding the difference between—

(i) the amount determined under paragraph (2)(a), and

(ii) the amount of the original credit cover;

(b) the original credit cover is included in the credit cover that may be drawn down under regulation 61(1)(c) in relation to a capacity agreement awarded in the supplementary auction; and

(c) notwithstanding sub-paragraph (h) of regulation 60(1), any credit cover drawn down in relation to that agreement must be replaced in accordance with the obligation under regulation 60(1) to maintain the original credit cover.".

Regulation 61 (draw down of applicant credit cover)

7. In regulation 61(**c**), after paragraph (4) insert—

"(5) If applicant credit cover relates to a supplementary auction—

(a) paragraph (1) is to be read as if for sub-paragraph (b) there were substituted—

"(b) where CMU i is a distribution CMU in respect of which regulation 60(1)(g)(ii) applies, the credit obligation period has not ended by the date falling 6 months prior to the commencement of the delivery year of A's capacity agreement in respect of CMU i;

(**a**) Regulation 12 is also amended by paragraph 45 of this Schedule.
(**b**) Regulation 59 is also amended by paragraph 17 of this Schedule.
(**c**) Regulation 61 is also amended by paragraph 19 of this Schedule.

(ba) where CMU i is a prospective generating CMU or a prospective interconnector CMU, the credit obligation period has not ended by the date falling 3 months after the date on which A was awarded a capacity agreement in respect of CMU i;"; and

(b) this regulation has effect as if the following paragraphs were inserted after paragraph (1)—

"(1A) If paragraph (1)(b) applies but the date by which a copy of a distribution connection agreement is required by capacity market rules to be provided in respect of CMU i is extended under regulation 33(2)(b), the date in paragraph (1)(b) is extended to the date to which the requirement is extended.

(1B) If paragraph (1)(ba) applies but the date by which a financial commitment milestone is required by capacity market rules to be met in respect of CMU i is extended under regulation 33(2)(b), the date in paragraph (1)(ba) is extended to the date to which that requirement is extended."."

PART 2

Termination fees etc. and credit cover

Regulation 2 (interpretation)

8. In regulation 2(1), for the definitions of "TF1" and "TF2" substitute—

""TFx", for any value of x from x = 1 to x = 5, means the corresponding termination fee payable under regulation 43(3);".

Regulation 31 (capacity market register)

9. In regulation 31(2)(i), for "rates at which TF1 and TF2 are payable" substitute "rate at which each termination fee is payable".

Regulation 32 (termination fee rates)

10.—(1) In regulation 32(1)(**a**)—

(a) for ""$TF1_{rate}$" means" substitute ""TFx_{rate}" (for any value of x from x = 1 to x = 5) means";

(b) for "that TF1" substitute "that TFx"; and

(c) omit the definition of "$TF2_{rate}$".

(2) For regulation 32(2) and (3) substitute—

"(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.".

Regulation 43 (termination fees)

11.—(1) In regulation 43(3)(**b**)—

(**a**) Regulation 32 is also amended by paragraph 23 of this Schedule.
(**b**) Regulation 43 is also amended by paragraph 27 of this Schedule.

(a) for "TF1 is payable" substitute "TFx is payable (for any value of x from x = 1 to x = 5)"; and

(b) for the formula, substitute—

$$TFx = TFxrate \times CO.$$

(2) Omit regulation 43(4).

(3) In regulation 43(5), for the definitions of "$TF1_{rate}$" and "$TF2_{rate}$" substitute—

""TFx_{rate}" (for any value of x from x = 1 to x = 5) means the rate in pounds per MW determined in accordance with regulation 32 and specified on the capacity market register as the rate at which TFx is payable under the capacity agreement.".

New regulation 43ZA

12. After regulation 43 insert—

"**Termination fees: adjustment for DSR providers**

43ZA.—(1) This regulation applies where—

(a) a termination fee is payable by a DSR provider;

(b) before that termination fee became payable, the Settlement Body had drawn down applicant credit cover provided by the DSR provider in accordance with regulation 60(3) or regulation 61(1)(a)(ii);

(c) the termination fee and the applicant credit cover relate to the same unproven demand side response CMU; and

(d) either—

(i) the termination fee and the applicant credit cover relate to the same capacity auction; or

(ii) the termination fee relates to a capacity auction for which no further applicant credit cover was required to be provided because of regulation 59(1B).

(2) The amount of the termination fee to be determined and invoiced under regulation 43 is reduced by the amount of the credit cover drawn down.".

Regulation 43B (repayment of capacity payments on termination)

13. After sub-paragraph (b) of regulation 43B(3)(**a**) insert—

"(c) the period TP3, the capacity payments that must be repaid are those made in respect of the period beginning with the date on which capacity payments began under the relevant capacity agreement and ending with the date of termination of the relevant capacity agreement.".

Regulation 53 (interpretation of Part 7)

14. In regulation 53(3), in the definition of "the required amount", after "regulation 59(1)" insert "or (4)".

Regulation 56 (maintenance of credit cover)

15. After regulation 56(3) insert—

"(3A) If A does not comply with paragraph (3)—

(**a**) Regulation 43B is also amended by paragraph 28 of this Schedule.

(a) the Settlement Body may immediately draw down on the letter of credit to the full amount stated in the letter of credit and on receipt of funds from the paying bank place the funds in a bank account which satisfies the conditions in regulation 54(4); and

(b) funds placed in a bank account under sub-paragraph (a) shall be treated as credit cover provided by A.".

Regulation 57 (downgrade of letter of credit)

16. In regulation 57(3), for "8" substitute "10 working".

Regulation 59 (requirement to provide applicant credit cover)

17.—(1) In regulation 59—

(a) in paragraph (1), for "paragraphs (1A) and" substitute "paragraph";

(b) omit paragraph (1A); and

(c) in paragraph (1B), after "demand side response CMU" insert "or an interconnector CMU".

(2) For regulation 59(2)(a) substitute—

"(a) in the case of an application to prequalify for a T-4 auction or a T-1 auction—

(i) if CMU i is an unproven demand side response CMU, an amount equal to £5,000 per MW of the de-rated capacity of CMU i; and

(ii) if CMU i is not an unproven demand side response CMU, an amount equal to £10,000 per MW of the de-rated capacity of CMU i;".

(3) After regulation 59(3) insert—

"(4) In circumstances specified in capacity market rules, the applicant credit cover provided under paragraph (1) in respect of a new build CMU must, where twelve months have elapsed after auction results day, be increased by the capacity provider to an amount equal to £15,000 per MW of de-rated capacity.

(5) The increased credit cover required to be provided under paragraph (4) must be provided within 15 working days after the end of that twelve-month period.

(6) For the purposes of paragraph (4)—

(a) "new build CMU" has the meaning given in the Rules; and

(b) "auction results day" means the date on which the auction results are published under regulation 25(1)(c).".

Regulation 60 (credit obligation period)

18.—(1) In regulation 60(1), after sub-paragraph (b) insert—

"(ba) where A is required by capacity market rules to provide a notice of confirmation or other document as a requirement for being eligible to bid in the capacity auction in respect of CMU i, it does not do so within the time required by capacity market rules;".

(2) For regulation 60(2) substitute—

"(2) Where paragraph (1)(a) applies, A must thereafter maintain credit cover—

(a) for a T-4 or a T-1 auction, in an amount equal to £5,000 per MW of the amount of the DSR bid capacity of CMU i, or

(b) for a DSR transitional auction, in an amount equal to £500 per MW of the amount of the DSR bid capacity of CMU i,

until the earliest of the events in sub-paragraphs (b) to (h) of paragraph (1) has occurred.".

Regulation 61 (draw down of applicant credit cover)

19.—(1) In regulation 61(1)(c), after both occurrences of "fee" insert "or non-completion fee" and after "regulation 43" insert "or 43A".

(2) In regulation 61(2)(c), after "fee" insert "or non-completion fee".

PART 3

Transfer of capacity obligations, volume reallocation and over-delivery payments

Regulation 2 (interpretation)

20. In regulation 2(1)—

(a) in the definition of "capacity obligation", insert at the end "(and, unless the context otherwise requires, includes a part of a capacity obligation)";

(b) after the definition of "capacity payment" insert—

""capacity provider" means the holder of—

(a) a capacity agreement, or

(b) a transferred part;";

(c) in the definition of "termination fee", after "capacity agreement" insert "or transferred part"; and

(d) after the definition of "total system", insert—

""transferred part" has the meaning given in regulation 30A(3);".

Regulation 30 (capacity agreements)

21.—(1) In regulation 30(1)(**a**), for "is the term used to describe" substitute "comprises".

(2) In regulation 30(2)—

(a) for "capacity agreement accrues" substitute "distinct capacity agreement accrues"; and

(b) at the beginning of sub-paragraph (a) insert "a capacity obligation equal to".

(3) In regulation 30(6), after "capacity market rules," insert "and subject to any termination of a transferred part in accordance with regulation 30A(4),".

New regulation 30A

22. After regulation 30 insert—

"**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.

(**a**) Regulation 30 is also amended by paragraph 50 of this Schedule.

(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, but extinguishes 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.".

Regulation 32 (termination fee rates)

23. After regulation 32(4) insert—

"(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 or DSR bid capacity for which the capacity agreement is issued is to be construed as a reference to the capacity obligation comprised in the transferred part.".

Regulation 39 (determination of adjusted load-following capacity obligation etc.)

24. In regulation 39(5)(**a**)—

(a) in the definition of "volume reallocation", omit both occurrences of "capacity committed"; and

(b) in the definition of "volume reallocation window", for "capacity providers" substitute "persons qualified to do so (within the meaning given in regulation 42(2)(c))".

Regulation 41 (capacity provider penalty charges)

25. In regulation 41(3)(a) and (b), for "$SPPSA_{im}$" substitute "$MPSA_{im}$".

Regulation 42 (over-delivery payments)

26. For regulation 42 substitute—

"Over-delivery payments

42.—(1) A person ("P") is entitled to receive from the Settlement Body an over-delivery payment in respect of a delivery year ("year X") if—

(a) any capacity committed CMU ("CMU i") for which P was the capacity provider over-delivered in any relevant settlement period in year X; or

(b) P has made a qualifying delivery in any such settlement period.

(2) For the purposes of this regulation—

(**a**) Regulation 39 is also amended by paragraph 51 of this Schedule.

(a) CMU i over-delivers in a relevant settlement period j if AE_{ij} is greater than $ALFCO_{ij}$ in that settlement period;

(b) P makes a qualifying delivery in a relevant settlement period j if—

(i) P was a qualified person (but not a capacity provider) in respect of a CMU ("CMU i") during that period, and

(ii) in that period, AE_{ij} is greater than zero;

(c) a "qualified person" is a person who—

(i) has registered with the delivery body under capacity market rules in respect of a CMU for the purpose of participating in volume reallocation, and

(ii) is an "acceptable transferee" within the meaning of capacity market rules; and

(d) "volume reallocation" has the meaning given in regulation 39(5).

(3) The Settlement Body must, by not later than the 28th working day after the end of year X—

(a) determine the amount, if any, of the payments payable to each person under this regulation in respect of year X; and

(b) issue to each person who is entitled to such a payment a credit note for the amount determined for it.

(4) The amount payable to P under paragraph (3)(a) is the sum of—

(a) $TODP_{ix}$, as calculated in accordance with paragraph 7 of Schedule 1, for each CMU—

(i) for which P was registered on the capacity market register as the capacity provider for the whole of year X, or

(ii) in respect of which P was a qualified person for the whole of year X; and

(b) P's proportion of $TODP_{ix}$, as calculated in accordance with paragraphs 7 and 8 of Schedule 1, for each CMU—

(i) for which P was registered on the capacity market register as the capacity provider for part of year X, or

(ii) in respect of which P was a qualified person for part of year X.".

Regulation 43 (termination fees)

27.—(1) After regulation 43(1) insert—

"(1A) A termination fee is payable in accordance with paragraph (1) if the capacity agreement is terminated in accordance with capacity market rules, notwithstanding that the termination does not take effect until after the expiry of the delivery year, or period of delivery years, to which the capacity agreement relates ("the relevant period").".

(2) After regulation 43(5) insert—

"(6) In this regulation, references to the termination of a capacity agreement include references to the termination of a transferred part; and for that purpose—

(a) the reference to the relevant period in paragraph (1A) is to be construed as a reference to the transfer period as defined in regulation 30A(1)(b); and

(b) "CO" in paragraph (5) means the capacity obligation in MW comprised in that transferred part as specified on the capacity market register.".

Regulation 43B (repayment of capacity payments on termination)

28. After regulation 43B(4) insert—

"(5) This regulation applies to the termination of a transferred part as it applies to the termination of a capacity agreement."

Regulation 68 (delivery body reviewable decisions)

29.—(1) In the table in regulation 68(2), in the last entry in the first column, after "capacity agreement" insert "or a transferred part".

(2) In regulation 68(3), for "has the meaning" substitute ", "termination notice" and "notice of intention to terminate" have the meaning".

Amendments to Schedule 1

30.—(1) Schedule 1 (settlement calculations) is amended as follows.

(2) In the following provisions of this Part, any reference to a numbered paragraph is to the paragraph so numbered in that Schedule.

Paragraph 1 (interpretation)

31.—(1) For paragraph 1(1) substitute—

"(1) In this Schedule—

"AE_{ij}", "$ALFCO_{ij}$" and "E_{ij}", in relation to a capacity committed CMU i and a relevant settlement period j, are to be interpreted in accordance with regulation 39 and mean the amounts determined in accordance with that regulation;

"CO_{ix}" means the capacity obligation in MW, as recorded on the capacity market register, awarded in respect of CMU i for year X in a capacity auction;

"ICO_{ij}" means the whole or part of any capacity obligation CO_{zx} in MW, as recorded on the capacity market register, which applies to CMU i in relevant settlement period j;

"WF_{mx}" means the weighting factor determined under paragraph 2 for month M in capacity year X.".

(2) After paragraph 1(2) insert—

"(3) Where, in a formula, the symbol $\sum$ is used, it denotes that a value is to be determined from the summation of the sequence of elements found immediately to its right; these elements may be derived from one variable or a collection of variables contained in parentheses.

(4) In this Schedule, if not otherwise defined, subscript suffixes used in a term refer to the following things unless the context requires otherwise—

"i" refers to a specific CMU which is the subject of the provision the term appears in ("the relevant provision");

"j" refers to a relevant settlement period which is the subject of the relevant provision;

"k" refers to any relevant settlement periods in a given month that precede the relevant settlement period which is the subject of the relevant provision;

"m" refers to a given month;

"y" refers to any capacity obligation awarded in a capacity auction in respect of a CMU; and

"z" refers to a specific capacity obligation awarded in a capacity auction in respect of a CMU.".

Paragraph 3 (calculations to be made annually)

32.—(1) In paragraph 3(1)(a), for "CMU i for year X" substitute "CO_{ix}".

(2) For paragraph 3(2) and (3) substitute—

"(2) ACP_{yx} (for any value y) must be calculated in accordance with the formula—

$$ACP_{yx} = CO_{yx} \times PE_{yx}.$$

(3) MCP_{im} must be calculated in accordance with the formula—

$$MCP_{im} = WF_{mx} \times \left(ACP_{ix} + \sum_N tACP_N \times \frac{DT_{mN}}{D_m} \right).$$

(3A) For the purpose of sub-paragraph (3) $tACP_N$ is the amount $ACP_{zx} \times \frac{tICO_{iN}}{CO_{zx}}$,

where—

"$tICO_{iN}$" is any obligation, being the whole or part of the capacity obligation CO_{zx}, that has been transferred so as to—

(a) apply to CMU i for all or part of month M, or

(b) cease to apply to CMU i for all or part of month M (in which case $tACP_N$ is to be expressed as a negative number);

"DT_{mN}" means the number of days in month M for which that capacity obligation has been transferred;

"D_m" means the total number of days in month M.".

(3) In paragraph 3(4), for "PE_{ix}" substitute "PE_{yx}", and for "CMU i for year X" substitute "CO_{yx}".

(4) In paragraph 3(5) and (6), wherever it occurs for the subscript "i" substitute the subscript "y".

(5) In paragraph 3(7)—

(a) for the definition of "CCP_i", substitute—

""CCP_y" means the capacity cleared price for CO_{yx}, as recorded on the capacity market register";

(b) omit the definition of "CO_{ix}";

(c) in the definition of "CPI_{base}", for "determined under" substitute "referred to in";

(d) in the definition of "relevant capacity auction", for "the capacity obligation applying to CMU i" substitute "CO_{yx}"; and

(e) omit the definition of "WF_{mx}".

Paragraph 5 (calculation of settlement period penalty)

33.—(1) In paragraph 5(2), for "PR_{ix}" substitute "PR_{ij}".

(2) After paragraph 5(2) insert—

"(2A) For the purpose of sub-paragraph (2), "PR_{ij}" is the penalty rate in pounds per MWh applying to CMU i in respect of settlement period j, and is to be calculated in accordance with the formula—

$$PR_{ij} = \frac{\sum_N \left(PR_N \times ICO_{ijN} \right)}{\sum_N ICO_{ijN}},$$

where—

"ICO_{ijN}" is the whole or a part of any capacity obligation CO_{zx} applying to CMU i in settlement period j, and

"PR_N" is the penalty rate applying to that capacity obligation.".

(3) For paragraph 5(3) substitute—

"(3) For the purpose of sub-paragraph (2A), PR_N is to be calculated in accordance with the formula—

$$PR_N = PE_{zx} \times \left(\frac{1}{24} \right).".$$

(4) In paragraph 5(4), for the definition of "PE_{ix}" substitute—

""PE_{zx}" means the price in pounds per MW determined for CO_{zx} in accordance with paragraph 3(4) to (6)".

Paragraph 6 (calculation of monthly penalty charge)

34.—(1) For paragraph 6(1) and (2) substitute—

"(1) The Settlement Body must, after the end of each month of a delivery year ("year X") in which one or more relevant settlement periods occur ("month M"), calculate for each relevant CMU ("CMU i")—

(a) for each relevant settlement period in month M ("settlement period j"), the settlement period penalty settlement amount for CMU i in settlement period j ("$SPPSA_{ij}$"); and

(b) the monthly penalty charge to be paid in respect of month M ("$MPSA_{im}$").

(2) For the purpose of sub-paragraph (1)—

(a) $SPPSA_{ij}$ is—

(i) equal to the amount P_{ij} (calculated in accordance with paragraph (3)) unless paragraph (2A) applies; and

(ii) equal to the lesser of the amount P_{ij} and the amount Q_{ij} (calculated in accordance with paragraph (5)) if paragraph (2A) applies; and

(b) $MPSA_{im}$ is equal to the value of $SPPSA_{ij}$ for the last relevant settlement period j in month M in which the value of $ALFCO_{ij}$ for CMU i was greater than zero.

(2A) This paragraph applies where—

(a) a capacity provider penalty charge has been incurred in respect of CMU i in at least 48 relevant settlement periods, and

(b) those periods together comprise at least 8 relevant settlement periods in each of at least 6 months in delivery year X.".

(2) For paragraph 6(3) substitute—

"(3) P_{ij} must be calculated in accordance with the formula—

$$P_{ij} = \left(\frac{SP_i}{MaxSP_i} \right) \times \min\left(MaxSP_i, MPC_{ij} \right).".$$

(3) For paragraph 6(4) substitute—

"(4) For the purposes of the calculation in sub-paragraph (3), MPC_{ij} is the monthly penalty cap in pounds applying to CMU i in respect of relevant settlement period j in month M, and is to be calculated in accordance with the formula—

$$MPC_{ij} = RMCP_{ij} + \sum ASPPA'$$

where—

(a) RMCPij is to be calculated in accordance with the formula—

$$RMCP_{ij} = \left(ACP_{ix} \times WF_{mx} \times F_i \right) + \sum_N \left(tACP_N \times WF_{mx} \times F_z \right), \text{ and}$$

(b) $\sum$ASPPA′ is to be calculated in accordance with the formula—

$$\sum ASPPA' = \sum_A ASPPA_A - \sum_B ASPPA_B$$

where—

(i) $\sum_A ASPPA_A$ is the sum of each amount $ASPPA_{ikA}$ calculated under paragraph 6A(4) for any obligation ICO_{ikA} applying to CMU i in any relevant settlement period k in month M preceding settlement period j; and

(ii) $\sum_B ASPPA_B$ is the sum of each amount $ASPPA_{ijB}$ calculated under paragraph 6A(4) for any obligation ICO_{ijB} applying to CMU i in both—

(aa) settlement period j, and

(bb) any relevant settlement period k in month M preceding settlement period j.".

(4) For paragraph 6(5)substitute—

"(5) Q_{ij} must be calculated in accordance with the formula—

$$Q_{ij} = APC_{ij} - \sum_{k=1}^{m-1} MPSA_{ik}$$

and where that calculation would give a negative number, the value of Q_{ij} is to be taken to be zero. ".

(5) For paragraph 6(5A) substitute—

"(5A) For the purposes of the calculation in sub-paragraph (5), APC_{ij} is the annual penalty cap in pounds applying to CMU i in respect of relevant settlement period j, and is to be calculated in accordance with the formula—

$$APC_{ij} = ACP_{ix} \times G_i + \sum_N \left(tACP_N \times G_z \times WF_{mx} \times \frac{DT_{mN}}{D_m} \right),$$

where "DT_{mN}" and "D_m" have the meanings given in paragraph 3(3A)".

(6) In paragraph 6(6)—

(a) for the definitions of "F" and "G" substitute—

""F_y" (for any value y) means the percentage stated on the capacity market register under regulation 31(2)(f), at the date of issue of the capacity agreement, as the monthly penalty cap percentage for the capacity obligation CO_{yx} awarded in respect of CMU y for year X;

"G_y" (for any value y) means the percentage stated on the capacity market register under regulation 31(2)(f), at the date of issue of the capacity agreement, as the annual penalty cap percentage for the capacity obligation CO_{yx} awarded in respect of CMU y for year X;";

(b) in the definitions of "$MaxSP_i$" and "SP_i", after "paragraph 5" insert "up to and including the settlement period for which the calculation is being made";

(c) omit the definition of "$\sum SPPSA_{i(m-1)}$";

(d) insert after the definition of "MCP_{im}"—

""$\sum_{k=1}^{m-1} MPSA_{ik}$ "

means the sum of the monthly penalty charges paid or payable in respect of CMU i for each of the months of year X preceding month M (or where M is the first such month, zero)"; and

(e) insert at the end—

""$tACP_N$" has the meaning given in paragraph 3(3A)".

New paragraph 6A

35. After paragraph 6 insert—

"**Capacity provider penalty charges: apportionment**

6A.—(1) Immediately after calculating $SPPSA_{ij}$ for a relevant CMU i and any relevant settlement period j in month M under paragraph 6, the settlement body must also calculate D in accordance with the formula—

$$D = SPPSA_{ij} - SPPSA_{i(j-1)},$$

where "$SPPSA_{i(j-1)}$" is the settlement period penalty settlement amount for CMU i in the relevant settlement period preceding period j (or, where j is the first such period in month M, zero).

(2) For each relevant settlement period j in month M, the settlement body must then determine for each obligation ICO_{ij} applying to CMU i in that settlement period ("ICO_{ijN}")—

(a) the monthly penalty cap applying in respect of ICO_{ijN} ("MPC_{ijN}"); and

(b) the apportioned settlement period penalty amount for ICO_{ijN} ("$ASPPA_{ijN}$") as determined in accordance with sub-paragraph (4).

(3) For the purpose of sub-paragraph (2)(a), MPC_{ijN} is to be determined in accordance with the formula—

$$MPC_{ijN} = ICO_{ijN} \times PE_{zx} \times WF_{mx} \times F_z - \sum_{k=1}^{j-1} ASPPA_{ikN},$$

where—

"ICO_{ijN}" is the whole or a part of the capacity obligation CO_{zx} awarded in respect of CMU z for year X,

"PE_{zx}" means the price in pounds per MW determined for CO_{zx} in accordance with paragraph 3(4) to (6),

"F_z" is to be interpreted in accordance with paragraph 6(6), and

"$\sum_{k=1}^{j-1} ASPPA_{ikN}$"

means the sum of all apportioned settlement period penalty amounts calculated for ICO_{ijN} when that obligation applies to CMU i in any relevant settlement period in month M that precedes period j (or, where j is the first such period, zero).

(4) For the purpose of sub-paragraph (2)(b) $ASPPA_{ijN}$ is to be determined as follows (where D is the result of the calculation referred to in sub-paragraph (1))—

(a) for each obligation ICO_{ijN} referred to in sub-paragraph (2), calculate PR_N in accordance with paragraph 5(3), and arrange those obligations in a series (beginning with ICO_{ij1}) as described in paragraph (b);

(b) each such obligation ICO_{ijN} is ranked according to the magnitude of its corresponding PR_N (in descending order with the highest corresponding penalty rate first), except that where the same penalty rate corresponds to more than one such obligation those obligations are ranked between themselves—

(i) according to the date on which the obligation was awarded in respect of CMU i, or transferred so as to apply to CMU i (with the latest such date first), and

(ii) for obligations awarded or transferred on the same date, according to the time at which a request to transfer the obligation was received by the Delivery Body (with the latest such time first), and with an awarded obligation ranking prior to any transferred obligation;

(c) then for any such ICO_{ijN}—

(i) if $\sum_{k=1}^{N} MPC_{ijk} \leq D$, $ASPPA_{ijN} = MPC_{ijN}$;

(ii) if $\sum_{k=1}^{N-1} MPC_{ijk} < D$ and $\sum_{k=1}^{N} MPC_{ijk} > D$, $ASPPA_{ijN} = D - \sum_{k=1}^{N-1} MPC_{ijk}$; and

(iii) otherwise, $ASPPA_{ijN} = 0$.".

Paragraph 7 (over-delivery payments)

36.—(1) In paragraph 7(1)(a), for the words from "relevant" to the end substitute "each relevant settlement period in year X ("ODR_{ij}")".

(2) In paragraph 7(2) and (3), for "ODR_{ix}" (wherever it occurs) substitute "ODR_{ij}".

(3) In paragraph 7(2)—

(a) insert at the beginning "Subject to sub-paragraph (2A),"; and

(b) for "PR_{ix}" substitute "PR_{ij}".

(4) After paragraph 7(2) insert—

"(2A) For the purposes of the calculation in paragraph (2), where the over-delivery payment is to be made to a qualified person who is not a capacity provider in settlement period j, the value of PR_{ij} is deemed to be equal to the penalty rate applying to a capacity obligation awarded in the T-4 auction for year X and calculated in accordance with paragraph 5.".

(5) In paragraph 7(5)—

(a) for the definition of "PR_{ix}" substitute—

""PR_{ij}" means the penalty rate in pounds per MWh applying to CMU i in respect of settlement period j, as calculated in accordance with paragraph 5"; and

(b) after that definition insert—

""qualified person" has the meaning given in regulation 42(2);".

PART 4

DSR transitional auctions: eligibility

Regulation 2 (interpretation)

37. In regulation 2(1)—

(a) in the definition of "DSR transitional auction", after those words insert ", subject to regulation 29A(2)(b)"; and

(b) in the definition of "minimum capacity threshold", after those words insert ", subject to regulation 29A(2)(a)".

New regulation 29A

38. After regulation 29 insert—

"Second DSR transitional auction

29A.—(1) This regulation applies to the DSR transitional auction held in the auction window commencing on 1st September 2016.

(2) In this auction—

(a) regulation 15(4) applies as if the minimum capacity threshold is 500 kilowatts; and

(b) regulation 29(1) applies as if for sub-paragraphs (a) and (b) there were substituted "a demand side response CMU which does not provide DSR capacity by using a generating unit.".

PART 5

Review of secondary legislation

Regulation 81 (review by Secretary of State)

39. In regulation 81(1)(a), omit paragraph (ii) together with the "and" after paragraph (i).

Regulation 82 (review of capacity market rules)

40. In regulation 82—

(a) in paragraph (1), for "must from time to time" substitute "and the Secretary of State must each from time to time, in accordance with capacity market rules"; and

(b) omit paragraphs (2) to (4).

PART 6

Miscellaneous and minor amendments

Regulation 2 (interpretation)

41.—(1) In regulation 2(1)—

(a) omit the definition of "price duration equivalence";

(b) after the definition of "TFx"(**a**) insert—

""third T-4 auction" means a capacity auction held in the auction window starting on 1st September 2016 following a determination by the Secretary of State under regulation 10(1)(b);".

(2) In regulation 2(4), after "by a working day" insert ", unless specified otherwise".

Regulation 6 (reliability standard)

42. In regulation 6(5)(a), after "(4)(a)" omit "it".

Regulation 7 (annual electricity capacity report)

43. In regulation 7—

(a) omit paragraph (4)(c)(i) and (ii); and

(b) after paragraph (4) insert—

"(5) An electricity capacity report must include the de-rating factors that the Delivery Body estimates will apply to—

(a) generating CMUs in each generating technology class; and

(b) demand side response CMUs;

for the purposes of capacity auctions held in the following auction window.".

(**a**) The entry in regulation 2(1) for "TFx" is inserted by paragraph 8 of this Schedule.

Regulation 11 (meaning of auction parameters)

44. In regulation 11—

(a) omit paragraph (1)(g); and

(b) in paragraph (3), omit the entry for "price duration equivalence".

Regulation 12 (determination of auction parameters by the Secretary of State)

45. In regulation 12, omit paragraph (2)(b).

Regulation 13 (adjustment of auction parameters following prequalification)

46. In regulation 13(2), for "5" substitute "10".

Regulation 15 (general eligibility criteria)

47. In regulation 15(5), for "an" substitute "a".

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

48. In regulation 23(1), after "determined all the applications made to it" insert "and, if applicable, complied with any obligations under regulation 69(3) or (4) in relation to requests to review prequalification decisions notified to applicants on prequalification results day (which has the meaning given to that term in the Rules)".

Regulation 29 (DSR transitional auctions)

49.—(1) In regulation 29(10)—

(a) after sub-paragraph (a) insert—

"(aa) regulation 13 applies as if in paragraph (1), for "regulation 23" there were substituted "regulation 23(1)", and the following paragraphs were inserted after paragraph (2)—

"(3) After the Secretary of State receives a notification from the Delivery Body under regulation 23(1A), the Secretary of State may decide to adjust any of the auction parameters for the capacity auction to which the notification relates.

(4) The Secretary of State must make any decision under paragraph (3), and give notice of any adjustments to the Delivery Body, within 5 working days after receiving the notification from the Delivery Body.";

(ab) regulation 21 applies as if after paragraph (3) there were inserted—

"(4) If the Secretary of State gives notice of an adjustment to auction parameters under regulation 13(4)—

(a) within 5 working days after receiving the notice, the Delivery Body must publish a revised final version of the auction guidelines accordingly; or

(b) if the Delivery Body has not published a final version of the auction guidelines when it receives the notice, it must publish those guidelines at the time required by paragraph (3) or within 5 working days after receiving the notice, whichever is later.""; and

(b) in sub-paragraph (b) after "omitted" insert—

"and the following paragraph were inserted after paragraph (1)—

"(1A) The Delivery Body must—

(a) on the auction results day for a supplementary auction, or

(b) on the auction results day for a third T-4 auction if there is no supplementary auction but there is a third T-4 auction,

notify the Secretary of State of the aggregate de-rated capacity of CMUs which are eligible to participate in the capacity auction, and CMUs in respect of which applications were rejected.””.

(2) In regulation 29(11) before the definition of “delivery period” insert—

““auction results day” means the date on which the auction results are published under regulation 25(1)(c);”.

Regulation 30 (capacity agreements)

50. In regulation 30 (capacity agreements), for paragraph (4) substitute—

“(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).”.

Regulation 39 (determination of adjusted load-following capacity obligation, net output and adjusted net output)

51. In regulation 39(5), after the definition of “capacity market volume reallocation notifications” insert—

““net output”, in relation to a demand side response CMU, means DSR volume (as defined in capacity market rules);”.

Regulation 40 (capacity payments)

52. In regulation 40—

(a) in paragraph (4)(a), for “26th” substitute “28th”; and

(b) in paragraph (5), for “25th” substitute “26th”.

Regulation 45 (payment and non-payment, general)

53. In regulation 45—

(a) in paragraph (1), in the definition of “in default”, before “the payment due date” insert “the end of”; and

(b) omit paragraphs (2) and (3).

Regulation 46 (payment of invoices and accruing interest)

54. In regulation 46(1), before “the payment due date” insert “the end of”.

Regulation 47 (the non-payment register)

55. In regulation 47(1), before “the payment due date” insert “the end of”.

Regulation 48 (payment of credit notes)

56. In regulation 48(a) and (b), for “the 29th” substitute “the end of the 33rd”.

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

57. In regulation 50—

(a) in paragraph (4)(a), after "year X" insert "less the total amount of any capacity provider penalty charges that C has paid in respect of CMU i and year X"; and

(b) in paragraph (4)(b), for "of those capacity payments" substitute "due under sub-paragraph (a)".

Regulation 69 (requesting reconsideration by the Delivery Body)

58. In regulation 69(3), for the words before sub-paragraph (a) substitute "If the Delivery Body receives a request which complies with paragraph (2), within 15 working days of giving notice of the decision it must".

Regulation 77 (Authority's power to make capacity market rules)

59. In regulation 77(3)(b), for the words from "make" to the end substitute—

"make, amend or revoke any provision in capacity market rules which confers functions on—

(i) the Secretary of State; or

(ii) the Authority".

New Regulation 87B

60. After Regulation 87A insert—

"**Transitory provisions: the third T-4 auction and supplementary auction**

87B.—(1) If the Secretary of State determines that a third T-4 auction is to be held, paragraph (7) of regulation 87 has effect as if the reference to the "first T-4 auction" were a reference to the third T-4 auction.

(2) If the Secretary of State determines that a supplementary auction is to be held, paragraph (7) of regulation 87 has effect as if the reference to the "first T-4 auction" were a reference to the supplementary auction.".

SCHEDULE 2

Regulation 3

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

Regulation 2 (interpretation)

1. In regulation 2—

(a) in paragraph (1) in the definition of "late payment interest", omit ", unless specified otherwise,"; and

(b) in paragraph (8), after "by a working day" insert ", unless specified otherwise".

Regulation 7 (capacity market supplier charge: mutualisation)

2. Omit regulation 7(8).

Regulation 8 (penalty residual supplier amount)

3. In regulation 8(3), for "26th" substitute "28th".

Regulation 11 (payment of invoices and accruing interest)

4. In regulation 11—

(a) in paragraph (1), for "5.00 p.m. on" substitute "the end of"; and

(b) omit paragraph (2).

Regulation 12 (non-payment of invoices: draw down of credit cover)

5. In regulation 12(2)(a), before "the 9th working day" insert "the end of".

Regulation 13 (payment of credit notes)

6. In regulation 13(a)—

(a) after "than" insert "the end of"; and

(b) for "29th" substitute "33rd".

Regulation 22 (reconciliation invoices and payment)

7. In regulation 22(2), for "T–16" substitute "the end of T–14".

Regulation 23 (draw down of credit cover)

8. In regulation 23(1), for "by the date required under" substitute "in accordance with".

Regulation 25 (reconciliation credit notes and payment)

9. In regulation 25, after "than" insert "the end of".

Regulation 30 (the credit default register)

10.—(1) For regulation 30(1) substitute—

"(1) The Settlement Body must maintain a register ("the credit default register") which includes the entries on the register required by regulations 28(3)(a) and 29(2), including—

(a) the month to which an entry on the register relates; and

(b) whether or not the electricity supplier disputes that entry.".

(2) In regulation 30(3)(d), for "credit cover was drawn down" substitute "entry was made".

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"), by the Electricity Capacity (Amendment) Regulations 2015 (S.I. 2015/875), and by the Electricity Capacity (Amendment) (No. 2) Regulations 2015 (S.I. 2015/1974). 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. There are three kinds of capacity market units ("CMUs") that can be used to participate in the Capacity Market: generating CMUs, demand side response ("DSR") CMUs, and interconnector CMUs. 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 for an additional Capacity Market auction to those provided for in the Principal Regulations (a supplementary auction) to take place between September 2016 and July 2017 for the delivery of capacity in the 2017/18 Capacity Market delivery year; and makes associated amendments required to facilitate that auction.

Part 2 of Schedule 1 amends provisions relating to the termination of capacity agreements and to the credit cover required to be provided by applicants for capacity agreements in certain circumstances. In particular, provision is made for a wider range of termination fees (liability for which is determined by termination events provided for in the Rules); for increases in the level of credit cover; and for further increased credit cover to be provided in certain circumstances in the case of large new build CMUs.

Part 3 of Schedule 1 contains amendments relating to the transfer of capacity market obligations from one CMU to another (including the transfer of a part only of the relevant capacity market agreement); and amendments extending the range of circumstances in which payment can be made for over-delivery on a capacity market obligation.

Part 4 of Schedule 1 modifies regulation 29 of the Principal Regulations, which makes provision for DSR transitional auctions, and makes associated provision. The modification narrows the class of CMUs eligible to take part in the second of those auctions.

Part 5 of Schedule 1 amends provisions in the Principal Regulations relating to the role of the Secretary of State and the Gas and Electricity Markets Authority in reviewing the Principal Regulations, the Supplier Payment Regulations and the Rules from time to time, in particular so that provision for the review of the Rules can be made in the Rules themselves.

Part 6 of Schedule 1 contains miscellaneous and minor amendments to the Principal Regulations, including in relation to the process by which parameters for Capacity Market auctions are set, and *Schedule 2* contains miscellaneous and minor amendments to the Supplier Payment Regulations, principally in relation to the time at which various obligations under those Regulations must be discharged.

A full impact assessment 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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