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

2023 No.

ELECTRICITY

The Electricity Capacity (Amendment) Regulations 2023

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Secretary of State, in exercise of the powers conferred by sections 27(1), 28(1) and (4)(j), 29, 32, 36, and 40(1)(a) of the Energy Act 2013(**a**) ("the Act"), makes the following Regulations.

The Secretary of State has before making these Regulations—

(a) consulted in accordance with section 40(2) of the Act; and

(b) in accordance with section 5(1)(d), had regard to the matters in section 5(2) of the Act.

In accordance with section 40(5) of the Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity Capacity (Amendment) Regulations 2023.

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

(3) These Regulations extend to England and Wales and Scotland.

PART 2

Amendment of the Electricity Capacity Regulations 2014

Amendment of the Electricity Capacity Regulations 2014

2. The Electricity Capacity Regulations 2014(**b**) are amended in accordance with this Part.

(**a**) 2013 c. 32. The meaning of "providing capacity" in section 27(1) of the Energy Act 2013 is given in section 27(3).
(**b**) S.I. 2014/2043; relevant amending instruments are S.I. 2014/3354, 2015/875, 2016/742 and 2019/1139.

Amendment to regulation 10 (determining whether capacity auction is to be held)

3. In regulation 10—

(a) in paragraph (1), omit subparagraphs (a) to (bb) and the "and" after subparagraph (bb);

(b) in paragraph (1)(c), for "15th June 2017 and each subsequent year", substitute "15th June in each year";

(c) for paragraph (5), substitute—

"(5) Where a determination in paragraph (1)(c) is that an auction is not to be held or that neither auction is to be held, the Secretary of State must, as soon as reasonably practicable after making it, publish such a determination under paragraph (1)".

Amendment to regulation 34 (termination of capacity agreements: CFDs and ROO conversions)

4. In regulation 34—

(a) after paragraph (2), insert—

"(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.";

(b) in paragraph (3)—

(i) before the definition of "CFD transfer notice", insert—

""allocation round" means an allocation round established by the Secretary of State under regulation 4 of the Contracts for Difference (Allocation) Regulations 2014(**a**);";

(ii) for the definition of "CFD transfer notice", substitute—

""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);".

Amendment to regulation 41 (capacity provider penalty charges)

5. In regulation 41(2), for "21st", substitute "35th".

Name
Minister of State for Energy Security and Net Zero
Department for Energy Security and Net Zero

Date

(**a**) S.I. 2014/2011; regulation 4 has been amended by S.I. 2015/981, 2016/1053 and 2021/758.

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 2014 Regulations").

The 2014 Regulations make provision for the purpose of meeting consumers' demand 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, and which also impose obligations on capacity providers to provide capacity during one or more specified years. Following a prequalification process during which applications must be made to the scheme's delivery body (National Grid ESO), capacity agreements are awarded in a competitive process ("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"). A consolidated version of the Capacity Market Rules 2014 can be found at https://www.gov.uk/government/publications/capacity-market-rules. Copies are available from the Department for Energy Security and Net Zero, 1 Victoria Street, London, SW1H 0ET.

Regulation 3 amends regulation 10 of the 2014 Regulations so that the Secretary of State is only required to publish a decision about whether to hold a T-1 Auction and a T-4 Auction if they decide not to hold one or both of those capacity auctions. It also removes references to past capacity auctions.

Regulation 4 amends regulation 34 of the 2014 Regulations to allow certain capacity providers to request that their capacity agreements be terminated when they intend to apply to participate in the Contracts for Difference scheme. More information about this scheme can be found at https://www.gov.uk/government/publications/contracts-for-difference/contract-for-difference.

Regulation 5 amends regulation 41(2) of the 2014 Regulations so that the scheme's settlement body (the Electricity Settlements Company) has more time to determine penalty charges owing by certain capacity providers and to issue invoices for such penalty charges to those capacity providers.

A full 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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£4.90

http://www.legislation.gov.uk/id/ukdsi/2023/9780348248715

ISBN 978-0-34-824871-5

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