

**2014 No.**

**ENERGY**

**ELECTRICITY**

**The Electricity Capacity Regulations 2014**

*Made* - - - - - \*\*\*

*Coming into force* - - - *in accordance with regulation 1*

**CONTENTS**

**PART 1**

**Introduction**

1.	Citation and commencement	3
2.	Interpretation	3
3.	“Providing electricity”; “reducing demand for electricity”; “electricity supplier”	7
4.	“Generating CMU”	8
5.	“Customer demand response CMU”	8

**PART 2**

**Reliability standard**

6.	Reliability standard	9
----	----------------------	---

**PART 3**

**Electricity capacity report**

7.	Annual electricity capacity report	10
8.	Electricity capacity reports: supplementary	10
9.	Directions and assumptions	11

**PART 4**

**Capacity auctions**

**CHAPTER 1**

**Determining whether capacity auction to be held**

10.	Determining whether capacity auction to be held	11
-----	---	----

**CHAPTER 2**

**Auction parameters**

11.	Meaning of auction parameters	12
12.	Determination of auction parameters by the Secretary of State	12
13.	Value of lost load and penalty scaling factor	13
14.	Adjustment of auction parameters following prequalification	13

	CHAPTER 3	
	Eligibility criteria	
15.	Eligibility to bid in capacity auctions	13
16.	General eligibility criteria	14
	CHAPTER 4	
	Determining eligibility and holding capacity auctions	
17.	General duty of Delivery Body	14
18.	Auction guidelines	14
19.	Determination of eligibility	15
20.	Notifying prequalification results to Secretary of State	15
21.	Holding the capacity auction	15
22.	Conduct of capacity auction	15
23.	Notification of results	16
24.	Cancellation, postponement or stopping of capacity auction	16
25.	Power to annul capacity auction	17
26.	Rearranged capacity auctions	17
	CHAPTER 5	
	DSR transitional auctions	
27.	DSR transitional auctions	17
	PART 5	
	Capacity agreements, notices and termination	
28.	Capacity agreements	18
29.	Capacity agreement notices	18
30.	Termination of capacity agreements	19
	PART 6	
	Low carbon CMUs	
31.	General	19
32.	Low carbon exclusions	19
33.	Termination of capacity agreements: CfDs and ROO conversions	20
34.	NER300 and CCS grants	21
35.	Null and void capacity agreements	21
	PART 7	
	Information	
36.	Duties to provide information	22
37.	Limitation on duty to provide information	22
38.	Protection of information	23
	PART 8	
	Enforcement	
39.	Relevant requirements	24
	PART 9	
	Appeals	
40.	Dispute resolution by the Authority	24
41.	Dispute resolution by the Authority: procedure	24
42.	Appeals to the court	25
43.	Consequences of successful review or appeal	26
	PART 10	
	Capacity market rules	
44.	Authority's power to make capacity market rules	26

45.	Procedure	26
<b>PART 11</b>		
Other functions of the Secretary of State and the Authority		
46.	Appointment of Settlement Body and Settlement Agent	27
47.	Review of Electricity Capacity Regulations	27
48.	Review of capacity market rules	28
49.	Annual operational reports	28
<b>PART 12</b>		
Transitory Provisions and Repeal		
50.	Transitory provisions	28
51.	Repeal	29

The Secretary of State, in exercise of the powers conferred by sections 21 to 27, 28(3) to (5), 30 and 32(1) of the Energy Act 2013(a), makes the following Regulations.

## PART 1

### Introduction

#### **Citation and commencement**

- 1.—(1) These Regulations may be cited as the Electricity Capacity Regulations 2014.
- (2) These Regulations, except for regulation 51, come into force on the day after the day on which they are made.
- (3) Regulation 51 comes into force on [1st January 2015].

#### **Interpretation**

**2. In these Regulations—**

- “the Act” means the Energy Act 2013;
- “EA 1989” means the Electricity Act 1989(b);
- “the Payment Regulations” means the Electricity Capacity (Payment) Regulations 2014(c);
- “the Rules” means the Capacity Market Rules 2014(d);
- “active energy” and “active power” have the meanings given in the Rules;
- “administrative parties” means—
  - (a) the Secretary of State;
  - (b) the Authority;
  - (c) the Delivery Body;
  - (d) the Settlement Body; and
  - (e) the Settlement Agent;
- “applicant-related party” has the same meaning as in the Rules;
- “auctioneer” has the meaning given in regulation 21;

---

(a)  
(b)  
(c)  
(d)

“auction parameters” has the meaning given in regulation 11;

“auction window” means a period in which a capacity auction is to be held, being, subject to regulation 50, a period starting on 1st September and ending on the following 31st January;

“auction window extension”, in relation to an auction window, means a period starting at the end of the auction window and ending on the following 31st July;

“baseline demand” means the baseline demand for active power of a customer demand response CMU in a settlement period, as determined in accordance with the baseline methodology prescribed in the Rules;

“bid” means a bid made at a capacity auction to obtain a capacity obligation in respect of a CMU;

“bidding round” means a round of bidding in a capacity auction;

“business day” means any day other than a Saturday or Sunday or a day which is a bank holiday or public holiday in England and Wales;

“capacity agreement” has the meaning given in regulation 28(1);

“capacity credit” means—

- (a) in relation to a generating CMU and a capacity auction, the declared net capacity of the CMU multiplied by the maximum value of the de-rating factor range for the CMU’s technology class; and
- (b) in relation to a customer demand response CMU and a capacity auction, the CDR capacity of the CMU multiplied by the maximum value of the de-rating factor range for DSR CMUs;

“capacity market register” means the register maintained by the Delivery Body in accordance with capacity market rules;

“capacity obligation” means an obligation awarded pursuant to a capacity auction to provide a determined volume of capacity (whether by way of generating electricity or customer demand response) during one or more delivery years when required to do so in accordance with capacity market rules;

“capacity year” means a period of one year starting on 1st October;

“CDR capacity” means—

- (a) in the case of a proven customer demand response CMU, its proven CDR capacity; and
- (b) in the case of an unproven customer demand response CMU, its unproven CDR capacity, as determined in accordance with the Rules;

“CDR customer” and “CDR provider” have the meanings given in regulation 5;

“clearing price” means, in relation to a capacity auction, the price per MW which is determined by the capacity auction to be payable as capacity payments to CMUs awarded a capacity agreement pursuant to the capacity auction;

“CMU” means—

- (a) a generating CMU; or
- (b) customer demand response CMU;

“commissioned”, in relation to a generating unit, means that such procedures and tests have been completed as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning a generating unit of that type such that it is capable of operation at its declared net capacity;

“customer” means a person to whom electrical power is provided (whether or not that is the same person as the person who provides the electrical power);

“customer demand response” means the activity of reducing by way of short term intervention the metered volume of imported electricity of one or more customers below a baseline;

“customer demand response CMU” has the meaning given in regulation 5;

“customer demand response CMU component” means—

(a) a CDR customer’s consumption of electricity as measured by a single half hourly meter;  
or

(b) a permitted on-site generating unit,

which forms part of a customer demand response CMU;

“declared net capacity” means the maximum capacity at which a generating unit could be operated for a sustained period without causing damage to it (assuming the source of power used by it to generate electricity was available to it without interruption) less the amount of electricity that is consumed by the plant;

“Delivery Body” means—

(a) subject to paragraph (b), the national system operator; or

(b) if the national system operator’s functions under Part 2, Chapter 3 of the Act have been transferred to an alternative delivery body by an order under section 40 of the Act, that body;

“delivery year”—

(a) in relation to a capacity auction, means the capacity year—

(i) for which each one year capacity agreement issued as a result of that capacity auction will impose a capacity obligation; and

(ii) which is the first year of the period for which each multi-year capacity agreement issued as a result of that capacity auction will impose a capacity obligation; and

(b) in relation to a capacity agreement, means—

(i) in the case of a one year capacity agreement, the capacity year; or

(ii) in the case of a multi-year capacity agreement, any of the capacity years,

for which the capacity agreement imposes a capacity obligation;

“demand curve”, in respect of a capacity auction, means a curve showing how the total volume of capacity credit for which capacity agreements are to be issued is to vary depending on the clearing price of the capacity auction;

“de-rated capacity” has the meaning given in the Rules;

“de-rating factor range” has the meaning given in the Rules;

“distribution network” means a distribution network in Great Britain operated under a licence granted pursuant to section 6(1)(c) of EA 1989(a);

“Distribution Network Operator” means a person who operates a distribution network;

“DSR CMU” has the meaning given in the Rules;

“DSR transitional auction” has the meaning given in Schedule 2;

“electricity interconnector” has the meaning given in section 4(3E) of EA 89(b);

“electricity supplier” has the meaning given in regulation 3(2);

“export” means the flow of electricity from a generating unit on to a distribution network or transmission system (and “export” used as a verb is to be interpreted accordingly);

“GB transmission system” means the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989(c));

“general eligibility criteria” means the criteria in regulation 16;

“generating CMU” has the meaning given in regulation 4;

- 
- (a)
  - (b)
  - (c)

“generating unit” means any equipment in which electrical conductors are used or supported or of which they form part which produces electricity;

“half hourly meter” means a meter which measures import or export of electricity on a half hourly basis;

“import” means the flow of electricity from a distribution network or transmission system to any building, facility, installation, plant or equipment [on the site of a customer] which consumes electricity;

“interconnected capacity” means capacity provided by the transmission of electricity to Great Britain through an electricity interconnector;

“levelised cost” means an amount expressed in £/MWh, being the discounted lifetime cost of a generating unit, per megawatt hour of electricity generated by the unit over its lifetime;

“maximum volume”, in relation to a capacity auction, means the maximum aggregate volume of CMUs for which capacity agreements may be awarded;

“metered volume” means, for a CMU or CMU component and a settlement period, the net aggregate volume of active energy, measured by one or more meters, which flowed in that settlement period to or from that CMU or CMU component;

“minimum capacity threshold” has the meaning given in regulation 16;

“minimum volume”, in relation to a capacity auction, means the minimum aggregate volume of CMUs for which bids must be made in a capacity auction for the capacity auction to clear;

“MPAN” means a meter point administration number;

“multi-year capacity agreement” means a capacity agreement which imposes a capacity obligation for a period of more than one delivery year;

“net CONE” means an estimate by the Secretary of State of the level of capacity payment needed to incentivise sufficient investment in new generating capacity;

“on-site consumer” means a building, facility, installation, plant or equipment on the same site as a generating unit which consumes electricity from that generating unit;

“on-site supply” means the supply of electricity by a generating unit to an on-site consumer;

“penalty scaling factor” means a multiplier greater than 0 and equal to or less than 1, to be used in calculating the capacity incentive applicable in a settlement period;

“permitted on-site generating unit” means a generating unit which—

- (a) is primarily used to provide on-site supply; and
- (b) does not supply electricity to the distribution network or transmission system other than in settlement periods where—
  - (i) the electricity requirements of the on-site consumer are fully and exclusively met by on-site supply from the generating unit;
  - (ii) those requirements are less than the available capacity of the generating unit; and
  - (iii) neither the generating unit nor the on-site consumer imports any electricity;

“prequalification decision” means a decision by the Delivery Body under the Rules as to whether a CMU has prequalified for a capacity auction;

“prequalification window” means the period specified in auction guidelines before a capacity auction during which an application to prequalify for the capacity auction must be made to the Delivery Body;

“price cap” means, in respect of a capacity auction, the price to be offered in the first bidding round of the capacity auction;

“price-taker threshold”, in relation to a capacity auction, means the maximum price at which a price-taker can withdraw from the capacity auction; and “price-taker” means a pre-qualified CMU other than one which has, in accordance with capacity market rules, been registered as a price-maker on the capacity market register;

“reliability standard” has the meaning given in regulation 6;

“Settlement Agent” means the person appointed to that position under regulation 46, or, if no such appointment is in force, the Settlement Body;

“Settlement Body” means the person appointed to that position under regulation 46;

“settlement period” means a half-hour period beginning on the hour or half hour;

“storage facility” means a facility which consists of—

- (a) a means of converting imported electricity into a form of energy which can be stored, and of storing the energy which has been so converted; and
- (b) a generating unit which is wholly or mainly used to re-convert the stored energy into electrical energy;

“T-1 auction” means a capacity auction, other than a DSR transitional auction, held not less than 2 months and not more than 13 months before the start of the delivery year for which the auction is held;

“T-4 auction” means a capacity auction held not less than 3 years and 2 months and not more than 4 years and 1 month before the start of the delivery year for which the auction is held;

“target volume”, in relation to a capacity auction, means the aggregate volume of CMUs for which (subject to any adjustments required by capacity market rules) capacity agreements are to be issued if the clearing price is equal to net CONE;

“technology class” has the meaning given in the Rules;

“value of lost load” means the amount determined in accordance with regulation 13(1);

“volume” means a volume of electrical generating capacity or CDR capacity, expressed in MWh or kWh.

**“Providing electricity”; “reducing demand for electricity”; “electricity supplier”**

3.—(1) For the purposes of section 21 of the Act—

- (a) “providing electricity” means providing electricity by exporting it; and includes, in particular, providing electricity by exporting it from a storage facility; and
- (b) “reducing demand for electricity” means—
  - (i) providing customer demand response; or
  - (ii) permanent electricity demand reduction.

(2) For the purposes of sections 22 and 24 of the Act and these Regulations, “electricity supplier” means a person supplying electricity to customers in Great Britain under a licence granted or treated as granted under section 6(1)(d) of EA 1989(a).

**“Generating CMU”**

4.—(1) A “generating CMU” is—

- (a) an existing generating unit which meets the conditions in paragraph (3);
- (b) a prospective generating unit which, when commissioned, will meet the conditions in paragraph (3);
- (c) a combination of two or more existing generating units which meet the conditions in paragraph (4);
- (d) a combination of two or more prospective generating units which, when all of the generating units have been commissioned, will meet the conditions in paragraph (4);

(2) In paragraph (1), references to a generating unit do not include a permitted on-site generating unit.

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

---

(a)

- (a) the generating unit exports electricity;
  - (b) the generating unit is capable of being controlled independently from any other generating unit;
  - (c) the generating unit is connected to a half hourly meter specific to that generating unit; and
  - (d) the generating unit has a declared net capacity in excess of the minimum capacity threshold.
- (4) The conditions referred to in paragraph (1)(c) and (d) are that—
- (a) each generating unit exports electricity;
  - (b) each generating unit is capable of being controlled independently from any other generating unit not forming part of the generating CMU;
  - (c) all the generating units are connected to a single half hourly meter specific to those generating units;
  - (d) the aggregate declared net capacity of all the generating units is in excess of the minimum capacity threshold, but none of the generating CMU components individually has a declared net capacity in excess of that threshold; and
  - (e) all the generating units are owned by the same person.
- (5) In this regulation—
- “existing generating unit” means a generating unit that has been commissioned;
- “prospective generating unit” means a generating unit or proposed generating unit that has not been commissioned.

**“Customer demand response CMU”**

5.—(1) A “customer demand response CMU” is a commitment by a person (“a CDR provider”) to provide an amount of CDR capacity when required to do so by the delivery body, by a method of customer demand response which—

- (a) is specified in paragraph (2);
  - (b) in the case of a proven customer demand response CMU, meets the conditions in paragraph (3); and
  - (c) in the case of an unproven customer demand response CMU—
    - (i) meets the conditions in paragraph (3); or
    - (ii) will meet those conditions prior to the start of the delivery year for which the CDR provider has a capacity agreement.
- (2) The methods by which a CDR provider may provide CDR capacity are by causing one or more customers (a “CDR customer”) to—
- (a) reduce the CDR customer’s import of electricity as measured by one or more half hourly meters; or
  - (b) export electricity generated by one or more permitted on-site generating units, each of which is owned by the CDR customer.
- (3) The conditions in this paragraph are that—
- (a) the CDR provider must, in relation to each customer demand response CMU component—
    - (i) be the CDR customer;
    - (ii) own the CDR customer; or
    - (iii) have contractual CDR control over the CDR customer;
  - (b) each customer demand response CMU component must be connected to a half hourly meter that is capable of measuring the import or export of electricity to or from that customer demand response CMU component;



- (c) the total amount of CDR capacity which the CDR provider commits to provide must exceed the minimum capacity threshold; and
  - (d) if the customer demand response CMU consists of two or more customer demand response CMU components, none of the customer demand response CMU components must individually be capable of providing an amount of CDR capacity which exceeds the minimum capacity threshold.
- (4) In this regulation—
- “contractual CDR control” means, in respect of any delivery year, having the right (whether by owner or pursuant to contract notwithstanding that terms and conditions may apply to its exercise) to exclusively control all or part of the metered volume of any customer demand response CMU component to provide demand side response when required to do so in that delivery year;
- “proven customer demand response CMU” means a customer demand response CMU in respect of which a CDR test has been carried out prior to that CMU prequalifying for a capacity auction;
- “unproven customer demand response CMU” means a customer demand response CMU other than a proven customer demand response CMU.

## PART 2

### Reliability standard

#### **Reliability standard**

- 6.—(1) The reliability standard is [ ] hours of expected loss of load per capacity year.
- (2) In paragraph (1), “the reliability standard” means the cumulative duration of periods in a capacity year in which it is to be presumed—
- (a) by the Secretary of State in—
    - (i) making any decision about whether a capacity auction is to be held (other than a decision about whether a DSR transitional auction is to be held); and
    - (ii) setting auction parameters; and
  - (b) by the Delivery Body in making any recommendation in an electricity capacity report, that, on average over the long term, loss of load should occur.
- (3) For the purposes of this regulation, “loss of load” occurs if the national system operator—
- (a) instructs one or more Distribution Network Operators to disconnect customers, or to reduce the voltage on all or part of their network; or
  - (b) takes emergency action to avoid disconnections or voltage reductions,
- but not if the action referred to in paragraph (a) or (b) is required solely because of one or more temporary faults in the GB transmission system or a distribution network.
- (4) In paragraph (3)(b), “emergency action” means—
- (a) instructing a generator to increase the generation of electricity by a generating unit to its maximum output, otherwise than in accordance with a bilateral contract between the national system operator and the generator;
  - (b) securing the transmission of electricity to Great Britain through an electricity interconnector, where the electricity would not have been so transmitted without the national system operator’s action.
- (5) Where an event referred to in paragraph (4) occurs, the period of loss of load is the time—
- (a) from the national system operator issuing an instruction under paragraph (3)(a) or (4)(a) to it withdrawing that instruction (or, if the national system operator issues two or more

- such instructions for overlapping periods, from it issuing the first of those instructions to it withdrawing the last of them); or
- (b) during which electricity is transmitted through an interconnector as mentioned in paragraph (4)(b).

## PART 3

### Electricity capacity reports

#### **Annual electricity capacity report**

- 7.—(1) The Delivery Body must, before 1st June in 2015 and each subsequent year—
- (a) prepare a report in accordance with this Part (an “electricity capacity report”); and
  - (b) send the report to the Secretary of State.
- (2) An electricity capacity report must include, for each forecast period specified in paragraph (3)—
- (a) a forecast of the peak demand for electricity by customers in Great Britain during the forecast period;
  - (b) an estimate of the total amount of capacity needed to meet that demand, having regard to the reliability standard; and
  - (c) forecasts of how much of the demand for electricity, at times of peak demand, will be met by—
    - (i) interconnected capacity;
    - (ii) capacity from generating units in Great Britain or the offshore area which do not meet the general eligibility criteria;
    - (iii) capacity from generating units which already have a capacity agreement for the forecast period; and
    - (iv) customer demand response.
- (3) The forecast periods for the purposes of paragraph (2) are the capacity years starting on 1st October in each of the 15 calendar years following the calendar year in which the report is produced.
- (4) An electricity capacity report must include recommendations as to—
- (a) the target volume and the demand curve that should be used in a T-4 auction in the following auction window (if such an auction is held);
  - (b) in 2015 and 2016, the target volume and the demand curve that should be used in a DSR transitional auction in the following auction window (if such an auction is held); and
  - (c) in 2017 and each subsequent year, the target volume and the demand curve that should be used in a T-1 auction in the following auction window (if such an auction is held).

#### **Electricity capacity reports: supplementary**

- 8.—(1) The Delivery Body must—
- (a) make any forecast, estimate or recommendation for the purposes of an electricity capacity report in accordance with the directions, and using the assumptions, given by the Secretary of State under regulation 9; and
  - (b) express the forecast, estimate or recommendation in the report in accordance with any directions given by the Secretary of State.
- (2) The Delivery Body must set out in an electricity capacity report any assumptions upon which a forecast, estimate or recommendation in the report is based.
- (3) The Delivery Body must publish an electricity capacity report.

## **Directions and assumptions**

- 9.** The Secretary of State must give to the Delivery Body by [ ] in each year—
- (a) an estimate of net CONE;
  - (b) directions as to the methodology to be used by the Delivery Body in producing the recommended demand curves under regulation [7(4)];
  - (c) assumptions to be used by the Delivery Body in preparing the electricity capacity report as to—
    - (i) the levelised cost of a new generating unit of each technology class;
    - (ii) [fuel prices];
    - (iii) [build rates];
    - (iv) [estimated future CfD strike prices].

## **PART 4**

### **Capacity auctions**

#### **CHAPTER 1**

#### **Determining whether capacity auction to be held**

#### **Determining whether capacity auction to be held**

- 10.**—(1) The Secretary of State must determine—
- (a) within [ ] days after these Regulations come into force—
    - (i) whether a T-4 auction is to be held for the delivery year starting on 1st October 2018; and
    - (ii) whether DSR transitional auctions are to be held for the delivery year starting on 1st October 2015;
  - (b) by 15th June in 2015 and 2016—
    - (i) whether a T-4 auction is to be held; and
    - (ii) if no decision has previously been made to hold a DSR transitional auction, whether the first DSR transitional auctions are to be held, in the auction window starting on 1st September in that year;
  - (c) by 15th June in 2017 and each subsequent year—
    - (i) whether a T-4 auction is to be held; and
    - (ii) subject to paragraphs (2) and (3), whether a T-1 auction is to be held; in the auction window starting on 1st September in that year.
- (2) The Secretary of State must, under paragraph (1)(c)(ii), determine that a T-1 auction is to be held unless—
- (a) the electricity capacity report for that year forecasts that no DSR capacity will apply to bid in such an auction; or
  - (b) paragraph (3) applies.
- (3) A T-1 auction is not to be held for a delivery year if no T-4 auction was held for that delivery year.
- (4) The Secretary of State must make and publish the determinations under paragraph (1)—
- (a) in 2014, within [ ] days after this regulation comes into force; and
  - (b) in 2015 and each subsequent year, [within 14 days after the Secretary of State has received the electricity capacity report for that year] [before 15th June].

(5) A determination that a capacity auction is to be held is subject to regulation 24.

## CHAPTER 2

### Auction parameters

#### Meaning of auction parameters

**11.**—(1) “Auction parameters”, in relation to a capacity auction, means—

- (a) the—
  - (i) demand curve;
  - (ii) target volume;
  - (iii) minimum and maximum volumes;
  - (iv) price cap;
  - (v) price taker threshold;
  - (vi) 10 year minimum £/kW threshold; and
  - (vii) 3 year minimum £/kW threshold,

determined by the Secretary of State for that capacity auction under regulation 12, subject to any adjustments made to those parameters in accordance with these Regulations or capacity market rules;

- (b) the estimate of net CONE made by the Secretary of State and notified to the Delivery Body most recently before the publication of the auction guidelines for that capacity auction;
- (c) the value of lost load; and
- (d) the penalty scaling factor specified in regulation 13(2).

(2) In paragraph (1)—

“10 year minimum £/kW threshold” means the minimum amount of capital expenditure per kW of declared net capacity which a bidder must commit to spending on a generating CMU to be eligible to bid for a capacity agreement for a period of more than 3 and up to 10 delivery years;

“3 year minimum £/kW threshold” means the minimum amount of capital expenditure per kW of declared net capacity which a bidder must commit to spending on a generating CMU to be eligible to bid for a capacity agreement for a period of more than one and up to 3 delivery years.

#### Determination of auction parameters by the Secretary of State

**12.**—(1) If the Secretary of State decides that a capacity auction is to be held, the Secretary of State must determine for that capacity auction (subject to regulations 14 and 26) each of the auction parameters referred to in regulation 11(1)(a).

(2) The Secretary of State must make the determinations under paragraph (1) and notify them to the Delivery Body as soon as practicable after publishing a decision to hold a capacity auction.

(3) [The Secretary of State must publish the determinations under paragraph (1).]

(4) In making the estimates and determinations under paragraph (1), the Secretary of State must take into account—

- (a) the electricity capacity report;
- (b) the reliability standard;
- (c) the matters specified in section 5(2) of the Act.

(5) If any of the determinations under paragraph (1) is different from a recommendation in the electricity capacity report, the determination must include an explanation of—

- (a) the Secretary of State’s reasons for not following that recommendation; and

- (b) the basis upon which the Secretary of State has made the determination.

**Value of lost load and penalty scaling factor**

13.—(1) The value of lost load applying to a delivery year is—

$$£[ ]/MWh \times \frac{CPI_x}{CPI_{base}}$$

where—

*CPI<sub>base</sub>* means the arithmetic mean of the monthly values of CPI published in the capacity year starting on 1st October 2013;

*CPI<sub>x</sub>* means the arithmetic mean of the monthly values of CPI published in the capacity year preceding the delivery year; and

“the monthly values of CPI” means the values of the UK Consumer Prices Index (All Items) published monthly by the Office for National Statistics.

(2) The penalty scaling factor is [0.53].

**Adjustment of auction parameters following prequalification**

14.—(1) After the Secretary of State receives a notification from the Delivery Body under regulation 20, the Secretary of State may decide to adjust—

- (a) the demand curve;
- (b) the target volume; and
- (c) the minimum and maximum volumes.

(2) The Secretary of State must make a decision under paragraph (1), and notify any adjustments to the Delivery Body, within [ ] days after receiving the notification from the Delivery Body.

CHAPTER 3

Eligibility criteria

**Eligibility to bid in capacity auctions**

15.—(1) A person (“the applicant”) is eligible to bid in a capacity auction in respect of a CMU if—

- (a) the applicant is—
  - (i) in the case of a generating CMU, the owner of the CMU; or
  - (ii) in the case of a customer demand response CMU, the CDR provider; and
- (b) the CMU has prequalified for the capacity auction.

(2) A CMU has prequalified for a capacity auction if, by two business days before the start of the capacity auction—

- (a) the delivery body has determined, in accordance with paragraph (3); or
- (b) [the Authority or] the court has determined under Part 9 that the CMU has prequalified.

(3) The delivery body must determine that a CMU has prequalified for a capacity auction if—

- (a) it has received an application which has been submitted to it in accordance with capacity market rules; and
- (b) it is satisfied that—
  - (i) the CMU meets the general eligibility criteria in regulation 16; and
  - (ii) the CMU and the applicant meet any additional eligibility criteria in capacity market rules.

### **General eligibility criteria**

**16.**—(1) The general eligibility conditions for a CMU are the conditions specified in paragraphs (2) to (4).

(2) The first condition is that the CMU is in Great Britain or the offshore area.

(3) The second condition is that the declared net capacity of the CMU is equal to or greater than the minimum capacity threshold specified in paragraph (5).

(4) The third condition is that the CMU is not an excluded low carbon CMU.

(5) The minimum capacity threshold is 2MW.

(6) In this regulation—

“an excluded low carbon CMU” is a CMU in respect of which, by virtue of Part 6, the Delivery Body must not permit a bid to be accepted in a capacity auction;

“the offshore area” means the areas comprising—

(a) the sea adjacent to Great Britain from the low water mark to the landward baseline of the United Kingdom territorial sea;

(b) the United Kingdom territorial sea, except that part of it which is adjacent to Northern Ireland and extends seaward for 3 miles from the landward baseline; and

(c) the sea in any designated area within the meaning of the Continental Shelf Act 1964(a);

## **CHAPTER 4**

### **Determining eligibility and holding capacity auctions**

#### **General duty of Delivery Body**

**17.**—(1) This Chapter applies where the Secretary of State has determined that a capacity auction is to be held.

(2) The Delivery Body must exercise the functions conferred on it by this Chapter or by capacity market rules.

(3) The Delivery Body must exercise those functions in accordance with capacity market rules.

#### **Auction guidelines**

**18.**—(1) The Delivery Body must before the prequalification window opens publish guidelines for the capacity auction (“auction guidelines”).

(2) The auction guidelines must contain—

(a) the provisional date on which the capacity auction will start;

(b) the timetable for submission and determination of applications;

(c) details of how to apply;

(d) the auction parameters;

(e) the approved de-rating factor range for each technology class;

(f) such other information as may be—

(i) required by capacity market rules; or

(ii) directed by the Secretary of State or the Authority.

(3) The Delivery Body must, not less than [ ] [days/weeks] before the date specified in paragraph (2)(a), publish an update to the auction guidelines which contains—

(a) the date on which the capacity auction will start; and

(b) any changes made to the auction parameters under regulation 14.

---

(a)

(4) In paragraph (2), “approved de-rating factor range” means a de-rating factor range determined by the Delivery Body under the Rules, which has been approved by the Secretary of State.

### **Determination of eligibility**

**19.**—(1) The Delivery Body must—

- (a) determine each application that is made to it in accordance with capacity market rules;
- (b) notify each applicant of its determination; and
- (c) reconsider a determination, if an applicant requests it to do so in accordance with capacity market rules.

### **Notifying prequalification results to Secretary of State**

**20.**—(1) The Delivery Body must, within [ ] days after it has determined all the applications made to it, notify the Secretary of State of the aggregate de-rated capacity and the aggregate capacity credit of—

- (a) CMUs which have prequalified to bid in the capacity auction;
- (b) [generating] CMUs in respect of which applications were rejected; and
- (c) generating CMUs in respect of which the Delivery Body received—
  - (i) an opt-out notification stating that the CMU will continue to operate during the delivery year;
  - (ii) an opt-out notification stating that the CMU will be retired during the delivery year;
  - (iii) an opt-out notification stating that the operation of the CMU will be suspended during the delivery year.

(2) The Delivery Body must, at the same time—

- (a) advise the Secretary of State whether, in light of the data referred to in paragraph (1), the demand curve for the capacity auction should be adjusted; and
- (b) provide a recommendation to the Secretary of State as to the adjustment, if any, that should be made to the demand curve.

(3) The Delivery Body must give the advice and recommendation in accordance with the directions, and using the assumptions, given by the Secretary of State under regulation 9.

### **Holding the capacity auction**

**21.**—(1) The Delivery Body must, subject to regulation 24, hold a capacity auction starting on the date specified in the auction guidelines.

(2) The Delivery Body may arrange for another person to conduct the capacity auction on its behalf; and in these regulations “the auctioneer” means—

- (a) the Delivery Body, if it conducts the capacity auction itself; or
- (b) the person appointed by the Delivery Body to conduct the auction.

(3) The Delivery Body is responsible for the performance of functions conferred on the auctioneer by these regulations or capacity market rules, whether or not the Delivery Body performs those functions itself.

### **Conduct of capacity auction**

**22.** The auctioneer must conduct the capacity auction in accordance with—

- (a) capacity market rules;
- (b) the auction guidelines;

- (c) any instructions given to the auctioneer by the Secretary of State on how to set price decrements between bidding rounds.

### **Notification of results**

- 23.**—(1) The Delivery Body must, after a capacity auction is completed—
- (a) as soon as practicable notify the auction results to the Secretary of State;
  - (b) within one business day, notify each bidder in the capacity auction whether or not its bid was a successful bid; and
  - (c) within 8 business days, publish the auction results.
- (2) In paragraph (1) “the auction results” means—
- (a) the clearing price;
  - (b) the total volume in respect of which successful bids were made;
  - (c) the CMUs in respect of which successful bids were made;
  - (d) in respect of each CMU, the duration of capacity agreement for which the successful bid was made.
- (3) In paragraphs (1) and (2) a “successful bid” means a bid that, subject to regulation 25, results in the award of a capacity agreement to the bidder at the clearing price.

### **Cancellation, postponement or stopping of capacity auction**

- 24.**—(1) A capacity auction may not be cancelled, postponed or stopped except as provided in this Regulation.
- (2) The Delivery Body—
- (a) must cancel, postpone or stop a capacity auction if directed to do so by the Secretary of State under paragraph (3); and
  - (b) may postpone or stop a capacity auction if, in the Delivery Body’s opinion, the capacity auction cannot be conducted fairly and in accordance with regulation 22 because of a failure of the auction IT system or any other exceptional circumstances.
- (3) The Secretary of State—
- (a) must, not later than [*time*] before the auction start date, direct the delivery body to postpone or cancel a capacity auction if, in the Secretary of State’s opinion, were the auction to proceed the making of capacity payments to successful bidders would breach the law relating to state aid;
  - (b) may, not later than [*time*] direct the Delivery Body to postpone a capacity auction for an indefinite period, or to start the capacity auction on a later date than the date specified in auction guidelines, if—
    - (i) the aggregate volume of prequalified CMUs is less than the maximum volume; or
    - (ii) the Secretary of State decides for any other reason that the capacity auction should not start on the start date; and
  - (c) may direct the Delivery Body to stop a capacity auction if the volume bid in the first bidding round is less than the maximum volume.
- (4) If the Delivery Body postpones a capacity auction under paragraph (2)(b), the Delivery Body must hold or continue the capacity auction at a later date in accordance with regulation 26(4).
- (5) If the Secretary of State gives a direction under paragraph (3)(a) to postpone a capacity auction, the Secretary of State—
- (a) may subsequently direct the Delivery Body to continue with the capacity auction if the Secretary of State is, at the date of the later direction, satisfied that the making of capacity payments to successful bidders would not breach the law relating to state aid; and
  - (b) must otherwise direct the Delivery Body to cancel the capacity auction.



(6) If the Secretary of State gives a direction under paragraph (3)(b) or (c) to postpone or stop a capacity auction, the Secretary of State must within [*time period*] give a further direction to the Delivery Body to hold, continue with, re-start or cancel the capacity auction.

### **Power to annul capacity auction**

**25.**—(1) The Secretary of State may, within 7 business days after a capacity auction is completed, annul the capacity auction if it appears to the Secretary of State that there are reasonable grounds to suspect that—

- (a) there was an irregularity in relation to the capacity auction; and
- (b) the irregularity affected—
  - (i) the clearing price; or
  - (ii) the CMUs which were successful in the auction.

(2) For the purposes of paragraph (1) there is an irregularity if—

- (a) the capacity auction was not conducted in accordance with the Rules; or
- (b) a bidder has breached the Rules.

(3) If the Secretary of State decides to annul a capacity auction, the Secretary of State must immediately publish that decision.

### **Rearranged capacity auctions**

**26.**—(1) The Secretary of State may give directions to the Delivery Body about a rearranged capacity auction.

(2) Directions under paragraph (1) may include a direction to re-open prequalification for the capacity auction.

(3) If the Secretary of State directs the Delivery Body to re-open prequalification for a capacity auction, the Secretary of State may also at the same time change—

- (a) the demand curve;
- (b) the target volume
- (c) the minimum and maximum volumes.

(4) The Delivery Body must—

- (a) comply with any directions under paragraph (1); and
- (b) ensure that a rearranged capacity auction is completed by the earlier of—
  - (i) the end of the auction window extension; or
  - (ii) 6 months after the date of any direction by the Secretary of State to hold a rearranged capacity auction.

(5) A “rearranged capacity auction” means a capacity auction that is to be held, continued or re-started after being postponed or stopped.

## **CHAPTER 5**

### **DSR transitional auctions**

#### **DSR transitional auctions**

**27.**—(1) A DSR transitional auction is a capacity auction held not more than 12 months and not less than 2 months before the start of the delivery year, in which an applicant may only bid in respect of a DSR CMU.

(2) The Delivery Body must hold DSR transitional auctions—

- (a) in the capacity year in which the Secretary of State determines that the first DSR transitional auctions are to be held; and

- (b) in each subsequent capacity year up to and including 2016-17.
- (3) In each capacity year referred to in paragraph (2), the delivery body must hold—
  - (a) a DSR transitional auction for time banded capacity obligations; and
  - (b) a DSR transitional auction for non-time banded capacity obligations.
- (4) A time banded capacity obligation is an obligation to provide capacity during such times of the day and such months of a delivery year as are specified in capacity market rules.
- (5) A non-time banded capacity obligation is an obligation to provide capacity at any time during a delivery year.
- (6) Chapters 1 to 4 of this Part apply in relation to DSR transitional auctions with the modifications that—
  - (a) regulation 12 applies as if—
    - (i) in paragraph (1), for “each of the auction parameters referred to in regulation 11(1)(a)”, there were substituted “the auction parameters referred to in regulation 11(1)(a)(i) to (iv)”;
    - (ii) paragraphs (4)(a) and (b) and (5) were omitted;
  - (b) regulation 18 applies as if paragraphs (2)(e) and (4) were omitted; and
  - (c) regulation 20, except for paragraph (1)(a), does not apply.

## PART 5

### Capacity agreements, notices and termination

#### Capacity agreements

**28.**—(1) A “capacity agreement” means the rights and obligations which, by virtue of these Regulations and capacity market rules, accrue to a capacity provider in relation to a CMU in respect of one or more delivery years, including the capacity obligation and the right to receive capacity payments and liability to pay capacity incentives in respect of the CMU.

(2) A capacity agreement accrues to each successful bidder in a capacity auction, in relation to each CMU for which a successful bid was made, for—

- (a) the de-rated capacity of the CMU;
- (b) the delivery year for which the capacity auction was held (or, as the case may be, a period of two or more whole delivery years commencing with that delivery year); and
- (c) the clearing price.

(3) A capacity agreement—

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

(4) A capacity agreement remains in force until the expiry of the period of delivery years for which it is awarded, even if (in the case of a capacity agreement for two or more delivery years), no capacity auction is held for one or more of those delivery years.

#### Capacity agreement notices

**29.** The Delivery Body must, in accordance with capacity market rules, issue a capacity agreement notice to each capacity provider, containing—

- (a) a description of the CMU;
- (b) the matters set out in regulation 28(2)(a) to (c); and
- (c) such other information as may be specified in capacity market rules.

## Termination of capacity agreements

**30.**—(1) [The Secretary of State may direct the Delivery Body to terminate a capacity agreement if it appears to the Secretary of State that the capacity provider has breached the ethical requirements.]

(2) If the Delivery Body gives a termination notice to a capacity provider under the Rules, the Secretary of State may, within 60 business days of the date on which the termination notice is given, direct the Delivery Body to withdraw the termination notice.

(3) In this regulation, “ethical requirements” and “termination notice” have the meanings given in the Rules.

## PART 6

### Low carbon CMUs

#### General

**31.** In this Part—

["CfD" means a contract for difference;]

"FiT" means the Feed-in Tariffs Order 2012(a);

"RHI" means the Renewable Heat Incentive Scheme Regulations 2011(b);

"ROC" has the same meaning as it has in the ROO(c); and

"ROO" means the Renewables Obligation Order 2009(d).

#### Low carbon exclusions

**32.**—(1) The Delivery Body must exclude a bid which includes a CMU ("C") in respect of which—

(a) subject to paragraph (3), if C is accredited under the FiT, RHI or ROO and relevant support may be granted in respect of C for any of the capacity period, the bidder does not provide a non-support confirmation by the close of the pre-qualification window; or

(b) if an application (which is not determined) for a low carbon exclusion has been made in respect of C for any of the capacity period, the bidder does not provide a withdrawal confirmation by the close of the pre-qualification window.

(2) The Delivery Body must exclude a bid which includes a capacity market unit where that unit is subject to a CFD which applies for any of the capacity period.

(3) Paragraph (1)(a) does not apply where—

(a) C is accredited under the ROO and relevant support may be granted in respect of C for any of the capacity period;

(b) a capacity market transfer notice has been given in respect of C; and

(c) the bid is made at the T-4 auction.

(4) The Delivery Body may require a bidder[, the Authority] or the counter-party body to provide it with such information as it may require for the purposes of paragraphs (1) and (2).

(5) Where a bid is not excluded as required by paragraph (1) or (2), any capacity agreement issued by reason of that bid is null and void.

(6) In this regulation—

---

(a) S.I. 2012/2782 as amended by [ ].

(b) S.I. 2001/2860 as amended by [ ].

(c)

(d) S.I. 2009/785 as amended by [ ].

“capacity market transfer notice” has the same meaning as it has in the ROO(a);

“capacity period” means the period of the capacity agreement which would be awarded to the bidder if the bid in respect of C is accepted at the capacity auction at which the bid is to be made;

“low carbon exclusion” means—

- (a) an accreditation under—
  - (i) the FIT;
  - (ii) the RHI; or
  - (iii) the ROO; or
- (b) a CfD;

“non-support confirmation” means—

- (a) a copy of an irrevocable notice from the bidder to the Authority that the bidder will not seek to obtain relevant support for any of the capacity period; and
- (b) a written acknowledgement from Authority to the bidder that it has received the notice;

“relevant support” means—

- (a) a FIT payment within the meaning referred to in the FIT;
- (b) a periodic support payment within the meaning of the RHI; or
- (c) a ROC; and

“withdrawal confirmation” means—

- (a) a copy of a notice from the bidder to, as appropriate, the Authority or the counter-party body, that the bidder has withdrawn the application for the low carbon exclusion; and
- (b) a written acknowledgement from, as appropriate, the Authority or the counter-party body, to the bidder that it has received the notice.

### **Termination of capacity agreements: CFDs and ROO conversions**

**33.—**(1) The Delivery Body must terminate a capacity agreement (“A”) where, by no later than the relevant date, 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) give a notice that it has terminated A as soon as practicable to—
  - (i) the capacity provider in respect of A;
  - (ii) the settlement body [and settlement agent]; and
  - (iii) the counter-party body in respect of a CFD transfer notice or the Authority in respect of a ROO unit conversion notice.

(3) In this regulation—

“C” means the CMU to which A applies;

“capacity period” means the period of the capacity obligation under A;

“CFD transfer notice” means a notice from the counter-party body which—

- (a) identifies A;
- (b) states that the counter-party body intends to [grant] a CfD in respect of C for any of the capacity period; and

---

(a) [Cross-reference to ROO regulation]

- (c) gives the date when the CfD is intended to be [granted];
- “the relevant date” means the close of the [prequalification window] which applies to the T-1 auction due to be held in respect of the capacity period or a period which includes the capacity period;
- “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 C as a unit conversion or as part of a station conversion for any of the capacity period; and
  - (c) includes a written confirmation from the Authority that at least one ROC has been issued in respect of C 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(a); and
- “unit conversion” has the same meaning as it has in the ROO(b).

### NER 300 and CCS grants

**34.**—(1) The Delivery Body must exclude a bid which includes a CMU in respect of which the first payment of a grant under a relevant scheme is made within 10 years of the commencement of the period of the capacity obligation for which the bid is to be made.

(2) The Delivery Body may require a bidder or request the Secretary of State to provide it with such information as it may require for the purposes of paragraph (1).

(3) The Delivery Body is not in breach of paragraph (1) if it does not exclude a bid because of an error in any information provided to it under paragraph (2).

(4) Where a bid is not excluded as required by paragraph (1), any capacity agreement issued by reason of that bid is null and void.

“relevant scheme” means a scheme of financial assistance provided under—

- (a) NER 300;
- (b) section 1(1) of the Energy Act 2010(c) in respect of a CCS demonstration project within the meaning of that section; [or
- (c) section 5(1) of the Science and Technology Act 1965(d) to support carbon capture and storage];

“NER 300” means the competition established under Article 10a(8) of Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC(e).

### Null and void capacity agreements

**35.** Where the Delivery Body becomes aware that a capacity agreement is null and void by reason of regulation 32(5) or 34(4), the Delivery Body must give a notice to the settlement body and the settlement agent as soon as practicable which—

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

---

(a)

(b)

(c) 2010 c.27.

(d) 1965 c. 4. Section 1(1) has been amended by S.I. 1971/719, S.I. 1992/1296, S.I. 1995/2785 and S.I. 1995/2985. Other amendments have been made to section 5 which are not relevant.

(e) OJ L 275, 25.10.2003, p. 32. The Directive has been amended by [ ]. Aspects of NER 300 are implemented by Commission Decision 2010/670/EU (OJ L 290, 6.11.2010, p. 39). Those projects which have received a grant under NER 300 can be examined at: [www.ec.europa.eu/clima/funding/ner300/index\\_en.htm](http://www.ec.europa.eu/clima/funding/ner300/index_en.htm).

## PART 7

### Information

#### **Duties to provide information**

**36.**—(1) The Secretary of State may, for the purpose of any review of the capacity market, require—

- (a) an administrative party;
- (b) an electricity supplier; or
- (c) the owner of a CMU (whether or not a capacity provider),

to provide the Secretary of State with any specified information.

(2) The Authority may—

- (a) for the purpose of exercising its functions under regulation 48 or 49, require—
  - (i) an administrative party;
  - (ii) an electricity supplier; or
  - (iii) the owner of a CMU (whether or not a capacity provider),to provide the Authority with any specified information;

- (b) for the purpose of investigating any suspected breach of these Regulations, the Payment Regulations or capacity market rules, or any other law that may be relevant to the effective and competitive functioning of the capacity market, require—

- (i) any applicant-related party; or
  - (ii) an administrative party,

- to provide the Authority with any specified information which the Authority reasonably considers relevant to the investigation.

(3) A person appointed under the Rules as an auction monitor may require—

- (a) any bidder in a capacity auction;
- (b) the Delivery Body; or
- (c) the auctioneer,

to provide it with any specified information relating to the conduct of a capacity auction or to the conduct of a bidder in relation to a capacity auction.

(4) Any requirement on a person to provide information under this regulation must be made by giving notice to the person in writing; and references in this regulation to “specified information” mean information specified in such a notice.

(5) Any person on whom a requirement is made under this regulation must, subject to regulation 37, comply with the requirement as soon as practicable.

#### **Limitation on duty to provide information**

**37.**—(1) A person may not be required under these Regulations or capacity market rules to produce, disclose or permit the inspection of protected items.

(2) In paragraph (1) “protected items” means—

- (a) communications between a professional legal adviser (“LA”) and LA’s client or any person representing LA’s client which fall within paragraph (3);
- (b) communications between LA, LA’s client or any person representing LA’s client and any other person which fall within paragraph (3) (as a result of sub-paragraph (b) of that paragraph);
- (c) items which—

- (i) are enclosed with, or referred to in, such communications;
  - (ii) fall within paragraph (3); and
  - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this paragraph if it is made—
- (a) in connection with the giving of legal advice to the client; or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

### **Protection of information**

**38.**—(1) A person who, by virtue of these Regulations, the Payment Regulations or capacity market rules, has obtained information which relates to the affairs of any individual or to any particular business (“protected information”), must not—

- (a) use that information for any purpose other than participating in or exercising functions in relation to the capacity market; or
- (b) disclose that information,

except as provided below.

- (2) Paragraph (1) does not prohibit the use or disclosure of protected information which is—
- (a) made with the consent of the person to whom the information relates; or
  - (b) required by—
    - (i) an enactment (including capacity market rules);
    - (ii) auction guidelines;
    - (iii) a licence condition (where the person using or disclosing the information is a licence holder);
    - (iv) a condition of an industry document to which the person using or disclosing the information is a party; or
    - (v) an EU obligation.
- (3) Paragraph (1) does not prohibit the disclosure of protected information—
- (a) to a person exercising functions under these Regulations, the Payment Regulations, or capacity market rules, to the extent that the disclosure is required to enable that person to carry out those functions;
  - (b) which is already publicly available (other than by reason of a breach of this regulation); or
  - (c) to or in accordance with the order of a court.
- (4) In this regulation—
- (a) “licence” means a licence under section 6 of EA 89; and
  - (b) “industry document” means any of the following documents maintained under a licence—
    - (i) the Balancing and Settlement Code;
    - (ii) the Connection and Use of System Code; or
    - (iii) the Grid Code.

## PART 8

### Enforcement

#### **Relevant requirements**

**39.**—(1) The following requirements are enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989(a)—

- (a) the duties and prohibitions in Part 7 (information), except in so far as they apply to the Secretary of State or the Authority;
- (b) any other requirement to which—
  - (i) the Delivery Body; or
  - (ii) any person other than an administrative party,

is subject under these Regulations, the Payment Regulations or capacity market rules.

(2) For the avoidance of doubt, paragraph (1) applies whether or not the person on whom a requirement is imposed is in fact a regulated person within the meaning of EA 89.

## PART 9

### Dispute resolution and appeals

#### **Dispute resolution by [the Authority]**

**40.**—(1) Subject to paragraph (2), an affected person who disputes—

- (a) a pre-qualification decision[; or
- (b) any other decision of a kind described as a delivery body reviewable decision in capacity market rules,]

may apply to [the Authority] to resolve that dispute.

(2) If capacity market rules provide that an affected person may make a request to the Delivery Body to reconsider a decision (a “request for reconsideration”), then an affected person may not apply under paragraph (1) unless—

- (a) the affected person has, in accordance with any requirements (including time limits) in capacity market rules, made a request for reconsideration; and
- (b) either—
  - (i) the Delivery Body has reconsidered the decision and the affected person remains dissatisfied with the reconsidered decision; or
  - (ii) the time specified in capacity market rules for the Delivery Body to reconsider its decision has expired.

(3) In this Part, “affected person” means—

- (a) in relation to a pre-qualification decision, the applicant; and
- (b) in relation to any other kind of decision described as a delivery body reviewable decision in capacity market rules, a person specified in those rules as an affected person.

#### **Dispute resolution by the Authority: procedure**

**41.**—(1) An application under regulation 40 must be made within 5 business days after the start date.

---

(a)



- (2) In paragraph (1), “the start date” means—
- (a) if a request for reconsideration has been made, the earlier of—
    - (i) the date on which the affected person receives the reconsidered decision; or
    - (ii) the day after the date by which the Delivery Body is required under capacity market rules to reconsider the decision;
  - (b) in any other case, the date on which the affected person receives the decision.
- (3) The application—
- (a) must set out the affected person’s reasons for disputing the Delivery Body’s decision;
  - (b) if made by the relevant applicant or capacity provider, must include a copy of all information previously submitted to the Delivery Body; and
  - (c) must not include information which has not previously been provided to the Delivery Body.
- (4) Upon receiving an application, [the Authority] must—
- (a) subject to paragraph (6), review the decision;
  - (b) determine whether to uphold the Delivery Body’s decision or to substitute a different decision; and
  - (c) notify the affected person, the Delivery Body and the [Settlement Agent] of its determination.
- (5) [The Authority] may, to assist it in determining an application, appoint an independent person to consider the application or any matter relating to it and provide a report to [the Authority]; but [the Authority] remains responsible for determining the application.

### **Appeals to the court**

**42.**—(1) An affected person may appeal to the court against a determination under regulation 41.

- (2) [In paragraph (1), “the court” means—
- (a) the High Court; or
  - (b) in Scotland, the Court of Session.]
- (3) An appeal under paragraph (1) must be brought within 28 days after the date of the determination.
- (4) On an appeal relating to a prequalification decision in respect of a CMU the court may—
- (a) dismiss the appeal;
  - (b) direct the Delivery Body to register the CMU on the capacity market register as a prequalified CMU;
  - (c) if the relevant capacity auction has started or been held, direct the Delivery Body to issue a capacity agreement to the appellant on such terms as appear just; or
  - (d) remit the matter to the Delivery Body with a direction to reconsider it and make a new decision in accordance with the findings of the court.
- (5) On an appeal relating to any other decision, the court may—
- (a) dismiss the appeal; or
  - (b) remit the matter to the Delivery Body with a direction to reconsider it and make a new decision in accordance with the findings of the court.
- (6) The court may not—
- (a) order a capacity auction to be cancelled, postponed or suspended pending the determination of an appeal; or
  - (b) make an order which affects the validity or terms of a capacity agreement that has accrued to any person other than the appellant.

(7) Except as provided in this regulation, the validity of a prequalification decision may not be questioned by any legal proceedings whatsoever.

(8) In paragraph (4)(c), “the relevant capacity auction” means the capacity auction in relation to which the prequalification decision being appealed was made.

### **Consequences of successful review or appeal**

**43.**—(1) The Delivery Body must amend the capacity market register to give effect to—

- (a) a decision of the Authority or the court under this Part; or
- (b) a redetermination by the Delivery Body pursuant to a direction by [the Authority or] the court under this Part.

(2) Paragraph (3) applies if—

- (a) the Authority or the court determines that an applicant has prequalified for a capacity auction in respect of a CMU; but
- (b) the capacity auction has already been held or the auction participation deadline has passed.

(3) If this paragraph applies, the Delivery Body must award the applicant a capacity agreement in respect of the CMU, at the auction clearing price and for the number of delivery years which it appears to the Delivery Body that the applicant is entitled to a capacity agreement under capacity market rules.

(4) In paragraph (2), “the auction participation deadline” means the date referred to in regulation 15(2).

## **PART 10**

### **Capacity market rules**

#### **Authority’s power to make capacity market rules**

**44.**—(1) The Authority may make capacity market rules about the operation of the capacity market established by these Regulations.

(2) The power in paragraph (1)—

- (a) includes power to amend, add to, revoke or substitute any provision of the Rules; and
- (b) includes power to specify that an obligation in capacity market rules made by the Authority is a relevant requirement.

(3) But the Authority must not make any provision in capacity market rules which—

- (a) is inconsistent with these Regulations;
- (b) confers functions on the Secretary of State; or
- (c) confers additional functions on the Authority.

#### **Procedure**

**45.**—(1) Before making capacity market rules the Authority must consult—

- (a) the Secretary of State;
- (b) the Delivery Body;
- (c) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 89;
- (d) any person who is a capacity provider; and
- (e) such other persons as the Authority considers it appropriate to consult.

(2) [The Authority must consider any proposal to amend a provision of the Rules made to it by—

- (a) a person mentioned in paragraph (1)(a) to (d); or
- (b) a representative body representing any other class of persons which, in the Authority's opinion, has a sufficient interest in the capacity market.]

## PART 11

### Other functions of the Secretary of State and the Authority

#### **Appointment of Settlement Body and Settlement Agent**

**46.**—(1) The Secretary of State—

- (a) must, before [the first capacity auction is held], appoint a person (which may be the Secretary of State) to be the Settlement Body; and
- (b) may, at any time, appoint a person to be the Settlement Agent.

(2) The Secretary of State may terminate the appointment of a person as Settlement Body or Settlement Agent.

(3) If the Secretary of State terminates the appointment of a person (“A”) as Settlement Body, the Secretary of State must—

- (a) as soon as reasonably practicable, appoint another person (“B”) to that position; and
- (b) make arrangements to ensure that any funds held by A under the Payment Regulations are transferred to B.

(4) The Secretary of State must (unless the Secretary of State is the Settlement Body) consult the Settlement Body before—

- (a) appointing a Settlement Agent; or
- (b) terminating the appointment of a Settlement Agent.

(5) The Secretary of State must notify—

- (a) each capacity provider;
- (b) each electricity supplier; and
- (c) the other administrative parties,

of an appointment, or the termination of an appointment, under paragraph (1), (2) or (3)(a).

#### **Review of Electricity Capacity Regulations**

**47.**—(1) The Secretary of State must from time to time—

- (a) carry out a review of—
  - (i) these Regulations; and
  - (ii) the functions conferred on the Authority by capacity market rules;
- (b) set out the conclusions in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(3) The first report under this regulation must be published before the end of the period of five years beginning with the date on which these Regulations come into force.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

(5) In carrying out the review under paragraph (1)(a), the Secretary of State must take account of any reports published by the Authority under regulation 48 or provided to the Secretary of State under regulation 49.

### **Review of capacity market rules**

**48.**—(1) The Authority must from time to time—

- (a) carry out a review of capacity market rules;
- (b) set out the conclusions in a report; and
- (c) publish the report.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by the rules;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.

(3) The first report under this regulation must be published before the end of the period of [five years] beginning with the date on which capacity market rules first come into force.

(4) Reports under this regulation are afterwards to be published at intervals not exceeding [five years].

### **[Annual] operational reports**

**49.**—(1) The Authority must provide the Secretary of State with a[n annual] report on—

- (a) the operation of the capacity market; and
- (b) the national system operator's performance of its functions in relation to the capacity market.

(2) The [annual] report must also include a report on any particular matters specified in a notice given by the Secretary of State to the Authority by [date] in the year in which the report is to be provided.

(3) The first report under this regulation must be provided to the Secretary of State by [date] 2015.

(4) Reports under this regulation are afterwards to be provided to the Secretary of State by [date] in each subsequent year.

## **PART 12**

### **Transitory Provisions and Repeal**

#### **Transitory provisions**

**50.** If the Secretary of State determines under regulation 10(1)(a) that a capacity auction is to be held—

- (a) the Secretary of State must at the same time determine the auction window for the purposes of that capacity auction, which must end not later than [ ] 2015; and
- (b) in relation to the determination of auction parameters for that capacity auction, paragraphs (4)(a) and (5) of regulation 12 do not apply.

**Repeal**

**51.** Section 47ZA of EA 1989 is repealed.