# Capacity Market’s Legal Structure

## Proposed high-level structure

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| **Energy Act (currently Energy Bill)** |

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| **Electricity Capacity Regulations**  As set out in the Energy Act [Bill] the Electricity Capacity Regulations will contain the high-level requirements in relation to the Capacity Market and detailed provision of some matters (e.g. payment and settlement). They must be made by statutory instrument. The Regulations are likely to cover:   * Functions of the Secretary of State * Functions of the Authority and National System Operator * The circumstances in which, and amount of capacity for which, a capacity auction is to be held * Eligibility to participate in capacity auctions * Establishment of the Settlement Body * Payments and settlement * Information and advice * Enforcement and dispute resolution * Provision for the Authority to amend of add to Capacity Market rules * Other requirements (e.g. appeals) |

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| **Capacity Market Rules**  The Capacity Market rules will be technical, covering the processes for how the Capacity Market will operate. The first rules will be made by the Secretary of State. The regulations may confer power on the Authority to make further rules or amend existing rules and may limit the extent of, or impose conditions on, the exercise of such power. The rules are likely to cover:   * Pre-qualification, eligibility and de-rating * Rules and procedures for a capacity auction * Contents and effect, issuing, assignment and termination of capacity agreements * Maintenance of a register of capacity agreements * Circumstances in which capacity providers must make capacity available and provision for calculating the amount of capacity which must be made available * Calculation of capacity incentives * Testing of plant * Enforcement and dispute resolution procedure |

**Licences**

To consider whether consequential amendments to existing licences are required as a result of the Capacity Market and the regulations and rules.

**Governance framework for Settlement Body**

**Capacity agreement**

**Operating agreement**

(between Settlement Body and Settlement Agent) *[to follow at a later stage]*

**Auction guidelines**

**Industry Codes**

To consider whether consequential amendments to existing codes (e.g. Grid Code / BSC) are required as a result of the Capacity Market and the regulations and rules.

## DRAFT: Outline content of Electricity Capacity Regulations

1. **Definition of “providing capacity”, “providing electricity” and “reducing demand for electricity”**
2. **Functions of the Secretary of State**
   1. Duty to decide whether / when to hold / cancel capacity auctions
   2. Duty to determine volume of capacity
   3. Appointment of settlement body
   4. Oversight of settlement body
   5. Reviews / reports / publication of information
3. **Power of Authority to make or amend Capacity Market rules**
   1. Any exceptions to the power (e.g. for DSR transitional arrangements)
   2. What may trigger a change / amendment to the Capacity Market rules?
   3. Any restrictions (e.g. that certain provisions can only be amended with Secretary of State’s consent, or limits on the extent to which changes can apply to existing capacity providers)
   4. Consultation requirements
   5. Any other requirements as to the process for amending Capacity Market rules
4. **Duties of the National System Operator**

High-level duties, e.g. to run a capacity auction; function of issuing capacity agreements; to conduct the pre-qualification process

1. **Eligibility to participate in capacity auctions**
   1. Geographical eligibility
   2. Inclusion of DSR, storage and licence-exempt generators
   3. Exclusion of CFD and RO plant
2. **Payments and settlement**
   1. Duties of settlement body (a government owed public body) and settlement agent (Elexon)
   2. Data requirements
   3. Amounts to be calculated:
      1. Supplier charge
      2. Capacity provider payments
      3. Capacity provider penalty changes
      4. Capacity provider over delivery payments
      5. Penalty residual supplier amount
      6. Over delivery funding supplier amount
      7. Settlement body’s costs
   4. Invoicing, banking and payment
   5. Credit requirements
   6. Reconciliation
   7. Debt management and bad debt policy
   8. Dispute resolution
3. **Duties to provide information / advice / reports to the Secretary of State (and Authority)**
4. **Use and protection of information provided under the regulations or rules**
5. **Power of entry [if needed]**
6. **Enforcement of obligations in the regulations**
7. **Appeals to the Authority and the court / tribunal**
8. **Repeals and consequential amendments**
   1. Repeal of the Authority’s security of supply reporting duty
   2. Any other consequential amendments to primary or secondary legislation

## DRAFT: Outline content of Capacity Market rules

1. **Definitions (including CM Unit)**
2. **Pre-qualification information**
   1. Information to be provided for new, existing and refurbished CM Units and differentiation between these categories
   2. Timing and process
3. **Determination of eligibility and de-rating**
   1. Duties of the system operator
   2. Eligibility criteria (insofar as not in regulations)
   3. De-rating methodology
   4. Timing and process
   5. Effect of determinations
   6. Appeals (insofar as not in regulations)
4. **Capacity auctions**
   1. Duties of the system operator
   2. Rules for auction participants
5. **Capacity agreements**
   1. Contents
   2. Who will issue and process for issuing
   3. Effect
   4. Termination and enforcement [including who does this]
      1. If new plant does not enter operation
      2. Insolvency
6. **Capacity Market register**
   1. Duty to keep a register
   2. Contents of the register
      1. Pre-qualified CM Units
      2. Capacity agreements
7. **Obligations of capacity providers**
   1. Obligations before the delivery year (e.g. to provide information about meeting construction milestones; to permit inspection of plant)
   2. Obligation to provide capacity:
      1. When it applies (i.e. system stress events)
      2. Extent of obligation (i.e. adjusted load-following capacity obligation)
8. **Trading (and assignment) of capacity obligations**
9. **Capacity incentives**
   1. Penalty formulae applying during stress events:
      1. >4 hours after a capacity market warning
      2. <4 hours after a capacity market warning
   2. Penalties for new plant which are late entering operation
   3. Duties of the national system operator
      1. Issuing capacity market warning
      2. Determining the cause of periods of demand reduction
10. **Restrictions on opted-out plant or plant unsuccessful in capacity auction**
11. **DSR transitional arrangements [*note: not for October consultation and possibly not for the rules]***
12. **Monitoring**
    1. Duties or powers of [national system operator?] [xxx] to inspect or test plant
    2. Duties to provide information for monitoring purposes
13. **Disputes and appeals (insofar as not in regulations)**
14. **Enforcement of obligations in the capacity market rules**
15. **Testing regime**
16. **Miscellaneous, e.g. service of notices**