

The Capacity Market (Amendment) (No. 4) Rules 2019

Presented to Parliament pursuant to Section 41(9) of the
Energy Act 2013

The Capacity Market (Amendment) (No. 4) Rules 2019

1. Citation and commencement

1.1 These Rules may be cited as the Capacity Market (Amendment) (No. 4) Rules 2019.

1.2 Part 1, Part 2 and Part 3 come into force on the day on which the Electricity Capacity (No. 2) Regulations 2019 come into force.

1.3 Part 4 comes into force the day after the day on which these Rules are made.

1.4 In these Rules:

1.4.1 “the Rules” means the Capacity Market Rules 2014 as amended by:

- (a) the Capacity Market (Amendment) Rules 2014;
- (b) the Capacity Market (Amendment) (No. 2) Rules 2014;
- (c) the Capacity Market (Amendment) Rules 2015;
- (d) the Capacity Market (Amendment) (No. 2) Rules 2015;
- (e) the Capacity Market (Amendment) Rules 2016;
- (f) the Capacity Market (Amendment) (No. 2) Rules 2016;
- (g) the Capacity Market (Amendment) (No. 3) Rules 2016;
- (h) the Capacity Market (Amendment) Rules 2017;
- (i) the Capacity Market (Amendment) (No. 2) Rules 2017;
- (j) the Capacity Market (Amendment) (No. 3) Rules 2017;
- (k) the Capacity Market (Amendment) (No. 4) Rules 2017;
- (l) the Capacity Market (Amendment) Rules 2019;
- (m) the Capacity Market (Amendment) (No. 2) Rules 2019; and
- (n) the Capacity Market (Amendment) (No. 3) Rules 2019;

1.4.2 a reference to a Chapter, Rule or numbered Schedule by number alone is a reference to the Chapter, Rule or Schedule so numbered in the Rules; and

1.4.3 expressions which are defined in the Rules have the same meaning as in the Rules.

2. Amendments

2.1 The Rules are amended as set out in the Schedule to these Rules.

[Chris Skidmore]
Minister of State

[June 2019] Department for Business, Energy & Industrial Strategy

SCHEDULE

Part 1

Interpretation: The Electricity Capacity (No. 2) Regulations 2019

1. Amendments to Chapter 1 (General Provisions)

1.1 In Rule 1.2 (Definitions):

1.1.1 in Rule 1.2.1, in the definition of “the Regulations” for “and the (No. 1) Regulations 2019” substitute “the (No. 1) Regulations 2019¹, and the (No. 2) Regulations 2019”; and

1.1.2 in the appropriate place insert:

“(No. 2) Regulations 2019	means the Electricity Capacity (No. 2) Regulations 2019”.
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Part 2

Other funding sources in respect of Non-Dispatchable Generating Technology Classes

2. Amendments to Chapter 1 (General Provisions)

2.1 In Rule 1.2 (Definitions), in the appropriate place insert:

“Relevant Benefit	has the meaning given in Rule 8.3.8A”
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“State aid authority	means:
	(a) the European Commission; or
	(b) the Competition and Markets Authority”

¹ S.I 2019/862.

“Union Funding

means any funding from European Union resources (regardless of whether such funding constitutes State aid)”

3. Amendments to Chapter 6 (Capacity Agreements) in respect of the Financial Commitment Milestone

3.1 In Rule 6.6 (Achieving the Financial Commitment Milestone):

3.1.1 For Rule 6.6.1(b), substitute:

“(b) where:

- (i) Rule 6.6.5 applies, a Funding Declaration only insofar as it relates to Relevant Expenditure, made by at least two directors of the Capacity Provider; or
- (ii) Rule 6.6.5A applies, a Funding Declaration made by at least two directors of the Capacity Provider.”.

3.1.2 In Rule 6.6.5, at the beginning, insert “Unless Rule 6.6.5A applies,”.

3.1.3 After Rule 6.6.5, insert:

“6.6.5A This Rule 6.6.5A applies if:

- (a) the Capacity Provider holds a Capacity Agreement for a Prospective CMU in a Non-dispatchable Generating Technology Class; and
- (b) the Capacity Agreement is awarded in a Capacity Auction held in the Auction Window commencing on 1 September 2019 or any subsequent Auction Window.”.

4. Amendments to Chapter 6, Chapter 8 and Chapter 16 in respect of updates to Funding Declarations

4.1 In Rule 6.10.1(p), for “with Rule 8.3.8” substitute “with Rule 8.3.8(a) or Rule 8.3.8(b)”.

4.2 In Rule 8.3 (Specific obligations and consequences):

4.2.1 For Rule 8.3.8, substitute:

“8.3.8 Declarations about other funding sources

- (a) Where a Capacity Provider has been required by Rule 6.6.1(b) to make a Funding Declaration (“first Funding Declaration”) in respect of a CMU (“the relevant CMU”), the Capacity Provider must provide the Delivery Body with an updated Funding Declaration (“updated Funding Declaration”) if:
 - (i) the total amount of Relevant Expenditure that has been or will be incurred in respect of the relevant CMU differs or will differ from the amount stated in the first Funding Declaration provided pursuant to Rule 6.6.1(b)(i); or
 - (ii) the total amount of Relevant Expenditure that has been or will be incurred differs or will differ, and the total amount of Relevant Benefit that has been or will be received in respect of the relevant CMU differs or will differ from the amount stated in the first Funding Declaration provided pursuant to Rule 6.6.1(b)(ii).
- (b) The Capacity Provider must provide an additional updated Funding Declaration (“additional updated Funding Declaration”) whenever the total amount of Relevant Benefit that has been or will be received in respect of the relevant CMU differs or will differ from the amount declared in the updated Funding Declaration or any additional updated Funding Declaration.
- (c) An updated Funding Declaration or additional updated Funding Declaration:
 - (i) in the case of an updated Funding Declaration required by Rule 8.3.8(a), must be provided to the Delivery Body by no later than three months after the start of the first Delivery Year for the relevant Capacity Agreement;
 - (ii) in the case of any additional updated Funding Declaration required by Rule 8.3.8(b), must be provided to the Delivery Body as soon as reasonably practicable after the grantor of the Relevant Benefit gives notice to the Capacity Provider that the Capacity Provider will receive a Relevant Benefit (“notice of Relevant Benefit”) and in any event by the date which is 10

Working Days after the date the notice of Relevant Benefit is given; and

- (iii) must be made by at least two directors of the Capacity Provider.”.

4.2.2 After Rule 8.3.8, insert:

“8.3.8A Determination of Relevant Benefit

Relevant Benefit is the amount of State aid or Union Funding that is not Excepted Benefit or Authorised Benefit, and which is:

- (a) granted to a Person;
- (b) granted in any form;
- (c) granted in respect of the CMU; and
- (d) Applied in respect of the costs of the CMU (whether to partly or fully meet those costs).

8.3.8B For the purposes of Rule 8.3.8A:

“the CMU” means a Prospective CMU in a non-dispatchable Generating Technology Class;

“the costs of the CMU” means:

- (a) Total Project Spend; and
- (b) any other costs incurred during the Delivery Period of the Capacity Agreement in respect of the CMU to enable the Capacity Provider to comply with the relevant Capacity Agreement or benefit from the rights accruing under the relevant Capacity Agreement;

“Applied” means to be applied towards (including by way of savings made), to be planned to be applied towards, or to be held;

“Authorised Benefit” means State aid or Union Funding which a State aid authority expressly authorises to be Applied in addition to Capacity Payments in respect of the costs of the CMU;

“Delivery Period” means the Delivery Year or Delivery Years for which a Capacity Obligation would be awarded in respect of a CMU (“CMU i”) if a bid in respect of CMU i were accepted at the Capacity Auction for which the Applicant is applying for prequalification;

“Excepted Benefit” means State aid granted by way of:

- (a) Capacity Payments received or due to be received in respect of the CMU;
- (b) a Relevant Investment; or
- (c) a “relevant support” as defined in Regulation 16(4);

“Person” includes that person’s Agent, Holding Company, a member of that person’s Group, a director in the case of a company, or equivalent in the case other than a company.

4.2.3 In Rule 8.3.10, for “the updated” substitute “any updated”.

4.3 For Rule 16.4E.2(i), substitute:

“(i) for Rule 8.3.8(a), there were substituted:

- “(a) Where a Capacity Provider awarded a 2019 T-1 Agreement in respect of a Prospective CMU has been required by Rule 6.6.1(b)(i) to make a Funding Declaration (“first Funding Declaration”) in respect of a CMU (“the relevant CMU”), the Capacity Provider must provide the Delivery Body with an updated Funding Declaration (“updated Funding Declaration”) if the total amount of Relevant Expenditure that has been or will be incurred differs or will differ from the amount stated in the first Funding Declaration in respect of the relevant CMU.”.

5. Amendments to Chapter 14 (Data Provision)

5.1 After Rule 14.6.2(a), insert:

“(aa) the total amount of Relevant Benefit that has been, or will be, received;”.

6. Substitution of Exhibit J (Form of Funding Declaration)

6.1 For Exhibit J, substitute:

“Funding Declaration

The following declarations and confirmations are made by *[name of the Capacity Provider]* (the “**Capacity Provider**”) with respect to the following CMU (the “**Relevant CMU**”):

[Description of the CMU to be inserted]

(a)

(i) *[no Relevant Expenditure has been, or will be, incurred];*

or

[Relevant Expenditure has been incurred, or is expected to be incurred] in respect of the Relevant CMU;

or

[This Funding Declaration is provided pursuant to Rule 8.3.8(a)(ii) or Rule 8.3.8(b) in respect of a CMU which is in a Non-Dispatchable Generating Technology Class, and is only in respect of Relevant Benefit (where applicable)];

(ii) *[no Relevant Benefit has been received, or will be, received];*

or

[Relevant Benefit has been, or is expected to be received] in respect of the Relevant CMU;

or

[This Funding Declaration is provided in respect of a CMU which is not in a Non-Dispatchable Generating Technology Class, and is not in respect of Relevant Benefit];

Where Relevant Expenditure has been, or will be, incurred:

(iii) the total amount of Relevant Expenditure that has been *[and/or] [will be]*, incurred in respect of the Relevant CMU is *[insert amount]*;

(iv) the date(s) that the Relevant Investment was *[and/or] [will be]* received was *[and/or] [is] [insert date(s)]*;

(v) *either:*

[the Relevant Investment was [will be] under [the Enterprise Investment Scheme], [and/or] [the Seed Enterprise Investment Scheme] and the name of the company that received the Relevant Investment as recorded in HM Revenue & Customs records in respect of that Relevant Investment is [insert name]];

or

[the Relevant Investment was under the Venture Capital Trust and the name of the company that made the Relevant Investment is *[insert name]*]; and

- (vi) the Capacity Provider agrees for the total Relevant Expenditure incurred with respect to the Relevant CMU to be set off against or recovered from any Capacity Payments payable to the Capacity Provider in respect of the Relevant CMU, and no payment shall be made to the Capacity Provider until such amount has been set off or recovered in its entirety.

Where Relevant Benefit has been, or will be, received:

- (vii) the total amount of Relevant Benefit that has been *[and/or] [will be]* received in respect of the Relevant CMU is *[insert total amount (described in pound sterling (£) including if granted in any form or currency other than pound sterling (£)) including where notice of the Relevant Benefit has been given]*;
- (viii) the notice of Relevant Benefit was given on *[insert date(s) for all aid granted where notice of the Relevant Benefit has been given but Relevant Benefit has not yet been granted]*;
- (ix) the Relevant Benefit was *[and/or] [will be]* received was *[and/or] [will be]* *[insert date/s for all aid granted/to be granted]*;
- (x) the Relevant Benefit is granted under the following scheme(s) or measure(s):

[insert a numbered list containing a description of each scheme or measure under which the Relevant Benefit is granted]
- (xi) the name of the company/companies that received the Relevant Benefit *[under the scheme/s or measure/s described at [insert number] of the list in (a)(x)]* as recorded in HM Revenue & Customs records in respect of that Relevant Benefit is *[insert name(s)] [and/or] [The name of the Person(s) other than a company/companies who received the Relevant Benefit [under the scheme/s or measure/s described at [insert number] of the list in (a)(x)] is [insert name(s)]*; and
- (xii) the Capacity Provider agrees for the total Relevant Benefit received with respect to the Relevant CMU to be set off against or recovered from any Capacity Payments payable to the Capacity Provider in respect of the Relevant CMU, so that no payment shall be made to the Capacity Provider until such amount has been set off or recovered in its entirety.

(b) The Capacity Provider hereby confirms that:

- (i) where Rule 8.3.8(a)(i) applies, the Capacity Provider will provide the Delivery Body with an updated Funding Declaration in respect of Relevant Expenditure incurred or due to be incurred required in accordance with that Rule;
- (ii) where Rule 8.3.8(a)(ii) or Rule 8.3.8(b) apply, the Capacity Provider will provide the Delivery Body with an updated Funding Declaration and additional updated Funding Declaration required in accordance with those Rules;
- (iii) the Capacity Provider consents, and has obtained the written consent of all other relevant persons, to the Authority and HM Revenue & Customs exchanging relevant information in relation to any Relevant Expenditure, Relevant Investment or Relevant Benefit for the sole purpose of the Authority exercising its functions under the Rules and the Regulations in connection with the Relevant Expenditure, or Relevant Benefit; and
- (iv) in all respects, this Funding Declaration and each of the specific declarations referred to in paragraph (a) are true and correct and that this Funding Declaration has been authorised by the board of directors of the Capacity Provider.

“notice of Relevant Benefit”, “updated Funding Declaration”, “additional updated Funding Declaration” and capitalised terms used herein have the meaning given in the Capacity Market Rules 2014.

DATED: [x]

Signed for and on behalf of

.....

.....

Director

Director

Print Name:

Print Name:

To be executed by the signature of two directors, unless Rule 1.3A (inserted by the Capacity Market (Amendment) Rules 2014) applies.”.

Part 3

Repayment of Capacity Payments upon Termination

7. Amendments to Chapter 6 (Capacity Agreements)

7.1 After Rule 6.10.3A(cb) insert:

“(cc) Capacity payments are repayable in respect of the period TP4, as defined in Regulation 43B(3)(d), where a Capacity Agreement, or a Transferred Part in respect of such a Capacity Agreement, is terminated on either or both of the grounds specified in Rule 6.10.1(r) and Rule 6.10.1(s).”.

8. Amendments to Chapter 16 (Modifications in respect of Agreements existing on 15 November 2018 and in respect of the T-1 Auction for the Delivery Year commencing on 1 October 2019)

8.1 After Rule 16.4C.17(f), insert:

“(fa) in Rule 6.10.3A(cc), after “Capacity Agreement”, in both places it occurs, there were inserted “or Conditional Capacity Agreement”.”.

Part 4

Miscellaneous Amendments

9. Amendments to Chapter 2 (Auction guidelines and de-rating)

9.1 In Rule 2.3.9, for the first sentence substitute:

“The objective referred to in Rule 2.3.8 is to derive a percentage which most reliably reflects either (in the case of TCWAA and AABS) the mean average availability of the relevant CMUs during Loss of Load Occurrences or (in the case of EFC) the level of Expected Energy Unserved when the Total System is at the reliability standard of 3 hours of expected loss of load per Capacity Year.”.

10. Amendments to Schedule 3B (Methodology for determining the De-rating factors for Storage Generating Technology Classes that are Duration Limited and for non-dispatchable Generating Technology Classes)

10.1 For the third paragraph, substitute:

“The Delivery Body shall calculate the EFC for each Non-dispatchable Generating Technology Class using a time-sequential stochastic simulation

model where the outputs of the model for each Non-dispatchable Generating Technology Class give the de-rating factor.”.