



Energy Act 2013

2013 CHAPTER 32

PART 2

ELECTRICITY MARKET REFORM

CHAPTER 3

CAPACITY MARKET

27 Power to make electricity capacity regulations

- (1) The Secretary of State may by regulations make provision for the purpose of providing capacity to meet the demands of consumers for the supply of electricity in Great Britain.
- (2) Regulations under this section are referred to in this Chapter as “electricity capacity regulations”.
- (3) In subsection (1) “providing capacity” means providing electricity or reducing demand for electricity; and electricity capacity regulations may make further provision about the meaning of “providing electricity” or “reducing demand for electricity”.
- (4) The provision which may be made about the meaning of “reducing demand for electricity” includes provision that reducing the consumption of electricity reduces demand for electricity.
- (5) The provision that may be made in electricity capacity regulations includes, but is not limited to, the provision described in this Chapter.
- (6) In this Chapter “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

28 Capacity agreements

- (1) Electricity capacity regulations may make provision about capacity agreements.
- (2) Subject to any further provision made under this Chapter, a capacity agreement is an instrument by virtue of which—
 - (a) the holder of the capacity agreement (“the capacity provider”) may be required to provide capacity;
 - (b) all electricity suppliers may be required to make payments (“capacity payments”) for the benefit of capacity providers;
 - (c) capacity providers may be required to make payments (“capacity incentives”) for the benefit of all electricity suppliers.
- (3) Provision included in electricity capacity regulations for the purposes of subsection (2) may make provision about the meaning of “electricity supplier”.
- (4) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision about—
 - (a) the terms of a capacity agreement;
 - (b) the circumstances in which, and the process by which, a capacity agreement may or must be issued;
 - (c) the persons who may be capacity providers;
 - (d) the circumstances in which capacity must be available;
 - (e) the duration of a capacity agreement;
 - (f) the means by which capacity payments or capacity incentives are to be calculated;
 - (g) a person or body who is to administer the settlement of capacity payments or capacity incentives (“a settlement body”);
 - (h) the enforcement of the terms of a capacity agreement;
 - (i) the resolution of disputes relating to a capacity agreement;
 - (j) the circumstances in which a capacity agreement may be terminated or varied;
 - (k) the circumstances in which a capacity agreement may be assigned or traded.
- (5) Provision falling within subsection (4) includes provision—
 - (a) conferring on the national system operator the function of issuing capacity agreements;
 - (b) relating to the outcome of a capacity auction (see section 29);
 - (c) about any conditions that must be satisfied by or in relation to a person before that person may enter a capacity auction or become a capacity provider;
 - (d) about any matters in relation to which a person must satisfy the national system operator before the person may enter a capacity auction or become a capacity provider.
- (6) Provision made by virtue of subsection (4)(f) and (g) may—
 - (a) include provision for a settlement body to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed as capacity payments or capacity incentives;
 - (b) provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with

such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

- (7) Provision made by virtue of this section may include provision requiring a person to consent to the inspection of plant or premises, either before or after that person becomes a capacity provider.

29 Capacity auctions

- (1) Electricity capacity regulations may make provision for the determination on a competitive basis of who may be a capacity provider (referred to in this Chapter as a “capacity auction”).
- (2) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision—
- (a) for the national system operator to run a capacity auction;
 - (b) about the circumstances in which a capacity auction may or must be held;
 - (c) about the amount of capacity in relation to which a determination may be made;
 - (d) about the intervals at which a capacity auction may or must be held;
 - (e) about the process by which a capacity auction may or must be run;
 - (f) about the manner in which the Secretary of State may decide whether and how to exercise any function in relation to capacity auctions;
 - (g) about appeals relating to eligibility for, or the outcome of, capacity auctions.
- (3) Provision falling within subsection (2)(a) may include provision—
- (a) requiring the national system operator to prepare and publish rules or guidance about capacity auctions;
 - (b) about any process to be followed in preparing and publishing any such rules or guidance.
- (4) Provision falling within subsection (2)(c) may confer on the Secretary of State or the Authority (but not on any other person) the function of deciding the amount of capacity in relation to which a determination may be made.
- (5) Provision falling within subsection (2)(f) may include provision about—
- (a) the frequency with which a decision will be made and reviewed;
 - (b) the persons who will be consulted before a decision is made;
 - (c) the matters to be taken into account in reaching a decision.

30 Settlement body

- (1) Electricity capacity regulations may make provision for payments to be made by electricity suppliers or capacity providers to a settlement body (see section 28(4)(g)) for the purpose of enabling the body—
- (a) to meet such descriptions of its costs as the Secretary of State considers appropriate;
 - (b) to hold sums in reserve;
 - (c) to cover losses in the case of insolvency or default of an electricity supplier or capacity provider.

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- (2) In subsection (1)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Chapter.
- (3) Electricity capacity regulations may make provision to require electricity suppliers or capacity providers to provide financial collateral to a settlement body (whether in cash, securities or any other form).
- (4) Provision made by virtue of this section may include provision for—
 - (a) a settlement body to determine the form and terms of any financial collateral;
 - (b) a settlement body to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or capacity provider or are to be provided as financial collateral by an electricity supplier or capacity provider;
 - (c) the issuing of notices by a settlement body to require the payment or provision of such amounts.
- (5) Provision made by virtue of subsection (4)(b) may provide for anything which is to be calculated or determined under the regulations to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

31 Functions of the Authority or the national system operator

Electricity capacity regulations may make provision to confer functions on the Authority or the national system operator.

32 Other requirements

- (1) Electricity capacity regulations may impose requirements otherwise than under a capacity agreement.
- (2) The persons on whom requirements may be imposed by virtue of subsection (1) include—
 - (a) any person who is a holder of a licence under section 6(1) of EA 1989;
 - (b) any other person carrying out functions in relation to capacity agreements;
 - (c) any other person who is, or has ceased to be, a capacity provider.
- (3) Requirements which may be imposed by virtue of subsection (1) include requirements—
 - (a) relating to the manner in which functions are to be exercised;
 - (b) relating to restrictions on the use of generating plant;
 - (c) relating to participation in a capacity auction;
 - (d) relating to the inspection of plant or property.

33 Electricity capacity regulations: information and advice

- (1) Electricity capacity regulations may make provision about the provision and publication of information.
- (2) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision—

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- (a) for the Secretary of State to require the Authority, the national system operator or any other person specified in the regulations to provide information or advice to the Secretary of State or any other person so specified;
 - (b) for the Authority or the national system operator to require information to be provided to it by any person specified in the regulations for any purpose so specified;
 - (c) for the Secretary of State to require capacity providers and electricity suppliers to share information about the operation of capacity agreements with each other or with any other person so specified;
 - (d) for the publication by any person so specified of any information or advice so specified;
 - (e) for the classification and protection of confidential or sensitive information.
- (3) The prohibition on disclosure of information by section 105(1) of the Utilities Act 2000 does not apply to a disclosure required by virtue of this section.

34 Power to make capacity market rules

- (1) The Secretary of State may make capacity market rules which, subject to subsection (2), may contain any provision that may be made by electricity capacity regulations.
- (2) Capacity market rules may not make—
- (a) provision falling within—
 - (i) section 27(3);
 - (ii) section 28(3);
 - (iii) paragraphs (f) or (g) of section 28(4);
 - (iv) section 28(5)(a);
 - (v) paragraphs (b), (c), (d) or (f) of section 29(2);
 - (vi) section 30;
 - (vii) section 35;
 - (b) provision for the Secretary of State to require a person to provide information or advice to the Secretary of State.
- (3) Electricity capacity regulations may make provision to confer on the Authority, to such extent and subject to such conditions as may be specified in the regulations, the power to make capacity market rules.
- (4) The conditions may in particular include conditions about consultation; and provision made by virtue of subsection (3) must provide that, before any exercise of the power to make capacity market rules, the Authority must consult—
- (a) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989;
 - (b) any person who is a capacity provider.
- (5) Provision made by virtue of subsection (3) must secure that capacity market rules made by the Authority may not confer functions on the Authority except with the consent of the Secretary of State.
- (6) Provision made by virtue of subsection (3) may include provision—

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- (a) for the reference to the Secretary of State in section 33(2)(c) to have effect, for the purposes of capacity market rules and to such extent as may be specified in the regulations, as a reference to the Authority;
- (b) for section 33(3) to apply in relation to a disclosure required by virtue of the capacity market rules.

35 Provision about electricity demand reduction

- (1) This section applies where provision made by electricity capacity regulations relates to the provision of capacity by reducing demand for electricity.
- (2) Where this section applies, the Secretary of State may, instead of conferring functions on the national system operator, confer functions on such other person or body as the Secretary of State considers appropriate.
- (3) For the purposes of provision made by virtue of subsection (2), the references to the national system operator in—
 - (a) section 28(5)(a) and (d);
 - (b) section 29(2)(a) and (3)(a);
 - (c) section 31;
 - (d) section 33(2)(a) and (b);
 - (e) section 37,
 are to be read as if they included a reference to a person or body on whom a function is conferred by virtue of this section.

36 Enforcement and dispute resolution

- (1) Electricity capacity regulations may make provision about the enforcement of any obligation or requirement imposed by the regulations or by capacity market rules.
- (2) Capacity market rules may make provision about the enforcement of any obligation or requirement imposed by the rules.
- (3) Provision in electricity capacity regulations or in capacity market rules about enforcement or the resolution of disputes may include provision conferring functions on any public body or any other person.
- (4) Provision made by virtue of this section may include provision—
 - (a) about powers to impose financial penalties;
 - (b) for requirements under the electricity capacity regulations or under capacity market rules to be enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
 - (c) about reference to arbitration;
 - (d) about appeals.

37 Licence modifications for the purpose of the capacity market

- (1) The Secretary of State may, for any purpose related to provision that is made by this Chapter, or any purpose for which provision may be made under this Chapter, modify—
 - (a) a condition of a particular licence under section 6(1)(a) to (e) of EA 1989 (generation, transmission, distribution, supply and interconnector licences);

- (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
 - (c) a document maintained in accordance with the conditions of licences under those provisions, or an agreement that gives effect to a document so maintained.
- (2) A modification under this section may in particular include a modification—
- (a) to provide for a new document to be prepared and maintained in accordance with the conditions of a licence;
 - (b) to provide for an agreement to give effect to a document so maintained;
 - (c) to confer functions on the national system operator.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the modification power may in particular include provision of any kind that may be included in electricity capacity regulations.
- (4) Before making a modification under this section, the Secretary of State must consult—
- (a) the holder of any licence being modified,
 - (b) the Authority, and
 - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

38 Amendment of enactments

The Secretary of State may by regulations, for the purpose of or in connection with any provision made by or by virtue of this Chapter—

- (a) amend or repeal section 47ZA of EA 1989 (annual report by Authority on security of electricity supply);
- (b) amend section 172 of the Energy Act 2004 (annual report on security of energy supplies);
- (c) amend section 25 of and Schedule 6A to EA 1989 (enforcement of obligations of regulated persons);
- (d) make such provision amending, repealing or revoking any other enactment as the Secretary of State considers appropriate in consequence of provision made by or by virtue of this Chapter.

39 Principal objective and general duties

Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Authority conferred by or by virtue of this Chapter as they apply in relation to functions under Part 1 of that Act.

40 Regulations under Chapter 3

- (1) Regulations under this Chapter may—
- (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different cases or circumstances or for different purposes;

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- (d) make provision subject to exceptions.
- (2) Before making any regulations under this Chapter, the Secretary of State must consult—
 - (a) the Authority,
 - (b) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989,
 - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (4) Regulations under this Chapter must be made by statutory instrument.
- (5) Subject to subsection (6), an instrument containing (whether alone or with other provision) regulations under this Chapter may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) An instrument containing only regulations within subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The regulations within this subsection are—
 - (a) electricity capacity regulations which—
 - (i) only make provision within section 33, and
 - (ii) are not the first set of electricity capacity regulations to make such provision;
 - (b) regulations under section 38 which do not make provision amending or repealing a provision of an enactment contained in primary legislation.
- (8) If, but for this subsection, an instrument containing electricity capacity regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

41 Capacity market rules: procedure

- (1) Before the first exercise by the Secretary of State of the power to make capacity market rules, the Secretary of State must lay a draft of the rules before Parliament.
- (2) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed rules.
- (3) If no such resolution is made within that period, the Secretary of State may make the rules in the form of the draft.
- (4) Subsection (3) does not prevent a new draft of proposed capacity market rules being laid before Parliament.
- (5) In this section “40-day period”, in relation to a draft of proposed capacity market rules, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).

- (6) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (7) Before any exercise by the Secretary of State of a power to make capacity market rules, the Secretary of State must consult—
 - (a) the Authority;
 - (b) any person who is a holder of a licence to supply electricity under section 6(1) of EA 1989;
 - (c) any person who is a capacity provider;
 - (d) such other persons as the Secretary of State considers it appropriate to consult.
- (8) Subsection (7) may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (9) In relation to any exercise by the Secretary of State or the Authority of a power to make capacity market rules, the person making the rules must, as soon as reasonably practicable after they are made, lay them before Parliament and publish them.

42 Capacity market rules: further provision

- (1) Capacity market rules may—
 - (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different cases or circumstances or for different purposes;
 - (d) make provision subject to exceptions.
- (2) A power to make capacity market rules includes a power to amend, add to or remove capacity market rules (and a person exercising such a power may amend, add to or remove provision in capacity market rules made by another person).
- (3) But subsection (2) is subject to provision made by electricity capacity regulations.

43 Pilot scheme for electricity demand reduction

- (1) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State in connection with arrangements made—
 - (a) for the purpose of reducing demand for electricity, and
 - (b) wholly or partly for the purpose of determining provision to be included in electricity capacity regulations;and such arrangements are referred to in this section as “a pilot scheme”.
- (2) The Secretary of State must review the operation and effectiveness of any pilot scheme.
- (3) The Secretary of State must set out the results and conclusions of the review in a report to Parliament—
 - (a) by laying a copy of the report before each House of Parliament, or
 - (b) if the Secretary of State determines that the report should be made orally, by making a statement to the House of Parliament of which that Secretary of State is a member.

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- (4) A report under subsection (3) must be made as soon as reasonably practicable after the conclusion of the pilot scheme to which the report relates.