

# Guidance

## The Change Process for the Capacity Market Rules – Draft guidance update for consultation

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**Contact:** Robin Dunne

**Team:** GB Wholesale Markets

**Email:** [EMR\\_CMRules@ofgem.gov.uk](mailto:EMR_CMRules@ofgem.gov.uk)

### Information relevant to consultation on this draft guidance

Today we have published a [call for input](#) seeking stakeholder views on our intention to establish a Capacity Market Advisory Group (“CMAG”) and its proposed key design features. The new proposed process allows stakeholders to submit change proposals to CMAG or directly to Ofgem. We believe that change proposals will benefit from CMAG analysis and hence we may refer change proposals submitted to us to CMAG. We expect to work closely with CMAG to optimise the timings for consultations on Capacity Market Rules change proposals, and therefore are moving away from an annual consultation, as described in the 2016 guidance document, to a more continuous process. We welcome views on these proposals.

Key provisions for the establishment and operation of CMAG are set out in this draft update to the 2016 Change Process for the Capacity Market Rules Guidance document<sup>1</sup> (“2016 Guidance document”). We are seeking stakeholder feedback on proposed changes to this document as part of the call for input.

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<sup>1</sup> <https://www.ofgem.gov.uk/publications/final-guidance-capacity-market-cm-rules>

To support stakeholder’s consideration of the proposed updates to the 2016 Guidance document, we have taken steps to clearly highlight the changes. Where an addition to the 2016 Guidance document is being proposed, text is **bold and underlined**. Where the removal of text from the 2016 Guidance document is being proposed, text is highlighted with ~~strikethrough~~. Proposed changes relate to the formation of CMAG, to the proposed new change process for the Capacity Market Rules, and minor drafting amendments to improve the quality of previous drafting. Until a final update to the 2016 Guidance document is published, stakeholders should continue to refer to the 2016 version.

## Overview:

This guidance is for industry and interested parties on the change process for the Capacity Market Rules **(the “CM Rules”) and the key design principles for the Capacity Market Advisory Group (“CMAG”) as part of this process.**

The Capacity Market **(“CM”)** is designed to provide investment in the overall level of reliable capacity (both supply and demand side response) needed to help ensure secure electricity supplies. It was introduced as part of the government’s Electricity Market Reform (“EMR”) programme. The Capacity Market Rules govern how the Capacity Market is implemented, as set out in The Electricity Capacity Regulations 2014 (the “Regulations”).

Ofgem is responsible for amending, adding to, revoking or substituting any provision of the Capacity Market Rules in line with the Regulations.

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## Context

The ~~Electricity Market Reform (EMR) programme~~ is a government policy that seeks to incentivise investment in secure, low-carbon electricity, improve the security of Great Britain's electricity supply, and improve affordability for consumers.

The Energy Act 2013 introduced several initiatives to achieve this. The Capacity Market has been introduced to help ensure security of electricity supply at the least cost to the consumer. It will be administered by National Grid Electricity **System Operator ("NGESO")** ~~Transmission plc (NGET)~~, alongside a number of **Delivery Partners** ~~delivery partners~~.

We have several important roles in EMR, including:

- being responsible for the Capacity Market Rules (the "**CM** Rules") from the day after the results of the first auction are published
- having oversight of and enforcement powers over how **NGESO** ~~NGET~~, suppliers and generators are complying with The Electricity Capacity Regulations 2014 (the Regulations) and the **CM** Rules
- determining certain disputes where participants disagree with a decision made by **NGESO** ~~NGET~~
- monitoring the Capacity Market and the Contracts for Difference policies
- enforcing competition law and compliance with **CM** Rules and the Regulations.
- reporting on the effectiveness of the Capacity Market generally and on **NGESO's** ~~NGET's~~ performance.

The Regulations came into force on 1 August 2014 and contain provisions allowing amendments to the **CM** Rules. The **CM** Rules provide the detail for implementing much of the operating framework set out in the Regulations.

## Associated documents

The Electricity Capacity Regulations 2014

[http://www.legislation.gov.uk/uksi/2014/2043/pdfs/uksi\\_20142043\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/2043/pdfs/uksi_20142043_en.pdf)

The Capacity Market Rules

<https://www.ofgem.gov.uk/electricity/wholesale-market/market-efficiency-review-and-reform/electricity-market-reform/capacity-market-cm-rules>

The **15 September 2016** ~~1 August 2014~~ version of The Change Process for the Capacity Market Rules

**<https://www.ofgem.gov.uk/publications/final-guidance-capacity-market-cm-rules>**

[https://www.ofgem.gov.uk/sites/default/files/docs/2014/08/final\\_guidelines\\_for\\_the\\_capacity\\_market\\_rules\\_august.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2014/08/final_guidelines_for_the_capacity_market_rules_august.pdf)

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## Executive summary

The Capacity Market is governed by secondary legislation through a combination of The Electricity Capacity Regulations 2014 (the Regulations) and the Capacity Market Rules (the **CM** Rules). The **CM** Rules provide the detail for implementing much of the Capacity Market operating framework set out in the Regulations. This includes many of the technical rules and procedures relating to how the Capacity Market will operate. A list of what the **CM** Rules cover can be found in the introduction and overview.

We became responsible for the **CM** Rules from the day after the results of the first auction were published in January 2015. This guidance shows the process we will follow to amend, add to, revoke or substitute any part of the **CM** Rules. It includes the change process and the legal framework that underpins it.

**This document also contains guidance related to CMAG and describes how the processes followed by Ofgem and CMAG interlink and complement one another. CMAG has been created to improve the effective functioning of the CM by enabling the change process to become more dynamic and adaptive to changing market conditions, whilst also increasing transparency and promoting collaboration between experts and stakeholders.**

**Industry and other interested parties should use this guidance document to familiarise themselves with how a CM Rules change proposal can be submitted via CMAG or Ofgem, CMAG's key design principles and objectives, and the role of CMAG and associated parties in the CM Rules change process. The CMAG Secretariat and CMAG members should also use this guidance to ensure the efficient operation of CMAG.** This includes an explanation of how industry and other interested parties can submit a change request, an explanation of the Rules change process, the timeframes involved, and the implications of any changes on existing participants. The guidance also includes Ofgem's principal objective and general duties, and the three objectives we will have regard to when making decisions to change the **CM** Rules (see paragraphs **1.11 and 1.12**).

**CM Rules change proposals can be submitted by industry and other interested parties at any time via CMAG or Ofgem. We will work with CMAG to determine the optimal frequency and timing for consultations.** We will consult on any changes to the Rules on an annual basis. Before doing so, we will seek proposals for potential changes. We may also incorporate our own proposals for changes within the consultation. If there is an

~~urgent change to the Rules required outside the annual process, we would address this through a separate consultation.~~

This guidance will be reviewed and updated as required.



## 1. Introduction

### **Section summary**

This chapter explains the legal framework that underpins the change process for the Capacity Market Rules (the **CM** Rules). This includes a summary of the grandfathered provisions. It also states the objectives we shall have regard to when making decisions to change the **CM** Rules and an overview of the **CM** Rules change process.

### **Legislative framework for the CM Rules change process**

1.1. Under the Electricity Market Reform (EMR) programme, we became responsible for the **CM** Rules from the day after the results of the first auction were published in January 2015. The Capacity Market is governed by a combination of The Electricity Capacity Regulations 2014 (the Regulations) (**as amended**) and the **CM** Rules. The Regulations provide the overarching policy and design, including the powers that the Secretary of State will retain. The **CM** Rules underpin the Capacity Market and provide the detail for implementing much of the operating framework in the Regulations. The **CM** Rules include details on:

- auction guidelines and de-rating information
- prequalification information
- determination of eligibility
- capacity auctions
- capacity agreements
- capacity market register
- obligations of capacity providers and system stress events
- transfer of capacity obligations

- volume reallocation
- transitional arrangements
- monitoring
- testing regime
- metering recovery faults and repayment of capacity payments
- data provisions

1.2. In accordance with the Regulations, we must consider all proposals from:

- the Secretary of State
- the Delivery Body
- any person who is a holder of a licence to supply electricity
- any person who is a capacity provider
- an applicant, or a person wishing to apply to bid in a capacity auction; or
- a representative body representing persons (c) or (d) above or any other class of persons which we consider to have a sufficient interest in the capacity market.

1.3. Before making any changes to the **CM** Rules, we must consult with:

- the Secretary of State
- the Delivery Body
- any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 89
- any person who is a capacity provider

- such other persons as we consider it appropriate to consult.

1.4. This applies whether we have identified the potential change through our own analysis or through a proposal from an external party.

1.5. We will ~~publically~~ **publicly** consult on our website<sup>2</sup> on proposed changes to the **CM** Rules to ensure industry and interested parties have an opportunity to comment.

1.6. If we do not think there is a good reason to take forward a proposal received from the parties set out in 1.2 above, we must publish our reasons for this decision.

1.7. The **CM** Rules will apply to all capacity providers with capacity agreements. Certain terms in the capacity agreements have been grandfathered<sup>3</sup> by the Secretary of State through the Regulations. The terms covered by this in ~~r~~Regulation 31(2)(a)-(i) are:

- the description of the CMU in respect of which the capacity agreement is issued
- the duration of the capacity agreement, and the delivery year or years for which it is issued
- the capacity obligation for which the capacity agreement is issued
- the capacity cleared price
- in the case of a capacity agreement issued following a T-4 auction, the base period applicable for the purpose of calculating capacity payments
- the annual penalty cap and monthly penalty cap applicable in accordance with the electricity capacity regulations in force at the date of issue of the capacity agreement, expressed respectively as percentages of the annual capacity payment and the monthly capacity payments payable under the capacity agreement

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<sup>2</sup> [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

<sup>3</sup> A provision in which certain terms set out in The Electricity Capacity Regulations 2014 continue to apply in respect of existing agreements, while the equivalent new **CM** Rule will apply to all future participants. Further information on the grandfathered terms can be found in Regulation 31 (2) a-i of The Electricity Capacity Regulations 2014.

- whether the capacity provider is subject to a financial commitment milestone and, if so, the date by which that milestone must be met
- whether the capacity provider is subject to a minimum completion requirement and, if so, the long stop date in respect of that requirement
- the rates at which termination fees are payable, which must be determined by the Delivery Body in accordance with regulation 32.

1.8. These terms in existing capacity agreements will be unaffected by subsequent related changes to the **CM** Rules.

1.9. ~~We intend to publish revised Rules ahead of the prequalification period. This is to **will** avoid **making** changes to **CM** Rules between a prequalification and an auction where possible. We recognise that the Transitional Arrangements, T-1 and T-4 prequalifications may not be run concurrently. We will keep our process under review to manage this but we expect to aim to publish revised Rules ahead of the earlier where possible.~~

## The objectives

1.10. We must act consistently with our principal objective and general duties when exercising our power to change the **CM** Rules.

1.11. Our principal objective is “to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. The interests of such consumers are their interests taken as a whole, including their interests in the reduction of greenhouse gases in the security of the supply of gas and electricity to them and in the fulfilment by the Authority, when carrying out its functions as the designated regulatory authority for Great Britain, of the objectives set out in

Article 40(a)–(h) of the Gas Directive<sup>4</sup> and Article 36(a)–(h) of the Electricity Directive<sup>5</sup>.<sup>6</sup>

1.12. In addition, when we make any changes to the **CM** Rules, we must have regard to the following objectives (the “CM Rules Change Objectives”) which are set out in the Regulations:

- promoting investment in capacity to ensure security of electricity supply
- facilitating the efficient operation and administration of the Capacity Market
- ensuring the compatibility of the Capacity Market Rules with other subordinate legislation under Part 2 of the Energy Act 2013.<sup>7</sup>

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<sup>4</sup> Directive 2009/73/EC

<sup>5</sup> Directive 2009/72/EC

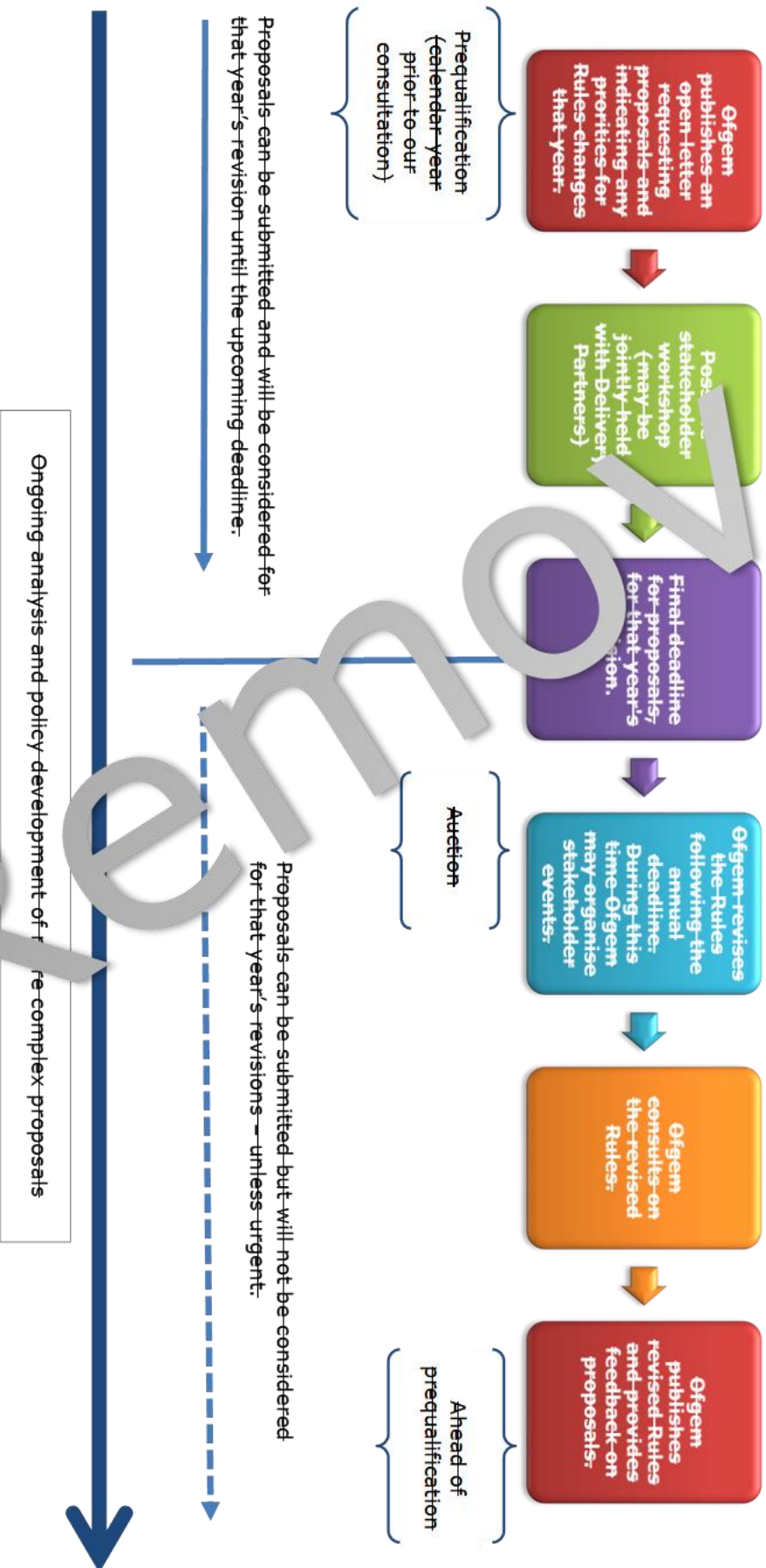
<sup>6</sup> For full details on our principal objective and general duties please see:

<https://www.ofgem.gov.uk/publications-and-updates/powers-and-duties-gema>

<sup>7</sup> This is set out in regulation 78 of The Electricity Capacity Regulations 2014

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Overview of the qualification and change process for the Capacity Market Rules



1.13. Ofgem has to consider all proposals to change the **CM** Rules that are submitted. The key aspects of the standard process are **described in chapter 3**.

- You can submit proposals at any time via our website. We will publish the deadline on our website for when proposals must be received in order to be considered for that year's revisions to the Rules. Once the deadline has passed any proposals submitted will not be considered for that year's revision — unless the proposal is urgent. In these cases, we will try to include it in that round of revisions (more details on what constitutes an urgent request can be found in paragraph 1.14).
- The deadline will be set annually based on the expected date of the next prequalification.
- Proposals should include as much detail as possible and be set out in the form on our website (an indicative example can be found in Appendix 2).
- We expect to host stakeholder workshops before the annual deadline. The workshops provide early engagement with industry and other interested parties, and the opportunity to discuss the main issues emerging and any conflicting concerns.
- Between prequalification and the auction, we expect to publish an open letter stating our expected priorities for that year's revisions. We will invite comments on this.
- After the annual deadline, we will revise the Rules for the upcoming prequalification. This does not preclude industry from developing a proposal for the following year during this time.
- We will consult on the draft changes — including giving stakeholders an opportunity to comment on our intention not to take particular proposals forward. We will then make a decision on the draft revised Rules (assuming potential changes have been identified).
- The revised Rules will be published before the prequalification period for the next auction.
- We will publish all proposals, including those not taken forward, and provide feedback on our decisions.

- ~~If we need more time to consider a particular proposal, for instance to complete an impact assessment, we will keep the proposal under review and roll it on to the following year.~~

## **Urgent Proposals**

1.14. **Certain proposals can be classified as urgent.** ~~In exceptional circumstances, we may consider it necessary to propose an amendment to the Rules outside of this process, for example where we consider a change is urgent. We will judge whether proposals are urgent on a case-by-case basis. An urgent proposal must be in accordance with our principal objectives and general duties and have regard to the CM Rule Change objectives. It should be linked to an imminent or current issue, and one which if not urgently addressed may:~~

- affect the efficient operation of the capacity market, and/or
- have a significant commercial impact on capacity market participants, possible capacity market participants, consumers or other stakeholders.

### **1.15. Urgent proposals can be raised with CMAG or directly with Ofgem.**

1.16. Any proposed change, including an urgent change, is subject to a statutory consultation.

1.17. The Secretary of State retains the power to change the **CM** Rules after we take responsibility for them, subject to consultation.



## 2. Capacity Market Advisory Group

### Section summary

**This chapter defines the key operating principles for CMAG, including the objectives it should follow when processing CM Rules change proposals. It also provides details on CMAG membership and defines the role of the Secretariat and Delivery Partners<sup>8</sup> in CMAG.**

### Introduction

**2.1. This guidance document provides the framework for the operation of CMAG as an important part of the CM Rule change process, and its integration with the process followed by Ofgem for making CM Rules changes. It should be used by the CMAG Secretariat and CMAG members to ensure the efficient operation of CMAG. It should also be used by CM stakeholders who wish to understand and be involved in the overall process, and to inform themselves on how to submit CM Rule change proposals for consideration.**

### CMAG objectives

**2.2. We have identified three core objectives and associated details to ensure that CMAG operates under a robust set of guidelines that add value to the overall CM Rules change process. These objectives should be used by CMAG members and the Secretariat when designing the CMAG process and when developing, scrutinising and prioritising CM Rule change proposals, and submitting recommendations to Ofgem. The following table provides more detail about the CMAG objectives.**

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**<sup>8</sup> The Capacity Market Delivery Partners consist of the Department for Business, Energy & Industrial Strategy ("BEIS"), National Grid Electricity System Operator (NGESO) who act as the Electricity Market Reform Deliver Body ("NGESO DB" or "Delivery Body"), the Capacity Market Settlement Body and Ofgem.**

<u>Objective</u>	<u>Details</u>
<p><b>1. <u>Ensure CM Rule changes submitted to Ofgem via CMAG further Ofgem’s principal objective as detailed in paragraph 1.11 of this guidance and the CM Rules Change objectives, as detailed in paragraph 1.12.</u></b></p>	<p><b>a. <u>Demonstrate due regard and consideration of the CM Rules Change objectives when assessing and prioritising proposals and ensuring that recommendations to Ofgem further Ofgem’s principal objective and the CM Rules Change objectives.</u></b></p>
<p><b>2. <u>Present recommendations in a clear, robust and well-evidenced manner.</u></b></p>	<p><b>a. <u>Utilise industry and stakeholder-led discussion to assist in the development, scrutiny, and scoping of change proposals before they are submitted to Ofgem. These discussions should consider the complexity, efficacy and urgency of the proposals by, for example, effectively incorporating an initial impact assessment and advice provided by relevant Delivery Partners.</u></b></p> <p><b>b. <u>Consider developments within the wider industry codes governance framework. Identify and recommend relevant changes to the CM Rules to promote regulatory alignment.</u></b></p>
<p><b>3. <u>CMAG operates and is administered in an efficient, impartial, and transparent manner.</u></b></p>	<p><b>a. <u>Develop a CMAG change proposal process that is accessible and understood by industry and interested parties. Consideration should be given to promoting consistency with the template used to submit CM Rules change proposals directly to Ofgem, as described in Chapter 3 of this guidance.</u></b></p> <p><b>b. <u>Develop a framework for assessing and prioritising proposals, based on a fair assessment of the impact as evaluated against the CM Objectives (paragraphs 1.11 and 1.12),</u></b></p>

	<p><b><u>while incorporating the views of all members and the benefits to consumers.</u></b></p> <p><b>c. <u>Maintain a forward programme of change proposals, with input from stakeholders, including Ofgem.</u></b></p> <p><b>d. <u>Ensure decisions and recommendations consider and balance a wide range of relevant stakeholder views.</u></b></p>
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**2.3. CMAG has the potential to better the effective functioning of the CM, enable the CM Rules change process to become more adaptive and dynamic and improve transparency. Ofgem will consider the performance of CMAG against its objectives on an annual basis and consider the case for the ongoing functioning of the group for the following year. This will align with the annual membership process (paragraph 2.9) and will take into account views from the other Delivery Partners and the operation and outputs of the group.**

## **Membership**

**2.4. CMAG membership will be comprised of select Capacity Market participants and other stakeholders, such as consumer groups, that meet regularly to develop, analyse, prioritise and recommend rule changes to Ofgem for approval. CMAG membership should bring together a wide range of relevant practical expertise and knowledge. Members will apply their expertise in an impartial manner to further Ofgem’s principal objective and the CM Rule Change objectives (see paras 1.11-12) and, ultimately, consumer interests.**

**2.5. All interested parties must demonstrate suitability to join CMAG ahead of appointment. The CMAG Secretariat will be responsible for running the annual appointment of CMAG members. Ofgem will appoint the inaugural CMAG members and ratify members proposed by the Secretariat on an annual basis.**

**2.6. Ofgem will be part of CMAG. We will attend meetings and provide guidance in discussions when appropriate, including on the creation and updating of the CMAG process as needed.**

**2.7. The Delivery Partners will provide nominated representatives that will not be subject to this selection process.**

**2.8. Proposers who are not CMAG members will be able to raise proposals and typically be able to attend meeting. Proposers are listed in paragraph 1.2.**

## **Role of the Secretariat**

**2.9. It is our view that an independent CMAG Secretariat, provided by a body who has the appropriate skills and experience to perform this function in an efficient and effective manner, will bring benefits to the group.**

**2.10. To ensure the efficient operation of CMAG and the fulfilment of its objectives, we expect the Secretariat to administer the following arrangements:**

- **Support the administrative running of the group, including meeting organisation, minuting and independent Chairing of meetings.**
- **Design and operate the annual CMAG members appointment process, ensuring the suitability and merit of appointed members.**
- **Maintain a priority list of CM Rules change proposals.**
- **Support proposers in the early development of change proposals, for example providing expert administrative or technical advice, if required,**
- **Prepare submissions on change proposals that have been assessed by CMAG and submit to Ofgem for consideration, ensuring the submissions and underlying case for change aligns with the CMAG objectives.**

## **Role of Delivery Partners**

**2.11. The Delivery Partners will have full membership status. In addition, they will aim to provide the wider CMAG membership with information and advice that enables the group to make reasoned and robust decisions and recommendations, e.g., on the prioritisation of CM Rules change proposals.**

**2.12. We recognise that it will not necessarily be practical or desirable for the Delivery Partners to provide CMAG with fully costed impact assessments for changes under consideration. However, to provide effective recommendations on prioritisation and scheduling, CMAG will require relevant Delivery Partners to provide an initial impact assessment to help form a view on the complexity of the change under consideration and implementation costs and timelines.**

### 3. Developing the amended CM Rules

#### **Section summary**

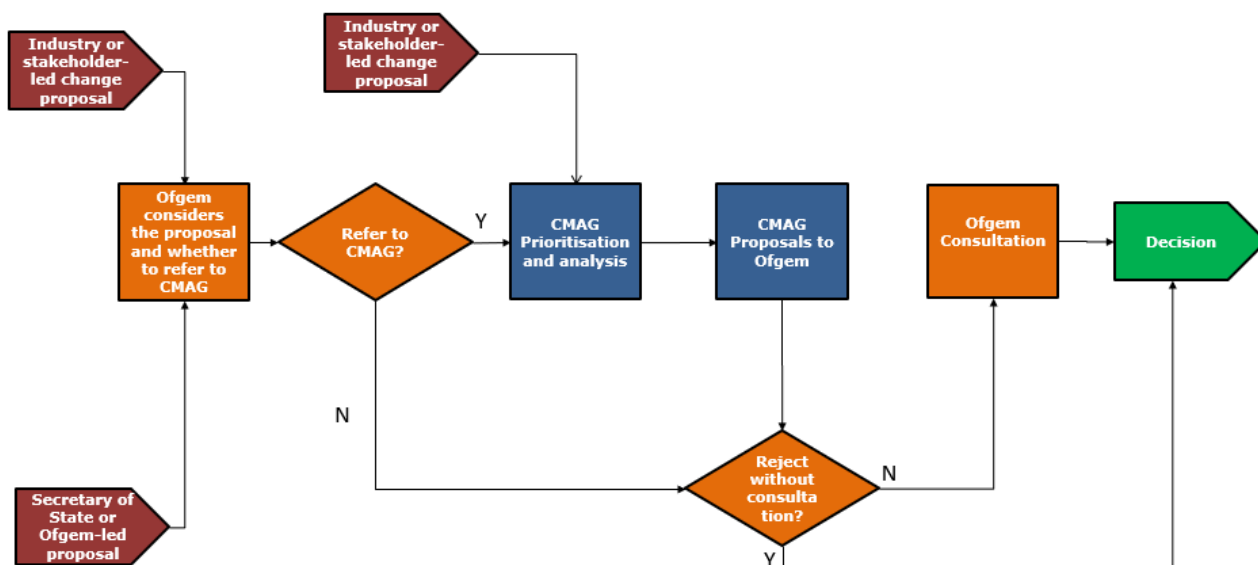
The chapter explains how the process to change the **CM** Rules will work, how proposals for changes will be brought forward, the consultation process, and how we will publish our decisions.

#### **Introduction**

**3.1. This section describes how the CM Rules change process works and how the processes followed by CMAG and by Ofgem interlink and complement one other. It also describes the process for submitting change proposals directly to Ofgem. For details on how to submit change proposals to CMAG, please refer to the CMAG process.**

**3.2. The CM Rule change process incorporates the work of CMAG into Ofgem’s statutory obligation to consider CM Rule changes raised by proposers (as defined in paragraph 1.2 of this document). Stakeholders can submit CM Rules change proposals to CMAG, who will then make reasoned recommendations to the Authority. Proposers remain able to submit change proposals directly to Ofgem. We anticipate that most change proposals will benefit from initial submission to CMAG as the proposals will be exposed to wider industry expertise and scrutiny earlier in the development process. We acknowledge that some stakeholders may prefer to submit change proposals to Ofgem, and some change proposals may not be suitable for discussion at an industry forum for reasons such as price sensitivity and concerns about Competition Law. However, as part of discharging our obligation to consider proposals, we may deem it appropriate for CMAG to consider first any change proposals submitted to us directly.**

**3.3. Figure 1 shows a high-level diagram of the integrated CM Rules change process. It shows the two possible change proposal submission routes (either to CMAG or to Ofgem), and the route that Ofgem follows when considering change proposals recommended by CMAG and those submitted directly to Ofgem.**



**Figure 1: CM Rules Change Process**

**3.4. Ofgem can receive change proposals at any time either directly from industry participants and stakeholders or via CMAG, in accordance with the CMAG process.**

**3.5. The Secretary of State retains the power to change the CM Rules after we take responsibility for them, subject to consultation.**

**3.6. Any proposed change, including an urgent change, is subject to a statutory consultation. If Ofgem decides to reject a proposal without consultation, it must publish the reasons for this decision. We will work with CMAG to determine the best timing and frequency of consultations.**

## **How to bring forward a change request proposal**

We will undertake an annual process to consider proposals for amendments to the Rules.

### **Format of a proposal for a change to the Rules**

#### **Industry or stakeholder-identified changes**

**3.7. While submitting change proposals directly to CMAG is expected to lead to greater efficiencies in the CM Rules change process, change proposals can also be submitted directly to Ofgem, as mentioned previously.**

**3.8. As part of our obligation to consider the proposal under regulation 79(3) of the Regulations, we may decide to refer the proposal to CMAG for inclusion in the overarching CMAG prioritisation programme (as a precursor to making a decision on whether to implement the change). We may also decide to consult directly or reject the proposal, publishing our reasons for this decision.**

**3.9. To submit a change proposal via the CMAG process, please follow the CMAG process, as maintained and made public by the CMAG Secretary.**

3.10. Any proposals for changes to the **CM** Rules **made directly to Ofgem**, should be made via the change request **proposal** form available on our website (**see example in** ~~There's an example in~~ Appendix 2). The form is standardised which means we get the information we need to make an informed decision. The areas we ask for information on are

- A brief summary of the proposal. We will publish this summary on our website.
- The aim of the proposed change and, if applicable, what part of the current **CM** Rules the proposal relates to. (Say what you want to see amended, added, substituted or revoked. If applicable please state the exact provision number it relates to.)
- If applicable, whether you are aware of an alternative proposal already submitted which this proposal relates to.
- A description of the issue that the change proposal seeks to address. This should provide a justification for the proposal with reference to the **CM** Rule Change Objectives (see paragraphs 1.10 to 1.12).
- The proposed revised drafting ~~in so far as possible~~. This should specifically highlight the changes to the current wording if applicable.
- Your analysis and evidence on the impact on industry and/or consumers, of making the change, including any risks and any potential implications for industry codes. Think about how you consider the changes to the **CM** Rules fit within the wider context of the Capacity Market, and identify potential impacts on other parties. This is particularly



relevant for the codes<sup>9</sup> - it is useful to identify at an early stage any impact on the codes and say how you will take it forward where applicable.

3.11. **For CM Rules Change proposals submitted to Ofgem**, legal drafting is not a requirement of the change **proposal** form, but we request that proposals include as much detail as possible. This is particularly important. Clear proposals backed with a sound justification, thorough analysis and legal drafting will ensure we - and industry - can assess the potential impacts of the proposal effectively and reach a decision on it as soon as possible. ~~As an approach to provide an efficient and strong proposal, you may wish to consider a joint proposal on key issues.~~

3.12. To provide clarity on the process and to reduce the risk of duplication, all proposals will be published on our website. Please note therefore that proposals will become public.

### **Withdrawing a proposal**

3.13. If you wish to withdraw a proposal once it has been submitted, please email [EMR\\_CMRules@ofgem.gov.uk](mailto:EMR_CMRules@ofgem.gov.uk) with your reasons.

3.14. Even if you seek to have the proposal withdrawn, if we think it is useful we would consider continuing it ourselves.

### **~~Bringing a proposal forward for consideration~~**

~~3.15. The cut-off date will be set annually based on the expected date of the prequalification period for the next auction.~~

~~3.16. There is an annual process for proposing changes to the Rules. This means we can evaluate them all together, rather than taking a piecemeal approach. If a proposal is submitted to us after the cut-off date for the given year, we will consider whether it needs urgent action (see paragraph 1.14). Otherwise we will consider it as part of next year's process. Similarly if we need more time to consider a proposal than available for that year's~~

~~revisions, such as if we need to complete an impact assessment, we will keep the proposal under review and roll it on to the following year (see paragraph 1.13).~~

~~3.17. We will publish an open letter between prequalification and the auction with our initial thoughts on the direction the Rule changes are taking. We intend to hold at least one stakeholder event to discuss emerging priorities and capture any key issues.~~

~~3.18. We may invite industry and other interested stakeholders to a workshop to discuss certain proposals should we see merit in doing so.~~

## **Ofgem - identified changes**

3.19. In addition to changes proposed by external parties, we may also identify proposed changes to the **CM** Rules. For example, if the Secretary of State changes the Regulations in a way that directly affects the **CM** Rules, we may consider a change is beneficial. ~~We would expect to consult on any change we identify as part of the annual consultation process outlined above.~~

3.20. We are separately required to produce an annual report on the operation of the Capacity Market for the Secretary of State. We will consider our findings from that report process to inform our decisions on changes to the Rules.

3.21. If we identify an urgent issue to be addressed, we may take a change forward **ourselves (see figure 1)** ~~outside of the usual process (see paragraph 1.14).~~ Any change would be subject to a statutory consultation.

**3.22. We may also ask CMAG to consider certain high priority issues.**

## **Consultation on the draft amended CM Rules**

3.23. The draft revised **CM** Rules will be subject to consultation. ~~We intend that the final revised Rules would be published before National Grid Electricity Transmission plc (NGET) launches the prequalification for the next auction.~~ We will aim to publish the revised **CM** Rules **at times that** sufficiently **avoid** ~~in advance~~ of the prequalification period to provide as much clarity on arrangements for the process as possible to interested parties.

3.24. Throughout the process we may organise *ad hoc* stakeholder events in addition to any stakeholder workshops before the final deadline, to discuss issues if we feel there is a particular benefit in doing so.

~~3.25. If there are no proposed changes and no proposals submitted which merit revising the Rules, then we will consult on our view that no changes are necessary, outlining our reasons.~~

## Interaction with the Codes

3.26. The **CM** Rules are in secondary legislation, and therefore sit above the existing industry codes which set out the day-to-day rules that govern the gas and electricity arrangements in Great Britain. It is important that the industry codes are consistent with legislation, including the **CM** Rules. The industry codes place requirements on code parties in relation to change coordination, including for EMR<sup>10</sup>. We expect industry to consider if an industry code change is likely to be needed when bringing forward any proposal to change the **CM** Rules. There is space in the change request **proposal** to allow for this. It is industry's responsibility to identify consequential changes and ensure that, amongst other things, industry codes remain consistent with **relevant** legislation.

3.27. When a code modification proposal is raised we would expect changes to the **CM** Rules to be identified. This would be part of existing duties on industry in relation to change coordination. This should include assessment of whether any change is consistent with legislation – which includes the CM Rules. We will take into account whether any proposed code modification is compatible with legislation, including the CM Rules, when we make a decision on it.

## Publishing the final decision

3.28. The amended **CM** Rules will be published in so far as possible **to avoid** ~~before the Delivery Body launches~~ **the** prequalification **period** ~~for the next auction~~. We will publish

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<sup>10</sup> See BSC section F clause 1.6, CUSC clause 8.15, Grid Code General Conditions clause 4.6 and STC section B clause 7.2.9

feedback on the proposals received and the areas addressed by the revised **CM** Rules, including why we did not take certain proposals forward.

3.29. We will have the ultimate responsibility for the legal drafting of the final published **CM** Rules.

3.30. The amended **CM** Rules will apply to participants who already have a Capacity Agreement. Terms which have been grandfathered through the Regulations will remain unaffected.

3.31. All proposals will be published on our website. This ensures transparency and makes the process more efficient for interested parties.

## Appendices

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## Appendix 1

### B

#### BEIS

#### **Department for Business, Energy and Industrial strategy**

### C

#### Capacity Agreement

A Capacity Agreement is the term used to describe the rights and obligations accruing to a Capacity Provider in relation to a particular Capacity Committed CMU in respect of one or more Delivery Years under or by virtue of the Regulations and these **Capacity Market** Rules, including the right to receive Capacity Payments in relation to the Capacity Committed CMU and the Capacity Obligation in relation to the Capacity Committed CMU.

#### Capacity Market (capacity mechanism)

The Capacity Market is the mechanism designed to provide investment in the overall level of reliable capacity (both supply and demand side response) needed to ensure secure electricity supplies.

#### Capacity Market Advisory Group (CMAG)

**CMAG is a group consisting of industry and interested parties that develops, scrutinises, and prioritises CM Rules change proposals before they are submitted to Ofgem for decision.**

#### Capacity Market Register

The register maintained by the Delivery Body in accordance with Capacity Market Rules.

#### Capacity Market Rules (**CM** Rules)

A set of explicit principles that govern the conduct and procedure within the Capacity Market. The **Capacity Market** Rules provide the detail for implementing much of the operating framework set out in The Electricity Capacity Regulations 2014 (the Regulations).

#### Capacity Market Unit (CMU)

A Capacity Market Unit (CMU) is a unit of electricity generation capacity or electricity demand reduction that can then be put forward in a future Capacity Market auction.

### Capacity Provider

For any Capacity Committed CMU and Delivery Year, the person who was the Applicant for that CMU at Prequalification.

### Change request **proposal**

A request made to change a provision of the Capacity Market Rules, usually submitted in a pro forma.

### **CMAG Objectives**

**Objectives derived from the Regulations to ensure that CMAG is operated and administered in an efficient, objective, and transparent manner.**

### Code

A multilateral code or agreement created and maintained pursuant to a licence granted by the Authority under section 6 of the Act or under sections 7, 7ZA or 7A of the Gas Act 1986.

### ~~Contracts for Difference~~

~~A government incentive to support new investment in all forms of low-carbon generation – carbon capture and storage, renewables and nuclear.~~

### **D**

### ~~DECC~~

~~Department of Energy & Climate Change.~~

### Delivery Body

National Grid Electricity **System Operator (NGESO)**. ~~Transmission plc (NGET)~~

### **Delivery Partners**

**The Capacity Market Delivery Partners consists of the Department for Business, Energy & Industrial Strategy (“BEIS”), National Grid Electricity System Operator (NGESO) who act as the Electricity Market Reform Delivery Body (“NGESO DB” or “Delivery Body”), the Capacity Market Settlement Body and Ofgem**

## E

### Electricity Capacity Regulations

The Electricity Capacity Regulations 2014 provide the overarching framework for the Capacity Market, including such matters as determining whether a capacity auction should be held and the determination of auction parameters by the Secretary of State.

### EMR

Electricity Market Reform.

## G

### Grandfathering

A provision in which certain terms set out in The Electricity Capacity Regulations 2014 continue to apply in respect of existing agreements, while the equivalent new ~~Rule~~ **rule** will apply to all future participants.

## N

### National Grid Electricity System Operator (NGESO) ~~Transmission plc (NGET)~~

The transmission system operator for Great Britain. ~~NGET~~ **NGESO** is responsible for procuring balancing services to balance demand and supply and to ensure the security and quality of electricity supply across the Great Britain transmission system. ~~NGET~~ **NGESO** has also been appointed by ~~DECC~~ **BEIS** to be the delivery body for EMR.

## O

### Ofgem/The Authority

Ofgem is the Office of Gas and Electricity Markets, which supports the Gas and Electricity Markets Authority (the Authority), the regulator of the gas and electricity industries in Great Britain.

## P

### Prequalification

The written confirmation by the Delivery Body that a CMU has prequalified for a Capacity Auction.



### Prequalification Period

For any Capacity Auction, the period specified in the Auction Guidelines within which applications for prequalification are to be made.

### ~~Proposal for Change~~

~~A request made to change a provision of the Capacity Market Rules, usually submitted in a pro forma.~~

## S

### Secretary of State

Secretary of State for Energy and Climate Change

## T

### ~~T-1~~

~~T-1 refers to the Auction Window commencing not less than 12 months and not more than 24 months prior to the commencement of that Delivery Year.~~

### ~~T-4~~

~~T-4 refers to the Auction Window commencing not less than four years and not more than five years prior to the commencement of that Delivery Year.~~

## Appendix 2 Example of the change request proposal form

<b>Proposal for a Capacity Market Rules Change</b>		Reference number <i>(to be completed by Ofgem)</i> :
Name of Organisation(s) / individual(s):	Date Submitted:	
Type of Change:  <input type="checkbox"/> Amendment  <input type="checkbox"/> Addition  <input type="checkbox"/> Revoke  <input type="checkbox"/> Substitution	If applicable, whether you are aware of an alternative proposal already submitted which this proposal relates to:	
Proposal summary <i>(short summary, suitable for published description on our website)</i>		
What the proposal relates to and if applicable, what current provision of <b>CM</b> Rules the proposal relates to <i>(please state provision number)</i> :		
Description of the issue that the change proposal seeks to address:		
If applicable, please state the proposed revised drafting <i>(please highlight the change)</i> :		
Analysis and evidence on the impact on industry and/or consumers including any risks to note when making the revision - including, any potential implications for industry codes:		
Details of Proposer <i>(please include name, telephone number, email and organisation)</i> :		

## ~~Appendix 3 Complaints about Ofgem~~

~~7.1. If a customer is unhappy with the way in which we have dealt with their complaint or is unhappy with the way in which we have reached a decision or how we operate, then they may write to:~~

~~Ofgem Complaints  
Ofgem E-Serve  
Ofgem  
9 Milbank  
London  
SW1P 3GE~~

~~7.2. A complaint will be acknowledged within two working days of receiving it. We will write to the complainant within 20 working days to inform them of the outcome of their complaint. If it is not possible to respond to the complainant in that time, we will write to update the complainant on the progress within 20 working days.~~

~~7.3. If, after this process, a complainant is still unhappy, they may write to Ofgem at the address above, and we will investigate the complaint further. The complainant will receive a response within 10 working days.~~

~~7.4. If the complainant is still not satisfied, they may take their complaint to the Parliamentary Ombudsman who carries out independent investigations into complaints about public bodies. If the complaint is found to be justified, the Ombudsman can recommend that we provide a remedy.~~