

# Consultation

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## Ten-Year Review of the Capacity Market Rules

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Publication date: 8 January 2024

Response deadline: 19 February 2024

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We are consulting on our Ten-Year Review of the Capacity Market Rules (the “Ten-Year Review”). We would like views from people with an interest in the functioning of the Capacity Market. We particularly welcome responses from market participants with experience of participating in the Capacity Market. We would also welcome responses from other stakeholders and the public.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

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## 1. Introduction

### Section summary

This section sets out the background to this consultation, what we are consulting on and how this consultation links to wider reviews of the Capacity Market. It also explains how to respond to this consultation.

### Background

- 1.1 The Capacity Market (“CM”) was introduced in 2014 to maintain sufficient levels of capacity to ensure security of supply.<sup>1</sup>
- 1.2 It does this by procuring commitments from generators to be ready to provide additional generation capacity if called upon at times of system stress during the committed period, and rewarding generators by paying them for making that capacity available or administering penalties if they fail to do so.
- 1.3 The CM is governed by the Electricity Capacity Regulations 2014 (“The Regulations”) and the Capacity Market Rules (“the Rules”).<sup>2</sup>
- 1.4 We are required to carry out a review of the Rules every five years.<sup>3</sup> This review is intended to assess whether the Rules continue to meet their objectives, whether those objectives remain appropriate, and whether they could be met with less administrative burden.

### The Five-Year Review

- 1.5 We published our first Five-Year Review of the Capacity Market Rules (“the Five-Year Review”) and Forward Work Plan in July 2019.<sup>4</sup> In the Report, we reviewed our objectives when making or changing the Rules, as set out in Regulation 78, along with the wider objective of the CM within the Electricity Market Reform (“EMR”) programme of delivering security of supply at the lowest possible cost to consumers.<sup>5</sup> We concluded that the Rules are effective in incentivising investment

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<sup>1</sup> [Capacity Market - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>2</sup> [The Electricity Capacity Regulations 2014 \(legislation.gov.uk\)](https://legislation.gov.uk); [Informal Consolidated Version of the Capacity Market Rules July 2023 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>3</sup> References to the “Authority”, “Ofgem”, “us”, “we”, “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work; [The Electricity Capacity Regulations 2014 \(legislation.gov.uk\)](https://legislation.gov.uk); [Informal Consolidated Version of the Capacity Market Rules July 2023 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>4</sup> [Report on our Five Year Review of the Capacity Market Rules and Forward Work Plan | Ofgem](#)

<sup>5</sup> [The Electricity Market Reform \(General\) Regulations 2014 \(legislation.gov.uk\)](https://legislation.gov.uk)

in secure electricity generation while improving affordability for consumers, and that they are compatible with subordinate legislation under Part 2 of the Energy Act 2013.<sup>6</sup> However, we also acknowledged that the Rules would benefit from some simplification and that the efficiency of the CM could be improved by updating the Rules. In our Forward Work Plan from the Five-Year Review, one of the proposed reforms was to improve the CM rule change process by creating a Capacity Market Advisory Group (“CMAG”) of experienced industry parties to reduce the complexity and regulatory burden on applicants.

### The Capacity Market Advisory Group

1.6 After consulting in January 2022, we published our decision to establish CMAG in May 2022.<sup>7</sup> CMAG is a forum for industry to develop, scrutinise and prioritise proposals to improve the CM Rules. We work collaboratively with CMAG to establish these priorities and to effectively deliver CM rule changes that have a positive effect on the operation of the CM, are beneficial to consumers and ensure security of supply. Alongside our decision to establish CMAG, we published the new amended Guidance on our Change Process for the CM Rules (the “Guidance”).<sup>8</sup>

### What are we consulting on?

1.7 In this consultation, we set out the objectives the CM Rules intend to achieve. We are seeking input and views from stakeholders on whether the Rules continue to meet these objectives, whether the objectives remain appropriate, and whether they could be met with less administrative burden. We also want to understand whether there are specific Rules which we should investigate in future.

1.8 In our previous consultation on the Five-Year Review, we consulted on amendments to the Rules as well as the objectives of the Rules.<sup>9</sup> We will not be consulting on specific change proposals in this Ten-Year Review. The standard CM rule change process (see Section 3 for more detail) will proceed as a separate, parallel process to this Ten-Year Review. Stakeholders who wish to submit change proposals may continue to submit them to CMAG or directly to Ofgem in accordance with the Guidance.

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<sup>6</sup> [Energy Act 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>7</sup> [Decision on establishing the Capacity Market Group \(CMAG\) | Ofgem](#)

<sup>8</sup> [The Change Process for the Capacity Market Rules \(ofgem.gov.uk\)](https://www.ofgem.gov.uk)

<sup>9</sup> [Five Year Review of the Capacity Market Rules \(ofgem.gov.uk\)](https://www.ofgem.gov.uk)

## Context and related publications

1.9 The main documents relating to this publication are:

- Open letter on the Five Year Review of the Capacity Market Rules and NGET's incentives: <https://www.ofgem.gov.uk/publications/open-letter-five-year-review-capacity-market-rules-and-ngets-incentives>
- Five-Year Review of the Capacity Market Rules – First Policy Consultation: <https://www.ofgem.gov.uk/publications/five-year-review-capacity-market-rules-first-policy-consultation>
- Report on our Five-Year Review of the Capacity Market Rules and Forward Work Plan: <https://www.ofgem.gov.uk/publications/report-our-five-year-review-capacity-market-rules-and-forward-work-plan>

1.10 The Department for Energy Security and Net Zero (“DESNZ”) consulted on a range of policy proposals aimed at enhancing the delivery assurance within the CM and aligning the scheme with net zero at the beginning of 2023. The response to this consultation, published in June 2023, set out a two-phased approach for implementing reforms to the CM. The main documents relating to these publications are:

- Capacity Market 2023 consultation: <https://assets.publishing.service.gov.uk/media/63bbe5698fa8f55e31a9f1bb/capacity-market-2023-consultation.pdf>
- Capacity Market 2023 Consultation: Government response: <https://assets.publishing.service.gov.uk/media/648837ec5f7bb700127fa8e4/capacity-market-2023-consultation-government-response.pdf>
- Capacity Market 2023: Phase 2 proposals and 10 year review - consultation: <https://www.gov.uk/government/consultations/capacity-market-2023-phase-2-proposals-and-10-year-review>

1.11 This consultation to inform our Ten-Year Review is in parallel with and complementary to DESNZ's consultation on their Ten-Year Review. These Ten-Year Reviews are both focused on the specific functioning of the current CM. Longer-term CM reform is being considered as part of wider electricity market reforms under DESNZ's Review of Electricity Market Arrangements (“REMA”) programme. The main document relating to the REMA programme is:

- <https://www.gov.uk/government/consultations/review-of-electricity-market-arrangements>

## **How to respond**

- 1.12 We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document's front page.
- 1.13 We've asked feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 1.14 We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

## **Your response, data and confidentiality**

- 1.15 You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.
- 1.16 If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.
- 1.17 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of UK GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix.
- 1.18 If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

## General Feedback

1.19. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

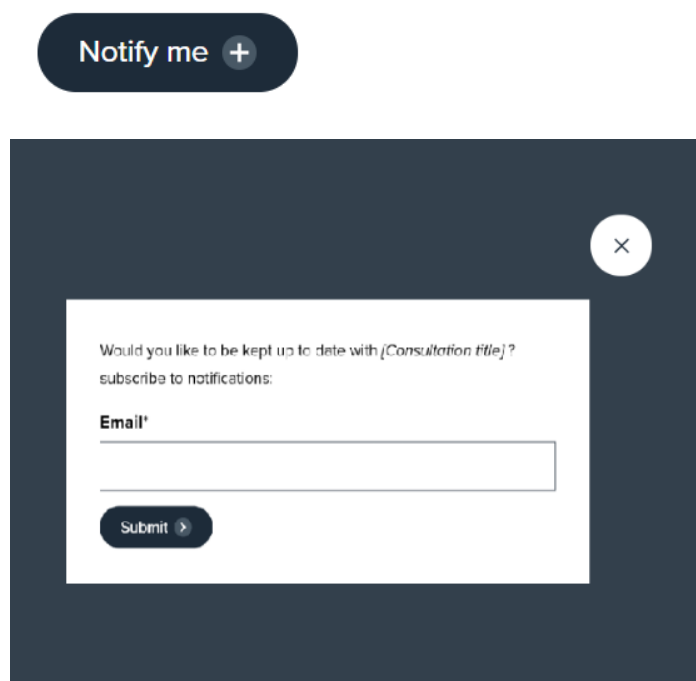
1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk)

## How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)



Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

**Upcoming** > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)



## 2. The objectives of the Capacity Market Rules

### Section summary

This section sets out our objectives when making or amending the CM Rules, as well as the wider objective of the CM within the EMR programme and the principal objective of the Authority, as they are relevant to the consideration of whether the CM Rules are achieving their intended objectives.

- 2.1 Regulation 78 sets three objectives for Ofgem when making amendments to the CM Rules (see Table 1 below). These objectives also serve as the underlying objectives for our evaluation of the Rules as a whole.
- 2.2 The Regulations, which form part of the implementing legislation for the Government's EMR programme, outline general objectives of incentivising investment in secure and low-carbon electricity generation while improving affordability for consumers.<sup>10</sup> We believe these overarching objectives are still relevant ten years on for the CM framework and operation.
- 2.3 The principal objective and general duties of the Authority, as set out under Part 2 of the Energy Act 2013, is to protect the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems (see Table 1 below). We also believe that the principal objective and general duties set out under Part 2 of the Energy Act 2013 are relevant to consider for this review of the CM Rules.
- 2.4 This section will therefore consider whether the Rules are continuing to meet the objectives set out in Regulation 78, in addition to the wider objective of the CM within the EMR programme and the principal objective and general duties of the Authority; whether the objectives remain appropriate; and whether these objectives could be met with less administrative burden.
- 2.5 We continue to believe that the objectives of the Rules remain appropriate. We believe that the Rules and any amendments to the Rules should have the objective of ensuring the efficient operation of the CM. The Rules should not unduly form a barrier to entry or provide excessive regulatory burden that is not justified by, for example, the delivery assurance that a requirement may provide. The Rules should ensure compatibility between the CM and other legislation introduced as part of EMR in the Energy Act 2013.

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<sup>10</sup> [The Electricity Market Reform \(General\) Regulations 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

2.6 The Review of Electricity Market Arrangements (“REMA”) programme is considering how our electricity market arrangements can enable the transition to net zero in the long term. DESNZ have also sought feedback in Part A of their Phase 2 consultation on a range of measures to support low carbon technology in the CM.<sup>11</sup> In this context, we will not be seeking further feedback in this area.

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<sup>11</sup> [Capacity Market 2023: Phase 2 proposals and 10 year review - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/capacity-market-2023-phase-2-proposals-and-10-year-review)

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<b>Table 1: The objectives of the CM Rules*</b>
The Electricity Capacity Regulations 2014 <sup>12</sup>
<p>Regulation 78</p> <p>The Authority must when making capacity market rules, in addition to having regard to its principal objective and general duties, have regard to the following objectives–</p> <ul style="list-style-type: none"> <li>a) promoting investment in capacity to ensure security of electricity supply;</li> <li>b) facilitating the efficient operation and administration of the capacity market;</li> <li>c) ensuring the compatibility of the capacity market rules with other subordinate legislation under Part 2 of the Energy Act 2013.</li> </ul>
The Electricity Market Reform (General) Regulations 2014 <sup>13</sup>
<p>Section 7.1 (policy background) in the Explanatory Memorandum to the Electricity Market Reform (General) Regulations 2014<sup>14</sup></p> <p>The EMR programme is intended to incentivise investment in low-carbon electricity generation, while improving affordability for consumers, and maintaining energy security.</p>
Energy Act 2013 <sup>15</sup>
<p>PART 2 Electricity Market Reform - Section 39 (principal objective and general duties) and Sections 3A to 3D of the Electricity Act 1989<sup>16</sup></p> <p>Section 3A (The principal objective and general duties of the Secretary of State and the Authority)</p> <p>(1) The principal objective of the Secretary of State and the Gas and Electricity Markets Authority in carrying out their respective functions under this Part is to protect the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems</p> <p>(2) Those interests of existing and future consumers are their interests taken as a whole, including–</p> <ul style="list-style-type: none"> <li>a) their interests in the reduction of electricity-supply emissions of targeted greenhouse gases;</li> <li>b) their interests in the security of supply of electricity to them;</li> <li>c) their interests in the fulfilment by the Authority, when carrying out its designed regulatory functions, of the designated regulatory objectives.</li> </ul> <p>The remainder of Sections 3A to 3D of the Electricity Act 1989 can be reviewed in full in this document: <a href="https://www.legislation.gov.uk/ukpga/1989/29/contents">https://www.legislation.gov.uk/ukpga/1989/29/contents</a></p>

\*While not exhaustive, this table highlights sections within the Rules and other legislation that are relevant to this consultation.

<sup>12</sup> [The Electricity Capacity Regulations 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/12/contents)

<sup>13</sup> [The Electricity Market Reform \(General\) Regulations 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/13/contents)

<sup>14</sup> [The Electricity Market Reform \(General\) Regulations 2014 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2014/13/contents)

<sup>15</sup> [Energy Act 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2013/15/contents)

<sup>16</sup> [Electricity Act 1989 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1989/29/contents)

**Questions**

- Q1. Do you have any views on whether the objectives of the Rules, as set out above, remain appropriate? If not, please provide your reasoning.**
- Q2. Do you believe that the current CM Rules achieve the objective of promoting investment in capacity to ensure security of electricity supply? How could they achieve this objective more efficiently?**
- Q3. Do you believe that the current CM Rules achieve the objective of facilitating the efficient operation and administration of the CM? How could they achieve this objective more efficiently?**
- Q4. Do you believe that the CM Rules are compatible with other subordinate legislation under Part 2 of the Energy Act 2013? How could they achieve this objective more efficiently?**

### 3. Capacity Market Rules that require further investigation

#### Section summary

This section outlines how the CM rule change process has been reformed since the publication of the Five-Year Review and the key differences between the Ten-Year Review, which will be informed by this consultation, and our previous Five-Year Review.

- 3.1 In the Five-Year Review, we identified the increase in duration, complexity and difficulty of implementation of the CM rule change process as a priority area for Ofgem. We proposed forming a Capacity Market Advisory Group (“CMAG”) to assist in developing, scrutinising, and prioritising proposals before they are submitted to Ofgem which would enable us to more effectively deliver CM rule changes that have a positive effect on the operation of the CM and are beneficial to consumers and security of supply.
- 3.2 On 9 May 2022, we published our decision to establish CMAG accompanied by the new Guidance outlining the CM rule change process.<sup>17</sup>
- 3.3 Under the Guidance, stakeholders can choose to submit CM rule change proposals directly to Ofgem or to CMAG, who will then make reasoned recommendations to the Ofgem. We believe 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. Figure 1 below shows a high-level diagram of the integrated CM rule 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.

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<sup>17</sup> [Decision on establishing the Capacity Market Group \(CMAG\) | Ofgem](#); [The Change Process for the Capacity Market Rules \(ofgem.gov.uk\)](#)

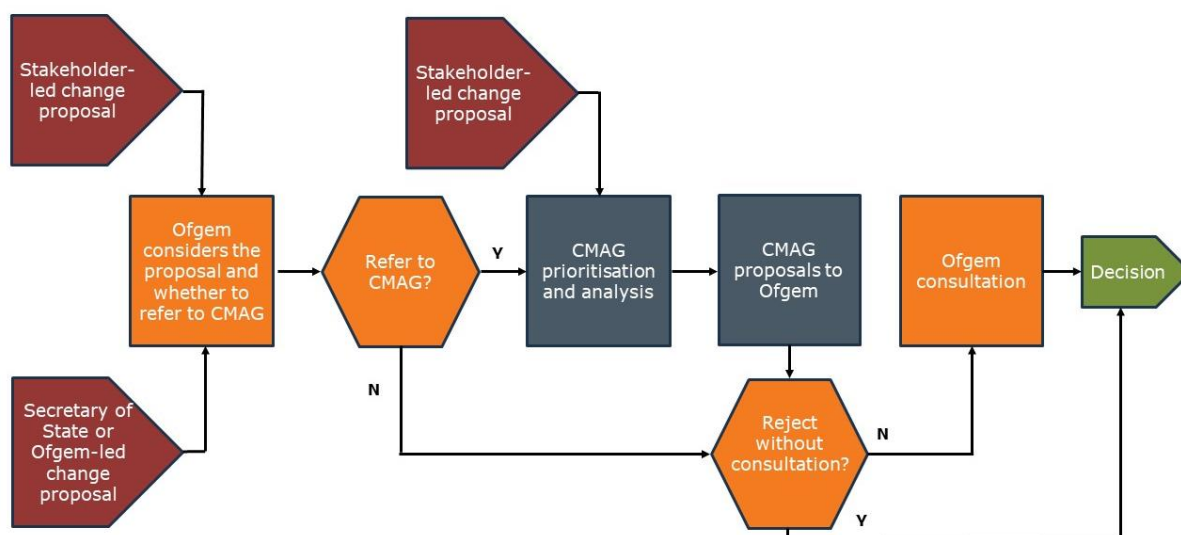


Figure 1 - CM Rule Change Process

- 3.4 Given the reform of the CM rule change process and the changes to how CM rule change proposals are submitted and reviewed, we are not asking for them to be submitted as part of this consultation for the Ten-Year Review. Instead, we would like to gather early insight from stakeholders who have concerns with specific CM Rules, without requiring them to propose specific solutions or changes to the legal text that would resolve that concern. This information will help us to identify areas that require closer scrutiny in future work with CMAG.
- 3.5 In our Five-Year Review, we asked for feedback on the interactions between the CM and other markets such as the wider wholesale markets, the balancing market and markets for ancillary services. Given that the CM and the Rules operate independently of these other markets and there is a risk of changes to the Rules driving unintended, inefficient outcomes in other markets, we believe it is necessary to seek to align it as much as possible with other markets. We also believe that the changes in the wholesale electricity markets over the last five years make it beneficial for us to seek this feedback again. We are therefore asking stakeholders for their views on the interaction and alignment of the CM with other markets.

**Questions**

- Q5. Do you have any concerns about CM Rules that are causing disproportionate administrative burden on CM participants? Please state the text of the rule(s) in your answer and explain why this is causing the disproportionate burden. You are not required to suggest a solution but may propose one if you wish.**
- Q6. Do you have any views on CM Rules that may cause inefficiency in the operation of the CM in future? Please state the text of the rule(s) in your answer and explain how this is leading to inefficiency in the operation of the CM. You are not required to suggest a solution to the issue but may propose one if you wish.**
- Q7. Do you have any concerns that the CM Rules are driving inefficient outcomes in other markets (such as forward markets, the balancing market or markets for ancillary services)? Please provide any evidence you have for this and any suggestions for how to better align the markets and mitigate these inefficiencies.**

## 4. Next steps

### Section summary

This section summarises our next steps towards the publication of the Ten-Year Review.

- 4.1 This consultation will be open for six weeks and will close on the 19 February 2024. We encourage responses from all interested stakeholders.
- 4.2 We will review the responses submitted to us and use these to inform our Ten-Year Review. We will identify concerns that have been raised and use them to shape CMAG discussions towards a beneficial outcome or to highlight areas where CMAG scrutiny and analysis may be needed to develop ideas further.
- 4.3 We will then publish our Ten-Year Review by 1 August 2024.



## Appendix – Privacy notice on consultations

### Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

#### **1. The identity of the controller and contact details of our Data Protection Officer**

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at [dpo@ofgem.gov.uk](mailto:dpo@ofgem.gov.uk)

#### **2. Why we are collecting your personal data**

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

#### **3. Our legal basis for processing your personal data**

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

#### **4. Your personal data will not be shared outside of Ofgem.**

#### **5. For how long we will keep your personal data, or criteria used to determine the retention period.**

Your personal data will be held for 12 months after the consultation has closed.

#### **6. Your rights**

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically

- tell us if we can share your information with 3<sup>rd</sup> parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**7. Your personal data will not be sent overseas.**

**8. Your personal data will not be used for any automated decision making.**

**9. Your personal data will be stored in a secure government IT system.**

**10. More information** For more information on how Ofgem processes your data, click on the link to our "[ofgem privacy promise](#)".