

The Change Process for the Capacity Market Rules

Guidance: Draft for consultation

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Overview:

This is guidance for industry and interested parties on the change process for the Capacity Market Rules. The Capacity Market 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 has been introduced as part of the government's Electricity Market Reform (EMR) programme. The Capacity Market Rules provide the detail of how the Capacity Market will be implemented, as set out in The Electricity Capacity Regulations 2014.

Ofgem is responsible, from the day after publication of the results of the first auction, for amending, adding to, revoking or substituting any provision of the Capacity Market Rules in line with the provisions in the Regulations.

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 a number of initiatives to achieve this, in particular:

- a **Capacity Market** to help ensure security of electricity supply at the least cost to the consumer
- **Contracts for Difference** which will provide long-term revenue stabilisation for new low carbon initiatives.

Both mechanisms will be administered by National Grid Electricity Transmission plc (NGET), alongside a number of delivery partners. We have several important roles in EMR, including:

- being responsible for the Capacity Market Rules (the Rules) from the day after the results of the first auction are published
- having oversight and enforcement powers over how NGET, suppliers and generators are complying with The Electricity Capacity Regulations 2014 (the Regulations) and the Rules
- reporting on the effectiveness of the Capacity Market generally.

The Regulations¹ came into force on [1 August 2014] and contain provisions allowing amendments to the Rules². The Rules provide the detail for implementing much of the operating framework set out in the Regulations.

¹ This draft guidance is written on the expectation that the Regulations will come into force on 1 August 2014. This is subject to the will of Parliament. All references to the Regulations are therefore subject to change.

² The Rules are currently in draft form. Where they are referenced in this guidance they are based on the Department of Energy and Climate Change's, "*Capacity Market Rules: Consultation Draft*," as published in October 2013. This can be accessed here: https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/249565/capacity_market_Rules_consultation_draft.pdf

Associated documents

[Draft] The Electricity Capacity Regulations 2014 as published by Department of Energy and Climate Change (DECC) on 10 October 2013.

https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/249564/electricity_capacity_regulations_2014_si.pdf

[Draft] The Capacity Market Rules as published by DECC on 10 October 2013

https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/249565/capacity_market_Rules_consultation_draft.pdf

DECC consultation on Electricity Market Reform Implementation as published on 10 October 2013. <https://www.gov.uk/Government/consultations/proposals-for-implementation-of-electricity-market-reform>

DECC Meeting Papers from the Electricity Market Reform (EMR): Capacity Market Expert Group. <https://www.gov.uk/government/groups/capacity-market-emr-expert-group>

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Executive summary

The Capacity Market Rules (the Rules) provide the detail for implementing much of the operating framework set out in The Electricity Capacity Regulations 2014 (the Regulations). This includes many of the technical rules and procedures relating to how the Capacity Market will operate, including:

- the auction guidelines and de-rating information
- prequalification information
- how eligibility is determined
- the process of holding capacity auctions and issuing of capacity agreements
- setting up and operating the Capacity Market Register
- system stress events and performance obligations
- secondary trading
- Demand Side Response transitional arrangements
- monitoring and testing regime

This guidance sets out the process we will follow to amend, add to, revoke or substitute any provision of the Rules. This includes the operational framework for the change process and the legal framework that underpins it. We also include the three objectives we will have regard to when making decisions to change the Rules (see paragraph 1.7 of chapter 1).

The guidance explains the practicalities within the change process for the Rules. 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 for changes, the reasoning behind them, and the implications of any changes on existing participants.

We will seek to consult on any changes to the Rules on an annual basis. Prior to consultation, we will seek industry's proposals for potential changes. In addition we will consider any areas identified by us. If an urgent change to the Rules is required outside of the annual process, we would address this through a separate consultation process.

This guidance will be reviewed and updated as required.

1. Introduction and Overview

Chapter summary

This chapter provides an explanation of the legal framework that underpins the change process for the Capacity Market Rules (the 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 Rules and an overview of the Rules change process.

Legislative framework for the Rules change process

1.1. Under the Electricity Market Reform (EMR) programme, we are responsible for the Rules from the day after the results of the first auction are published. The Rules provide the detail for implementing much of the operating framework set out in The Electricity Capacity Regulations 2014 (the Regulations). Together, they underpin the Capacity Market and include details on:

- the auction guidelines and de-rating information
- prequalification information
- how eligibility is determined
- the process of holding capacity auctions and issuing of capacity agreements
- setting up and operating the Capacity Market Register
- system stress events and performance obligations
- secondary trading
- Demand Side Response transitional arrangements
- monitoring and testing regime

1.2. The Regulations enable us to make Rules about the operation of the Capacity Market. In accordance with the Regulations, we must consider all proposals to amend a provision of the Rules and before making the Rules we must consult with:

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

1.3. We will publically consult on our website³ when we propose changes to the Rules to ensure industry and interested parties have an opportunity to comment. The change process for the Rules, as outlined in this guidance, helps to ensure that there is a robust and transparent framework in place for consultation with industry and other interested parties.

1.4. This guidance sets out the process we will follow to amend, add to, revoke or substitute any provision of the Rules. Changes to the Rules will apply to all capacity providers with Capacity Agreements with the exception of those terms that the Secretary of State has confirmed will be grandfathered and will not be subject to changes in the Rules. The Regulations will include the following terms as protected against future Rule changes⁴:

- agreement length
- capacity price and entitlement to payment (still subject to the principles of the payment model)
- capacity obligation and de-rating figure
- completion milestones and termination fees applicable
- maximum liability for penalties: ie monthly and annual caps (while penalty rates may change).

1.5. There is a limited timeframe to ensure appropriate changes to the Rules are made between the auctions. We will seek to ensure that sufficient time will be provided ahead of prequalification for the relevant auction to allow investors to take into account any changes to the Rules. Consequently we aim to make the changes following an auction but before the next prequalification window opens.

1.6. This guidance standardises the process for all changes to the Rules in order to ensure that the process is transparent, effective and efficient.

³ www.ofgem.gov.uk

⁴ This is based on DECC's latest policy drafting at the time of writing, taken from the Electricity Market Reform (EMR): Capacity Market Expert Group, meeting paper of 3 April 2014. It may be subject to change. It can be accessed here, <https://www.gov.uk/government/groups/capacity-market-emr-expert-group>

The objectives

1.7. We must act consistently with our principal objective and general duties⁵ when exercising our power to change the Rules. In addition, when we make any changes to the Rules, we must have regard to the following objectives which are set out in the Regulations:

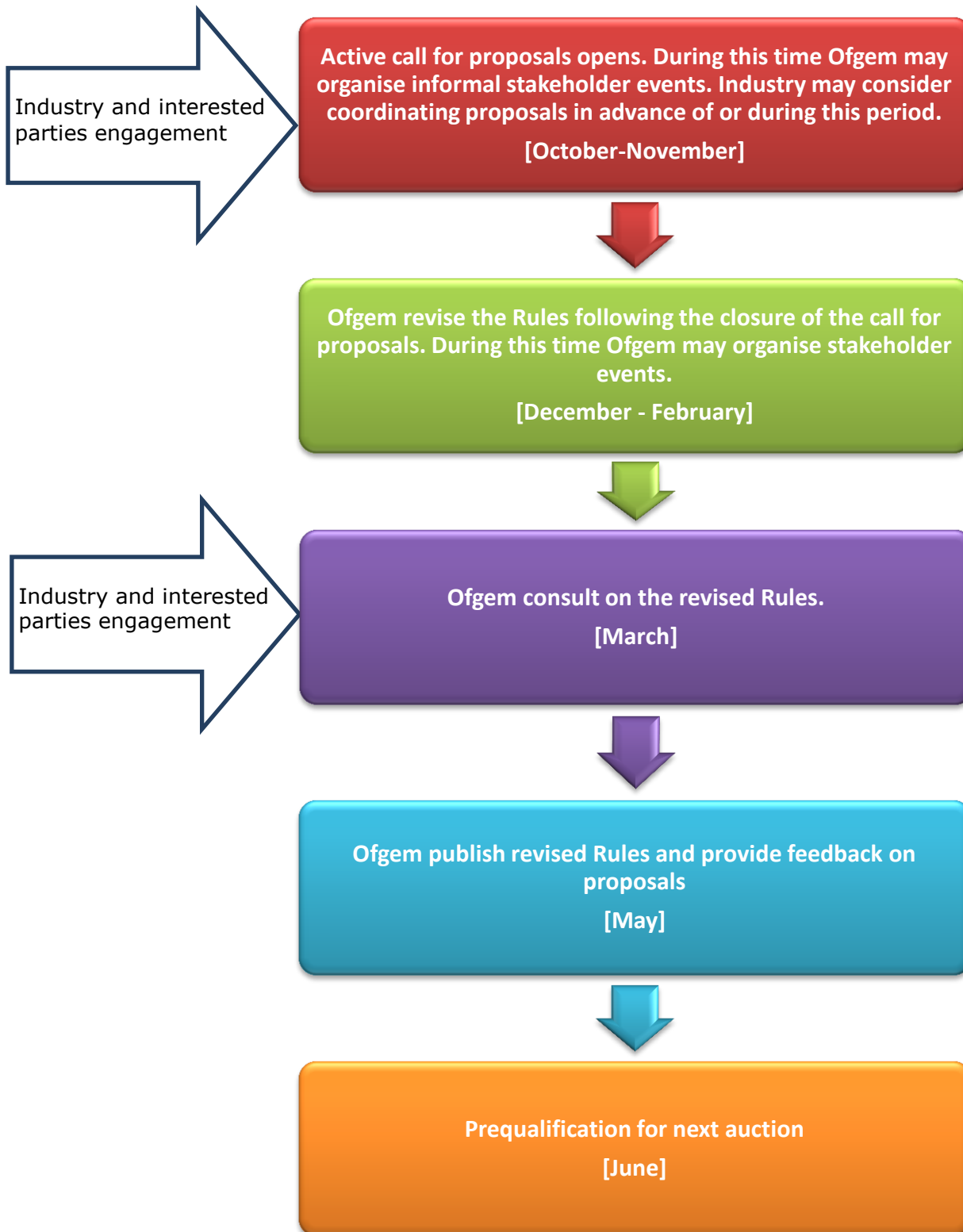
- promoting investment in capacity to ensure security of electricity supply
- facilitating the efficient operation and administration of the Capacity Market
- ensuring the compatibility of the Capacity Market Rules with other subordinate legislation under Part 2 of the Energy Act 2013.⁶

⁵ For full details on our principal objective and general duties please see:

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

⁶ This is based on DECC's latest policy drafting, taken from the Electricity Market Reform (EMR): Capacity Market Expert Group, meeting paper of 3 April 2014. It may be subject to change. It can be accessed here, <https://www.gov.uk/government/groups/capacity-market-emr-expert-group>

Overview of the change process for the Capacity Market Rules⁷



⁷ Timings reflective of indicative Capacity Market auction timings.

1.8. Ofgem has to consider all proposals to change the Rules that are submitted. In terms of the standard process we will follow, the key aspects are:

- We will inform industry of the deadline for proposals in a given year through publication on our website, two months in advance. (Submissions can be made outside of this process; however we would take forward any necessary resulting changes in the next annual process - unless we considered it to be a matter of exceptional urgency.)
- Industry and other interested parties may propose an amendment to the Rules. We ask that proposals are made using the form which can be found on our website (an indicative example can be found in Appendix 2).
- We will consider all proposals received and undertake our own review of the Rules.
- We will consult on the drafted changes and then make a decision on the draft amended Rules (assuming potential changes have been identified).
- The amended 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.

1.9. In exceptional circumstances, we may consider it necessary to propose an amendment to the Rules outside of the annual process. Such cases could arise where we have identified a systemic issue to be addressed as a matter of urgency, or where another party has made a proposal of this nature and we agree that it would be proportionate to take it forward for amendment immediately. Any proposed change would be subject to a statutory consultation.

1.10. We would also consider whether changes to the Rules are required outside of the standard process if the Secretary of State changes the Regulations in such a way that impacts directly on the Rules.

1.11. It should be noted that the Secretary of State retains the power to change the Rules after we take responsibility for them. For further details on this, please contact the Department of Energy & Climate Change (DECC) via email to secondarylegislationmr@decc.gsi.gov.uk.

2. Development of the amended Rules

Chapter summary

The chapter explains how the process to change the Rules will work, specifically addressing how proposals for changes will be brought forward, the consultation process and how our decisions will be published.

How to bring forward a change request

2.1. As set out in chapter 1, we will undertake an annual process to consider proposals for amendments to the Rules.

Format of a proposal for a change to the Rules

2.2. Any proposals for changes to the Rules should be made via the change request form. The form should be emailed to EMR_CMRules@ofgem.gov.uk. The current form will be available on our website and a draft can be found in Appendix 2. The standardised form ensures that we have the necessary information to make an informed decision which in turn helps to create a fairer, more transparent process. The key elements we request information on are:

- If applicable, what current provision of Rules does the change proposal relate to. (In answering this it is useful if the exact provision number is stated.)
- A description of the issue that the change proposal seeks to address. (This should provide an explanation of why you have submitted the proposal.)
- The proposed revised drafting. (This should state what you are seeking to have amended, added, substituted or revoked. If the intent is that a provision of the Rules is removed please state this to be the case.)
- Your analysis and evidence on the impact on industry and/or consumers, including any risks, of making the change - including any potential implications for industry codes. (This section provides your views on how you consider the changes to the Rules fit within the wider context of the Capacity Market arrangements and for you to identify potential impacts on other parties.)
- A justification for the proposed change to the Rules with reference to the applicable objectives (see section 1.7). (This section is to ensure that the Rule change is, in your opinion, in line with the objectives).

2.3. 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 documents.

2.4. For efficiency, industry and interested parties may wish to consider a joint proposal on key issues and may wish to start this process ahead of the call for proposals.

Bringing a proposal forward for consideration

2.5. We will hold an annual call for proposals for changes to the CM Rules. We encourage industry and other interested parties to submit proposals during this period. This will enable us to undertake a holistic review of proposals rather than considering them on a piecemeal approach. If a proposal is submitted to us at any other time we will consider whether it requires urgent action (see paragraph 1.9); otherwise it will be considered as part of the next annual process.

2.6. We intend to announce the deadline for the proposals in a given year after the results of prequalification have been published. Based on DECC's indicative delivery year we would announce the deadline in October; we anticipate that the deadline would be two months later in December. This is subject to the timings of the start of prequalification for the next auction.

2.7. Following the call for proposals, we will consider all the proposals we receive and prepare draft changes to the Rules where appropriate. As part of this process, we will incorporate any potential changes which we, Ofgem, have identified (see below).

Ofgem-identified changes

2.8. In addition to changes proposed by external parties, we will also consider where we think there is benefit to amending the Rule in the context of furthering our own principal objective, general duties and with regard to the CM Rules objectives. We will consult on any Ofgem identified changes as part of the annual consultation process outlined above.

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

2.10. If we identify a systemic issue to be addressed as a matter of urgency we may take a change forward outside of the annual process and through a faster track (see paragraph 1.9).

Consultation on the draft amended Rules

2.11. The draft revised Rules will be subject to consultation. We intend that the final amended Rules would be published ahead of National Grid Electricity Transmission plc (NGET) launching the prequalification for the next auction. We will aim to publish the revised Rules sufficiently in advance of the prequalification to provide as much clarity as possible to interested parties.

2.12. It is anticipated that throughout the process we may organise informal stakeholder events to discuss individual or cross-cutting issues where we identify a particular benefit in doing so.

2.13. There may be instances where the timescales are particularly restricted, for example if an auction is delayed. In such circumstances we may need to run a compressed version of the change process outlined in this guidance to bring in urgent changes before prequalification for the next auction.

2.14. If we have not identified any necessary changes and no proposals are submitted which we feel necessitate a revision to the Rules, then we will consult on our view that no changes are necessary, outlining our reasons for that decision. Subject to that consultation, we would then publish confirmation that the existing Rules remain in effect.

The Capacity Market Rules change process for 2014/15

2.15. We will become responsible for the Rules from the day after the first auction results are published. We may invite proposals for changes before this point to give us sufficient time to consider any revisions before prequalification opens for the second auction.

2.16. However, if any Rules changes are required before publication of the first auction's results, the Secretary of State will be responsible for undertaking and consulting on those changes.

Publication of the final decision

2.17. The amended Rules will be published ahead of the Delivery Body launching prequalification for the next auction.

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

2.19. If parties wish to challenge a change to the Rules this can be done by way of a Judicial Review.

Stakeholder feedback

2.20. At the end of the process we will publish feedback on the proposals received and the areas addressed by the revised Rules. This includes a summary of the proposals identified, and how we addressed them within the revised Rules and why we did not take certain proposals forward.

2.21. To ensure transparency and make the process more efficient for industry all proposals will be published on our website.

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Appendix 1 – Glossary

C

Capacity Agreement

Capacity Agreements are the rights and obligations which, by virtue of the Regulations and Capacity Market Rules, accrue to a capacity provider in relation to a Capacity Market Unit (CMU) in respect of one or more delivery years, including the capacity obligation and the right to receive capacity payments and liability to pay capacity incentives in respect of the 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 Register

The register maintained by the Delivery Body in accordance with capacity market rules.

Capacity Market Rules (Rules)

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

Capacity Market 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.

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.

Change request

A proposal made to change a provision of the Capacity Market Rules, usually submitted in a form.

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 Transmission plc (NGET)

[Demand Side Response](#)

The activity of reducing by way of short term intervention the metered volume of imported electricity of one or more customers below a baseline.

E

[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 will apply to all future participants.

N

[National Grid Electricity Transmission plc \(NGET\)](#)

The transmission system operator for Great Britain. As part of this role NGET 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.

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

[Proposal for Change](#)

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

Appendix 2 – Example of the change request proposal form

| Proposal for a Capacity Market Rules Change | |
|--|--|
| 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, which provision of the Rules it 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: | |
| Justification for proposed Rule change with reference to applicable CM Rule Change objectives: | |
| 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 receipt. 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.