

Ofgem Responses to Stakeholder Feedback on the Capacity Market Guidance Consultation 17th April 2014 – 22nd May 2014

Our draft guidance on the Capacity Market Rules Change Process was published for consultation on 17 April 2014 and closed on 22 May 2014. We received 10 responses in total to it. The individual responses can be found on the consultation's website¹. We have considered our Guidance in light of these responses and of comments we received at a stakeholder event on 28 April 2014.

We have summarised the issues raised into six key areas:

1. Timings
2. Stakeholder Engagement
3. Proposals
4. Objectives
5. Codes
6. Processes

1. Timings

Stakeholder views:

The majority of stakeholders supported having an annual process. But there was a strong consensus that it should be possible to submit proposals throughout the year not just during a specified window of time. Six stakeholders suggested that to do this there should be an annual deadline. Four stakeholders suggested that to ensure that proposals are not rushed through the date that a proposal comes into force should not be limited to the year the proposal was submitted. Three stakeholders were concerned that the timings for the first year needed to be considered further because of the tight timeframe.

Our response:

We have removed the window for proposals and incorporated an annual deadline into our process. Additionally, we have made it clearer in our guidance that proposals can be submitted throughout the year. However, proposals have to be submitted before the deadline for a given year if they are to be considered before the upcoming prequalification. Otherwise, they will roll forward to the next deadline. We have revised our process in order to ensure that proposals will not be rushed through. We agree that there are challenges to timings for the first set of changes. We anticipate that we may need to focus on a limited number of urgent proposals in the first year.

2. Stakeholder Engagement

Stakeholder views:

Several stakeholders did not feel that there was enough participation from industry in the process. Additionally, there was a suggestion from stakeholders that there should be working groups/technical panels to assess the proposals, or some clarity over how industry would be involved in developing and assessing proposals.

¹ The consultation website: <https://www.ofgem.gov.uk/publications-and-updates/change-process-capacity-market-rules-guidance>

Our response:

We have revised our process to ensure that we have committed to holding stakeholder events at critical points in the process. We now also expect to publish an open letter for comment on the priority areas for that year's process. We will publish the letter between prequalification and the auction in order to gather industry's views on our early thinking.

We have redrafted our guidance to ensure that the process for industry participation is clearer. We considered having a panel, but due to both timing and governance implications we do not believe it is appropriate. The Rules are a form of secondary legislation and Ofgem has been given the responsibility for making any changes. It is important that any decisions are informed by industry where appropriate but that the decision-making stays with Ofgem.

We expect industry to engage in our process and provide us with any analysis they think is important as part of their proposal. We will use experts to inform decisions on individual issues and may organise ad hoc working groups to discuss certain proposals when required.

3. Proposals

Stakeholder views:

Several stakeholders advised that there should be two different approaches for the rule changes depending on whether they are complex or simple proposals. There was also a request from some stakeholders for further definition of urgent proposals and for clarity on whether the decision not to consult on a proposed change may be challenged. Meanwhile, others expressed concern over the amount of detail needed in the pro forma both in the legal drafting, and analysis and evidence.

Our response:

We agree with the point that a more complex proposal will need longer to be discussed and processed but we do not intend to introduce separate approaches. We are obliged by the Regulations to consult on any amendment to the Rules so the basic principles of the process will need to be consistent regardless of the complexity of the proposed change. However, we will determine on a case-by-case basis whether the proposal can be processed in a given year or whether further information is needed and it should roll onto a subsequent year.

We have set out in our Guidance more detail on the criteria we will consider when assessing whether a proposal is urgent.

In response to the request for clarity on whether the decision not to consult on a proposed change can be challenged: it is possible to challenge any decision we take in this process by judicial review. But we hope we have mitigated this situation so it is unlikely to occur. Industry and interested parties will be aware of the direction Ofgem is taking from early on (after prequalification, when we issue an open letter). There is therefore time for industry and interested parties to influence the direction the Rule changes are taking.

We have clarified in the guidance that while legal drafting, analysis and evidence is not a requirement of the change request form, we encourage proposals to provide as much detail as possible. Submitting a clear proposal backed with analysis will ensure that we – and other members of industry – can assess and comprehensively consider the arguments within the proposal. Ofgem will be responsible for the final legal drafting.

4. Objectives

Stakeholder views:

A number of stakeholders requested more clarity on how the Capacity Market objectives will interact within the wider statutory duties.

Our response:

We have revised our guidance to ensure that it is made clear what our principal objective is and where stakeholders can find our general duties. We have also stated that in the event of a conflict with the CM Rule Change objectives, our principal objective and general duties will take precedence.

5. Codes

Stakeholder views:

More than half of stakeholders suggested that Ofgem should seek to replicate the code governance system.

Our response:

We have provided further explanation of the interaction between CM Rules changes and the codes in the revised version of our guidance. The way in which the CM Rules have been set up is different to the Codes. This means we do not think it is appropriate to simply duplicate arrangements. As such we continue to remain unconvinced that standing working groups are appropriate. We have indicated that we will seek additional technical expertise as the need arises.

6. Processes

Stakeholder views:

There were several points raised by stakeholders on how to improve the overall process. Two stakeholders requested clarity on how proposed changes will be considered and developed prior to Ofgem consulting on the draft revised Rules. A further two stakeholders suggested that the Ofgem website should support Rule Change Process. There was also concern about how DECC might change the Rules and the Regulations.

Our response:

We have revised our process to include an open letter after prequalification to give industry and interested stakeholders an indication of our thinking early in the process. We will publish all proposals on our website and, after reviewing the proposal, our feedback. While it is for DECC to decide whether and how it would make any changes to the Rules or the Regulations, we will work with DECC to align any changes with our process wherever possible.