



Termination clauses

Expert Group discussion

4 March 2013



- Context: key aims / concerns that termination rights are designed to address
- A reminder of the position set out in November
- Questions to prompt discussion
- A chance for you to share any other views

Government included termination rights in the CfD in order to:

- manage the risk of non-delivery (avoid projects seeking to block competitors, ensure decarbonisation objectives are achieved, make efficient use of budget)
- manage risk of under-delivery (CfD cannot become an option to build any size project up to the capacity)
- avoid situations where there is systematic/significant non-compliance with key terms of the contract.

And, the approach was informed by the need to avoid the CfD effectively becoming “one-way”, with parties walking away to avoid the period of pay-back to consumers.

There are interactions with other areas of the contract, yet to be fully developed:

- Force Majeure provisions
- Length of the TCW / time until long-stop date

The intention here is to provide sufficient timescales for a reasonable and prudent operator to develop their project.

Industry have also raised concerns around “hair trigger” risks in the termination events – we are open to considering how the drafting is set out to address this, alongside provisions such as cure periods.



The counterparty body will have the right but not the obligation to terminate.

Government's ultimate objective is for low-carbon generation to be built and operated for the full contract term.

November position – termination events



Department
of Energy &
Climate Change

- The CPB will normally terminate if the developer:
 - fails to meet the development milestones
 - does not deliver the agreed capacity (unless prevented by physical, rather than commercial, factors) or
 - does not commission the project ahead of the longstop date.
- The CfD contains a list of termination events, including:
 - Insolvency
 - Non-payment or credit support default
 - Breach of warranty or material obligation
 - Loss of key project documents / generation licence / facility

EMR Expert Group papers are not a statement of Government policy or policy intent

November position – flexibility and remedy



Department
of Energy &
Climate Change

- There will only be limited flexibility. It is not appropriate for a generator to continue to benefit if in material default e.g. failing to make payments, or no longer being able to perform its obligations.
- The contract will afford generators remedy periods for most events of default; mechanisms will allow the CfD counterparty to support a move back into a position of compliance.
- In addition, Government is minded to provide for a standard form Direct Agreement with the funders of a generator.

November position – termination payment



Department
of Energy &
Climate Change

- It is proposed that the CPB has the right to recover a lump sum termination payment in order to protect consumers and suppliers.
 - This would be calculated ‘mechanically’ e.g. the present value of the projected difference payments to be made by the generator over the remaining term of the contract.



- Not considered appropriate for generator termination rights as a result of CfD counterparty default due to:
 - legislative underpinning of the scheme
 - restrictive purpose of the CfD counterparty
 - required by law to raise revenue from suppliers in order to make payments to CfD generators
 - supported by the secondary legislation on the detail of the supplier obligation
 - no commercial incentive that might lead to non-performance under the contract.



1. How does the current 'package' address the risks faced by Government, generators and other interested parties?
2. Are there any specific areas that give cause for concern on the balance of risk?
3. Cure periods are being considered – do you have any views on this approach, and on what are appropriate timescales?
4. Which clauses have the most significance from the generator's perspective?

Anything else?



Department
of Energy &
Climate Change

- Has this discussion covered all your concerns?