



Department for  
Business, Energy  
& Industrial Strategy

# PROPOSALS FOR TECHNICAL AMENDMENTS TO THE CAPACITY MARKET

Consultation

Closing date: 10 January 2019



**OGL**

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# Contents

Executive summary	4
1. Introduction	5
2. 2019/20 delivery year	8
3. Deferred payments	13
4. Obligations under and enforcement of existing agreements	15
4.1 Modifications of obligations falling on capacity providers during the standstill period	15
4.2 Administration of agreements, termination fees and appeals	17
5. Payments administered by the Settlement Body	18
Annex A – existing obligations and milestones following a T-1 auction (as set by the current Capacity Market Rules)	22
Annex B – main obligations and milestones that are due under existing agreements in 2019	24

## Executive summary

Since its introduction in 2014, the Capacity Market has been an important part of the energy market, ensuring that we maintain and bring forward sufficient capacity to secure electricity supplies.

The 15 November 2018 judgment of the General Court of the Court of Justice of the European Union<sup>1</sup> had the effect of removing the European Commission's State aid approval for the GB Capacity Market scheme and introducing a standstill period<sup>2</sup> until the scheme can be approved again.

The Government has been clear that the judgment ruled on procedural grounds and did not challenge the fundamental nature of the Capacity Market or find it incompatible with State aid. It does not change our view that the Capacity Market is the right mechanism to deliver secure electricity supply at least cost, and we are therefore working closely with the European Commission to reinstate the full functioning of the Capacity Market as soon as possible.

As Minister of State for Energy, Claire Perry, set out in her Written Ministerial Statement published on 6 December 2018, the Government has confirmed its intention to hold a replacement T-1 'top-up' auction during the summer of 2019, for delivery in 2019/20. The Government also expects that a positive final State aid decision would allow payments to be made to those existing agreement holders that have met their obligations during the standstill period. We are working with the Capacity Market Delivery Body (National Grid) and the Capacity Market Settlement Body (the Electricity Settlement Company, or "ESC"), therefore, to allow the Capacity Market to continue to operate as normal (so far as is possible) until State aid approval is received, but without payments being made to agreement holders.

This consultation covers proposals for: conducting a replacement T-1 auction by re-arranging the T-1 which was planned for January 2019 and which was postponed following the judgment; changes regarding obligations under and enforcement of existing capacity agreements during the standstill period; payments for capacity providers that have met their obligations during the standstill period; and arrangements for the collection of charges from suppliers for the purpose of funding deferred payments to capacity providers.

Following the consultation, the Government will be looking to make the necessary amendments to the Electricity Capacity Regulations 2014 ("the Regulations"), the Electricity Capacity (Supplier Payment etc.) Regulations 2014 ("the Supplier Payment Regulations"), and the Capacity Market Rules 2014 ("the Rules").

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<sup>1</sup><http://curia.europa.eu/juris/document/document.jsf?text=&docid=207792&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1430154>

<sup>2</sup> The 'standstill period' refers to the period beginning on 15 November 2018 (the date of the General Court judgment) and ending when the Secretary of State determines that it has ended, following the European Commission granting State aid approval again to the main GB CM scheme (see Section 3.1). During the standstill period, the scheme does not have State aid approval and aid cannot be granted under the scheme.

# 1. Introduction

The Capacity Market (CM) aims to procure the capacity required to meet peak demand in a range of scenarios through competitive auctions held four-years (T-4) and one-year (T-1) ahead of delivery.

Since the CM was introduced in Great Britain (GB) in 2014, a series of auctions have been held securing capacity out until 2021/22. This includes four T-4 auctions, one T-1 auction, one 'Transitional Arrangements' auction for Demand Side Response (DSR) and small-scale distribution-connected capacity providers, one 'Transitional Arrangements' auction for turn-down DSR and a one year ahead 'Supplementary Capacity Auction'.

On 15 November 2018 the General Court of the Court of Justice of the European Union handed down its judgment in a case against the European Commission's decision-making process for giving State aid approval for the GB CM scheme. The judgment annulled the State aid approval for the main GB CM scheme<sup>3</sup> and the Commission must now undertake a formal investigation before the scheme can be approved again.

As National Grid has already confirmed, the court ruling will not impact security of supply this winter. The ruling does not change the UK Government's view that the CM is the right mechanism to deliver secure electricity supplies at least cost.

We are working closely with the European Commission to ensure that the CM is reinstated as quickly as possible. The Commission has confirmed that it will be conducting an investigation into the original State aid notification for the CM. This investigation covers the CM agreements already entered into, including those for 2018/19 and 2019/20. The Commission expects to issue an Opening Decision to open their formal investigation by early 2019.

Immediately following the judgment, the Secretary of State of BEIS directed National Grid to postpone indefinitely the T-1 and T-4 auctions, which were previously planned to be held in January 2019, and requested the Electricity Settlement Company to halt the making of capacity payments under existing agreements and, on the basis that there was not an immediate need to fund payments to capacity providers, the collection of charges from suppliers. The advice provided to capacity providers was that the Government was considering the judgment in detail, and capacity providers should continue complying with their agreements in the meantime.

Having considered the judgment more closely, the Government confirms that:

- **A replacement 'top-up' T-1 auction will be held in summer 2019 to secure capacity for delivery year 2019/20.** National Grid have said that there are no risks to the security of supply position for this winter. This replacement T-1 auction will be held by rearranging the postponed T-1 auction scheduled for January 2019. Agreements secured through this auction will be conditional on the timing and outcome of the European Commission's formal investigation. Some changes will be needed to the Regulations and Rules to accommodate the changed State aid position and auction timing, but in many ways its structure will be as similar as possible to the previously planned T-1 auction, procuring the top-up capacity required. This will provide assurance

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<sup>3</sup> The judgment does not affect State aid approval for the Supplementary Capacity Auction for the 2017/18 delivery year.

for the 2019/20 year. **Section 2** of this consultation sets out the proposed changes required to run this auction.

- **A positive final State aid decision would allow deferred payments will be made to capacity providers who have met their obligations during the standstill period.** These payments will be made following the end of the standstill period to replace capacity payments missed as a result of the standstill period (subject to State aid approval for these payments being granted by the European Commission). **Section 3** of this consultation considers arrangements for making the deferred payments.
- **Capacity agreements awarded under past auctions are still capable of being fully administered and enforced during the standstill period.** As per previous advice, capacity providers should continue complying with their agreements. We are working with National Grid and the Electricity Settlements Company to allow the CM to continue to operate as normal, so far as is possible. **Section 4** of this consultation considers potential modifications to the obligations and termination fees falling on capacity providers during the standstill period.

The Government has also had the opportunity to consider more carefully its position in respect of the collection of charges from suppliers. As set out in our previous statements, following consultation with the Commission since the judgement, we now expect that, if and when our State Aid case is approved, we will be able to make deferred payments for all suspended payments. The Commission have also confirmed that they have no objection to us resuming collection from suppliers during standstill. The Government has also received a range of representations across industry to us that it would be beneficial for confidence and for efficient operations to resume monthly collection now in anticipation of deferred payments being required at a later date. Therefore, the Government is minded to restart collection of the CM Supplier Charge during the standstill period, subject to this consultation, for the purpose of enabling the making of eventual deferred payments to capacity providers. Pending the outcome of this consultation, suppliers may therefore feel it is sensible to continue to collect money from their customers to fund this charge. **Section 5** of this consultation considers the options and practicalities for re-starting the collection of charges from suppliers during the standstill period.

Following the consultation, the Government will be looking to amend the Electricity Capacity Regulations 2014 (“the Regulations”), the Electricity Capacity (Supplier Payment etc.) Regulations 2014 (“the Supplier Payment Regulations”), and the Capacity Market Rules 2014 (“the Rules”) as soon as possible and in time to hold the replacement T-1 auction during summer 2019.

The Government intends to conduct a second consultation and legislative change process in Spring 2019, to make further changes to the Regulations and Rules ahead of the 2019 pre-qualification window, to require credit cover to be reposted after the end of the standstill period, and covering the changes required to enable a T-3 auction to be run in early 2020 to replace the postponed T-4 auction which was scheduled to be run in January 2019 to secure capacity for 2022/23.

### How to respond

This consultation will be open from 19 December 2018 until 10 January 2019. Please submit your response to this consultation by 11:45pm 10 January 2019.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will most useful if it is framed in direct response to the questions posed, though further comments are also welcome.

**Email to:** [energy.security@beis.gov.uk](mailto:energy.security@beis.gov.uk)

**Write to:**

Energy Security Team,  
Department for Business, Energy and Industrial Strategy  
3rd Floor, 1 Victoria Street,  
London, SW1H 0ET

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Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances and will share all responses with our delivery partners. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable UK and EU data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

**Quality assurance**

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

## 2. 2019/20 delivery year

### **Replacement T-1 auction for delivery in 2019/20**

The Government has confirmed its intention to hold a replacement T-1 ‘top-up’ auction for the delivery year 2019/20. The Government remains of the view that the CM is the most appropriate way in which to secure electricity supply at least cost, and this auction is the first step in our wider plan to reinstate its full functioning as soon as possible.

This replacement T-1 auction will be held by rearranging the postponed T-1 auction scheduled for January 2019. Some minor changes will be needed to the Regulations and Rules, but in other ways its structure will be as similar as possible to the previously planned T-1 auction, procuring the top-up capacity required. We currently expect to make the required changes to the Regulations and Rules by spring 2019, and to run the auction in summer 2019.

The Commission has confirmed that it will be conducting an investigation into the original State aid notification for the CM. The Commission expects to issue an Opening Decision to open their formal investigation by early 2019. Their formal investigation is likely to be ongoing at the time the replacement T-1 auction is run, meaning that we will be running the auction before State aid approval is secured. To ensure that the auction remains State aid compliant, we are therefore proposing to decouple the running of the auction from the awarding of capacity agreements. Capacity agreements will not be awarded as a result of the T-1 auction unless and until the Commission grants state aid approval to the GB CM Scheme and the Secretary of State directs that capacity agreements should be awarded, following the Commission’s full investigation.

A small number of further amendments to the legislation will be required to accommodate the specific circumstances and timing of this auction, for example to allow the replacement T-1 auction to be run at a later date than is usual. These changes are set out in more detail.

### **State aid compatibility**

The Government is working closely with the European Commission on the necessary steps for the CM scheme to be reinstated as quickly as possible. We expect the Commission to deliver an Opening Decision to open their formal investigation in early 2019, but it is unlikely that the Commission will have completed its investigation and published a final decision giving State aid approval in advance of the replacement T-1 auction. During the standstill period, it is unlawful for the CM scheme to grant State aid, including the granting of capacity agreements. Accordingly, we propose to make Regulations for the purposes of the replacement T-1 auction to prevent capacity agreements from automatically accruing to successful bidders.

This means the results of the replacement T-1 auction would not give rise to capacity agreements until the European Commission provides State aid approval covering the replacement T-1 auction and the Secretary of State directs that capacity agreements should be awarded (hereafter referred to as the “T-1 agreement trigger”). We anticipate that State aid approval will be received before the 2019/20 delivery year so that payments under agreements awarded through the replacement T-1 auction will cover the period from October 2019. However, the Secretary of State would retain the power to decline to activate the T-1 agreement trigger (for example, if State aid approval was delayed until a time when the award of agreements is no longer the most effective way to secure capacity for the 2019/2020 delivery year), providing reasons for this decision.



We are also considering whether we need to make other changes to the application of Regulations, Supplier Payment Regulations, and Rules to address the gap between the end of the auction and any award of capacity agreements. For instance, it is likely to be necessary to modify regulation 25(3) of the Regulations to make it clear that, in the context of the replacement T-1 auction, a successful bid is one which would result in award of a capacity obligation if the Secretary of State were to direct capacity agreements be awarded. Similarly, Rule 6.3 requires that capacity agreement notices be issued within 20 working days of the end of the relevant auction. As capacity agreements would no longer automatically accrue to successful bidders, we anticipate this rule will need amending to ensure capacity agreement notices are provided when agreements are awarded. We anticipate a number of similar changes will be required to reflect the conditionality of agreements which may be awarded through the replacement T-1 auction process.

### **Timing**

Although we will be aiming to run the replacement T-1 auction as soon as possible, we consider it prudent to amend the Regulations to enable the auction to be held outside of the usual auction window specified in the Regulations (1st September to 31st July), in case it does not prove possible to make the required regulatory changes which will allow the Government to run the replacement T-1 auction within the existing window. We are proposing to extend the auction window to the end of August, for this auction only.

We are also considering whether additional changes are required for the Regulations and Rules to operate as intended in line with the timing of the replacement auction. This is likely to include amendments to calculations conducted by the Settlement Body, such as those in Schedule 1 to the Regulations, and Schedule 1 to the Supplier Payment Regulations, to ensure relevant information is available at the time these calculations are made.

### **Eligibility/Prequalification**

We propose to run the replacement T-1 auction by re-arranging the T-1 auction for delivery year 2019/20, which was previously scheduled to run in January 2019. We are not proposing to make any changes to the eligibility requirements which were in place for the January T-1 auction.

At this stage, BEIS does not consider that it will be necessary to re-open the prequalification process ahead of the replacement T-1 auction, meaning the pre-qualification results which were finalised by the Delivery Body for that planned auction would remain valid for the replacement T-1 auction. We will, however, make changes to allow all those who pre-qualified for the planned T-1 to withdraw their pre-qualification applications for this replacement T-1 auction if they choose, and are also considering whether it may be necessary to ask pre-qualified capacity holders to re-confirm whether some of the information provided during the pre-qualification process in Summer 2018 remains correct.

### **Target capacity**

As a T-4 auction has already been held for 2019/20, the replacement T-1 auction will procure 'top-up' capacity, rather than the full requirement for the 2019/20 delivery year.

We propose to amend the Regulations to require the Delivery Body to update the Secretary of State in relation to pre-qualification results and to advise on whether the demand curve for the replacement T-1 auction should be adjusted once those who are currently pre-qualified confirm whether they are withdrawing and have provided any updated information required. The

Secretary of State will be able to adjust the auction parameters in light of these updated prequalification results and the Delivery Body's advice in the usual way under Regulation 13.

### **Transmission Entry Capacity requirements for Transmission-connected Capacity Market Units**

As is usual for T-1 auctions, transmission-connected CMUs will be required to confirm they have entered into one or more Grid Connection Agreements that secure Transmission Entry Capacity (TEC) for the replacement T-1 auction delivery year (Rule 3.6.3(a)(i)). We are aware that generators considering whether to retain TEC for 2020/21 will need to cancel before the end of March 2019 if they are to avoid a cancellation charge from National Grid, i.e. before the replacement T-1 auction is likely to be held. Although it is more usual for transmission-connected CMUs to participate in a T-1 auction before this deadline, we do not currently foresee this as an issue, but would welcome views as part of this consultation.

### **Secondary Trading**

The existing Regulations and Rules only allow for the transfer of rights and obligations under capacity agreements. As we are proposing that the replacement T-1 auction results would not lead to capacity agreements until the T-1 agreement trigger is activated, secondary trading will only be possible from the point at which capacity agreements accrue to successful bidders.

### **Capacity Market register**

As set out in the Regulations and the Rules, the Delivery Body is required to record auction result information (for instance, the capacity cleared price) in the capacity market register, some of which relates to awarded capacity agreements. This information is used for, among other things, Settlement Body capacity payment calculations. Any capacity agreements arising from the T-1 auction will not be awarded until the T-1 agreement trigger is activated, which may be sometime after the auction. We are considering how details of the auction results should be recorded before capacity agreements are awarded, so that capacity market processes that rely on information relating to capacity agreements, such as settlement calculations, can be carried out before any award. We anticipate this may require changes to the Regulations and the Rules (including Regulation 31 and Rules 5.10, 7.4-7.5 and others identified upon a detailed review).

### **Delivery assurance for prospective CMUs**

Under the existing Capacity Market Rules and Regulations, capacity providers who have successfully secured capacity market agreements are bound by a variety of milestones and obligations in the run up to the delivery year and during the delivery year. These milestones and obligations provide assurance that the capacity that has been successful in the auction will deliver in the delivery year. A list of the existing milestones and their usual dates is included at Annex A.

In the case of the replacement T-1 auction, it will remain important for Government to have assurance that successful bidders will deliver. There are, however, factors specific to the replacement T-1 auction which influence how this assurance can be obtained. In particular:

- the auction will be held later than usual, reducing the lead-in time to the delivery year and allowing less time for the completion of milestones; and
- capacity agreements will not be awarded until after State aid approval is received and the Secretary of State directs that they should be, meaning that successful bidders are

unlikely to have capacity agreements (giving rise to the aforementioned milestones and obligations) during most of the lead-in time to the delivery year. It is also possible that State aid approval (and therefore the award of capacity agreements), is delayed until after the start of the delivery year.

Given these factors, we propose setting two deadlines:

- A “delivery year readiness deadline”: This would be a deadline by which all key milestones should be demonstrated to the Delivery Body following the auction. It will not trigger penalties or terminations if missed, but its purpose would be to enable CMUs to demonstrate capacity delivery from the start of the delivery year, allowing payments to be paid from this point should the T-1 agreement trigger have been activated ahead of the delivery year. Our current proposal is that this deadline should be set for 30th September (i.e. immediately before the start of the delivery year). We propose to change the Rules to enable successful bidders to comply with this deadline before any award of capacity agreements.
- A “grace period deadline”: Failure to demonstrate all key milestones by this deadline would result in penalties and/or termination. This deadline would fall a short period (our current proposal is four weeks) after the T-1 agreement trigger, or would be aligned with the delivery year readiness deadline, whichever is later. If the T-1 agreement trigger is activated within four weeks of the start of the delivery year, this means that this deadline would fall after the delivery year readiness deadline, providing a short grace period for those who have not met the earlier deadline. Payments would only begin once the required key milestones have been demonstrated and after the T-1 agreement trigger is activated.

For the purposes of the deadlines above, we currently envisage that ‘key milestones’ would include those that prove CMUs are capable of delivering capacity or demand response that they have successfully bid for, for instance metering and DSR requirements and build completion milestones. We are considering whether there is a case for removing the requirement for some of the other milestones, for example, the progress reports for new build CMUs.

As the dates of the replacement T-1 auction and any award of capacity agreements are yet to be determined, we are also considering whether amendments will be necessary to the Regulations and Rules to allow for greater flexibility on these revised deadlines where appropriate, for example, if the T-1 replacement auction was held close to the end of the auction window. Unproven DSR CMUs are currently prevented (by Rule 13.2) from completing the DSR test milestone during pre-qualification periods, which are generally in August. Given the likely reduced lead-in time to the delivery year, we propose to disapply this rule for successful bidders in the replacement T-1 auction.

Any conditional pre-qualification requirements, which are necessary for participating in the auction, such as the referred submission of planning consent, will still be required as usual.

## **Credit cover**

We have already indicated that all CMUs that have credit cover currently lodged with ESC (including those CMUs pre-qualified for the T-1 auction which was planned for January 2019) may request this be returned. In other words, the requirement to maintain credit cover has been waived during the standstill period. In line with this position, we propose to also suspend the requirements for prequalified CMUs for this replacement T-1 auction to post credit cover in order to participate in the auction.

We will establish new dates for the resubmission of credit cover following the end of the standstill period and will make any regulatory changes required to enable capacity holders who choose to voluntarily withdraw their credit cover to continue to participate in the auction process.

<b>Question 1</b>
Do you agree that the amendments to the usual T-1 auction design/process proposed above are appropriate for this replacement T-1 auction?

<b>Question 2</b>
In particular, will the requirement for participants to hold TEC for the T-1 auction delivery year in line with existing rules cause any unintended consequences?

<b>Question 3</b>
Are there any further issues that the Government should consider in implementing the replacement T-1 auction?

## 3. Deferred payments

Our intention is to make provision for deferred payments to capacity providers, following the end of the standstill period, to replace capacity payments missed as a result of the standstill period, as these should:

- reward delivery by capacity providers against their capacity agreements (subject to any reductions in payments to account for non-compliance); and
- maintain confidence in the CM amongst capacity providers, many of whom will have made investments, in part, on the basis of the CM revenues they were expecting to receive during the standstill period. Over the long term, industry confidence in the CM as an investable mechanism can be an important driver of security of supply, cost-savings and value for money overall.

Deferred payments will be conditional on (a) the European Commission's State aid approval following its formal investigation and (b) capacity providers' continued compliance with the obligations under their capacity agreements (amended as we have proposed).

Deferred payments will replace the missed capacity payments from 1 October 2018 to the date of the domestic law trigger signalling the end of the standstill period, taking into account any deductions for termination fees and penalty charges. If a capacity provider's agreement is terminated during the standstill period, any deferred payments will be calculated in accordance with the Regulations and Rules<sup>4</sup>. We will seek to ensure any termination fees owed will be offset against any deferred payments owed. The calculation of the deferred payments will also take into account the imposition of penalty charges accruing from non-delivery in any stress events during the standstill period.

Deferred payments will be payable to capacity providers affected by the standstill period. This could include:

- capacity providers who hold agreements for the delivery year 2018/19, i.e. 1 October 2018 to 30 September 2019; and
- potentially capacity providers who hold existing agreements in respect of delivery year 2019/20 in the unlikely event that the timescale for State aid approval slips beyond 1 October 2019 (the start of that delivery year).

We will amend the Regulations and the Rules to enable deferred payments to be made on these terms. A new regulation will allow Secretary of State to determine that, following State aid approval from the European Commission, the standstill period has ended and, as a consequence, it would not be a breach of state aid law to resume the making of capacity payments, including deferred payments (hereafter referred to as the "domestic law trigger").

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<sup>4</sup> By reference to when payments would cease being made for a particular termination event: Regulation 43B(3) sets out the different termination period 'TPs' for which capacity payments are repayable – either up to the end of the termination period, up to the termination event, or from beginning of the capacity agreement.

**Question 4**

Do you have any comments on the proposed arrangements for making deferred payments to capacity providers for missed capacity during the standstill period, and for making deductions to reflect termination fees or penalties as necessary?

## 4. Obligations under and enforcement of existing agreements

### 4.1 Modifications of obligations falling on capacity providers during the standstill period

Capacity agreements impose a range of obligations and milestones upon capacity providers both in the lead up to the delivery year and in the delivery year itself (Annex B lists the main obligations and milestones that are due in 2019 in relation to agreements awarded in previous capacity auctions). Existing capacity agreements will continue to be administered and enforced during the standstill period to help ensure security of supply and to put capacity providers in a position to be eligible for deferred payments (subject to State aid approval). However, the Government recognises that, in light of the uncertainty created by the judgment and standstill period, capacity providers may find it difficult to achieve compliance with these obligations by the set deadline in some instances.

We are therefore considering whether to amend the Regulations and Rules to modify any obligations for capacity providers during the standstill period: either by extending the time for capacity providers to meet certain milestones that fall during the standstill period, or waiving certain obligations that arise during the standstill period. Generally, we believe these modifications should be minimised wherever possible given they could impact upon the timely delivery of capacity in relation to future delivery years, with potential impacts on security of supply. Modifications are, therefore, proposed where there is a high cost associated with the obligation and its modification is unlikely to impact materially risks to security of supply. To the extent that the European Commission's Opening Decision in its formal investigation in early 2019 is expected to provide reassurance that the Commission is 'minded to' approve the CM scheme, this should provide capacity providers with sufficient confidence to continue to comply with the majority of their obligations.

The following modifications are proposed:

- **Financial Commitment Milestone (Rule 6.6)** – Currently, new build CMUs with capacity agreements for the 2021/22 delivery year must meet the Financial Commitment Milestone (FCM) by 20 June 2019. This represents a significant financial commitment for the CMU (and their investors) and we recognise the European Commission's Opening Decision in early 2019 may not provide sufficient confidence in the CM scheme, or allow enough time for the Opening Decision to be taken into account, to support this level of commitment. We are, therefore, considering the case for extending the time for meeting the FCM to whichever is the later of: 31 March 2020; or five months following the domestic law trigger signalling end of the standstill period. We believe this modification to the FCM is unlikely to affect timely delivery of the new build CMUs for 2021/22 given much of this capacity has relatively quick construction times.
- **Credit cover (Regulations 59(4) - (5) and 60 and the Rules where necessary upon a detailed review)** – We have already indicated that all CMUs that have credit cover currently lodged with ESC may request this be returned i.e. the requirement to maintain credit cover will be waived during the standstill period. A consequence of this position is that the increase in credit cover, due by 13 March for those new build CMUs with

capacity agreements for the 2021/22 delivery year that have not achieved their FCM within 11 months of the 2018 T-4 auction, will also be waived. We will establish new dates for the resubmission of credit cover following the end of the standstill period (e.g. within one month of the domestic law trigger signalling end of the standstill period), and extend the time available for providing the increased level of credit cover for those new build CMUs that had not met their FCM within 11 months of the 2018 T-4 auction (e.g. within two months of the domestic law trigger signalling the end of the standstill period).

- **Connection agreements (Rule 3.7.3(c))** – Currently, new build, distribution-connected CMUs with capacity agreements for the 2020/21 delivery year must submit a distribution connection agreement by 29 March 2019. Given connection agreements tend to be high cost, and the limited amount of time that is likely to exist between the European Commission’s Opening Decision and the deadline for this requirement, we are considering the case for delaying this deadline until after the end of the standstill period (e.g. within one month of the domestic law trigger signalling the end of the standstill period).
- **Metering assessments (Rule 3.10.2(b))** – Currently, Unproven DSR CMUs with capacity agreements for the 2019/20 delivery year must complete a metering assessment by the end of May 2019. Whilst the European Commission’s Opening Decision in early 2019 should provide a sufficient basis for aggregators to recruit clients, we recognise the uncertainty that currently exists will delay this process. We are, therefore, considering the case for delaying the metering assessment deadline until the end of August 2019 (although aggregators should continue to aim to complete this as soon as practical to provide time for metering tests (if necessary) and DSR tests ahead of the start of the delivery year).
- **Metering tests (Rule 8.3.3(e))** – Currently, existing CMUs and Proven DSR CMUs with capacity agreements for the 2020/21 delivery year must complete a metering test by the end of March 2019. We are considering the case for delaying this deadline, until the end of September 2019, given the limited amount of time likely between the Opening Decision in early 2019 and the original deadline. Whilst this delay should not affect delivery for 2020/21, it may, however, impact our ability to accurately determine the amount of replacement capacity to secure in the T-1 auction for that delivery year if CMUs subsequently fail the delayed milestone.
- **Mock stress event** – The requirement for the Delivery Body to run a mock stress event will be waived during the standstill period. This is an administrative event only, the purpose of which is to test the functionality of National Grid’s and ESC’s operational processes in readiness for a stress event occurring – waiving this test will not affect security of supply.
- **Sterilisation of terminated CMUs (Rule 3.3.3(e))** – The Government recognises there may be an increased risk of terminations of capacity agreements during the standstill period. To avoid sterilising additional volumes of capacity from auctions to be held within the next two years, we propose waiving this Rule in relation to capacity terminated during the standstill period.



## 4.2 Administration of agreements, termination fees and appeals

National Grid will continue to administer and monitor compliance with the obligations under capacity agreements (including as amended by the proposed Regulations and Rules) during the standstill period. This will include issuing Notices of Intention to Terminate and Termination Notices as necessary.

The Secretary of State will continue to consider any appeals from capacity providers under Regulation 33 of the Regulations to exercise his discretion to direct National Grid to withdraw Termination Notices or extend the date by which capacity providers must meet any requirements specified in Termination Notices. We propose an amendment to Regulation 33(3) to allow the Secretary of State to extend the date by which capacity providers must meet any requirements specified in Termination Notices by up to 12 months, instead of 6 months as is currently the case, and an amendment for the maximum period an application a capacity provider may make to extend the Termination Notice, as set out in Rule 6.10.2, to be similarly extended. The Government will produce guidelines to outline the circumstances under which this greater degree of discretion may be employed.

Termination fees will not be imposed during the standstill period. Instead, following the domestic law trigger signalling the end of the standstill period, capacity providers will be invoiced by the Settlement Body and termination fees will be payable within one month from the date of the invoice.

CM penalty charges for non-delivery during system stress events will not be payable during the standstill period. However, any penalties incurred during the standstill period will continue to be recorded and adjustments made to the value of the deferred payments as necessary.

We will make adjustments to the Rules and Regulations to extend milestones, waive obligations, and provide for the payment of termination fees and penalties after the standstill period on the terms described above.

### Question 5

Are there any obligations that arise during the standstill period that should be postponed? If so, what are they? To what extent should they be postponed? What is your justification for postponing them?

### Question 6

Do you have any comments on the proposed arrangements for the administration of agreements, termination fees and appeals during the standstill period?

## 5. Payments administered by the Settlement Body

### **Capacity payments suspended during the standstill period**

The annulment of the State aid approval for the main GB CM scheme means that aid cannot be granted under the scheme until it can be approved again by the European Commission. Consequently, the making of capacity payments is suspended during the standstill period. We will be making amendments to the Regulations to modify the application of regulation 40 of the Regulations, which provides for capacity payments to be made by the CM Settlement Body (ESC), during the standstill period. ESC will only restart making payments to capacity providers, including deferred payments (Section 3) following the domestic law trigger signalling the end of the standstill period and we will be amending the relevant Regulations to provide for these payments.

### **Payments relating to the replacement T-1 auction**

We also propose to make technical amendments to the Supplier Payment Regulations, if necessary on more detailed review, to set out the methodology for the calculation of the supplier charge and capacity payments that will be payable under T-1 agreements (subject to State aid approval) if the agreements cannot be awarded before the start of the delivery year or when payments are suspended because a milestone has not been met. As noted in section 2, we are also considering whether it is necessary to make changes to Supplier Payment Regulations to accommodate the revised timeframes for the replacement T-1 auction and any subsequent award of capacity agreements.

### **Collection of Supplier Charge during the standstill period**

The Government has received representations across industry, including from capacity providers, suppliers and investors who would like to see the resumption of the Supplier Charge during the standstill period. Industry has argued that a continuation of the Supplier Charge should minimise uncertainty and disruption to both suppliers and their customers given these payments should have already been factored into suppliers' tariffs. Deferral until after the standstill period of the collection of the Supplier Charge originally scheduled for collection during the standstill period would, on the other hand, likely create a future spike in costs to suppliers and consumers (i.e. the Supplier Charge in delivery year 2019/20 will need to cover both the deferred payments relating to delivery year 2018/19 and the resumed, regular capacity payments relating to delivery year 2019/20). This could create practical difficulties in collecting funds from suppliers and, in turn, their customers. It would also have implications for the setting of the Standard Variable Tariff (SVT) Price Cap due to be introduced shortly.

Industry representations also stressed that a continuation of the Supplier Charge will help give confidence to capacity providers that funds are available to make deferred payments at the end of the standstill period (subject to State aid approval by the European Commission). The importance of deferred payments to the market was described in Section 3.

In light of these representations, in the Written Ministerial Statement ‘Energy Update’ published on 6 December 2018<sup>5</sup>, we signalled that we were “*considering the viability of the Capacity Market supplier charge continuing to be collected under the expectation that payments will be passed on to agreement holders at the appropriate time.*” After careful consideration of the representations from industry, we are minded to continue to collect payments from suppliers during the standstill period, and welcome views on our intended approach and on how these payments should be collected. The two options we are considering, discussed below, are: for ESC to continue to collect the Supplier Charge, or a modification to the Balancing and Settlement Code (BSC).

### *ESC continue to collect*

This option provides greatest continuity for suppliers and would be likely to be quicker to implement, as the Supplier Charge would be collected by the CM Settlement Body (the ESC) in line with the existing arrangements set out in the Supplier Payment Regulations. The calculation of the Supplier Charge would continue to be adjusted to take into account of changes to the market share of the supplier, the capacity being provided (e.g. if capacity agreements are terminated during the standstill period), capacity provider penalties and over-delivery by capacity providers.

In this option, we would consider whether it would be useful to introduce greater flexibility in the supplier credit cover, mutualisation and enforcement provisions that will operate in the event of supplier non-payments during the standstill period. We would also introduce provisions for the Supplier Charge collected during the standstill period to be returned to suppliers in the unlikely event that the European Commission reaches a negative decision in its formal investigation and does not give State aid approval for the CM scheme.

We would propose making any necessary technical amendments to the Supplier Payment Regulations to help ensure clarity and the smooth collection of the Supplier Charge during the standstill period. Whilst not essential, such changes may include:

- Any technical amendments required to the Supplier Charge calculation methodology in Schedule 1 to the Supplier Payment Regulations to ensure accurate calculations can continue to be made during the standstill period by reference to the capacity payments that remain payable to capacity providers during the standstill period;
- Providing for the Settlement Body to hold Supplier Charge monies until they can be used to make the deferred payments;
- Ensuring that any delay by the Settlement Body in sending invoices during the standstill period to suppliers for the monthly capacity market supplier charge and the amount of any mutualisation payment beyond the timeframes specified in the Supplier Payment Regulations (regulations 6(5) and 7(3) respectively) does not affect the liability of a supplier to pay the invoice;
- Providing for the Settlement Body to request suppliers to repost credit cover as the Supplier Charge will be collected during the standstill period;

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<sup>5</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-12-06/HCWS1154/>

- Providing that the Settlement Body will return Supplier Charge monies in the unlikely event that the European Commission reaches a negative decision after its formal investigation and does not give State aid approval for the CM scheme.

Subject to the outcome of this consultation and further consideration of the legal and practical implications, ESC could potentially re-start collection of the Supplier Charge as early as February 2019.

### *BSC modification*

Concurrently, industry is exploring whether a modification to the BSC could be made urgently to require suppliers to pay the equivalent of the supplier charge into a trust or escrow account, until State aid approval can be secured and the money can be transferred to ESC to pay out as the deferred capacity payments for the standstill period. The BSC is administered by Elexon. The BSC legally binds all licensed electricity companies in GB who are required by the terms of their licences to be subject to the BSC, including suppliers, so would achieve the same goal as ESC continuing to collect the Supplier Charge.

The Department does not have a formal role in developing or implementing this option. Nor is its implementation timing within our control; we understand this option would be ready for implementation from February or March 2019, although there are risks it could take longer to implement as there are a substantial number of design considerations for industry to work through and resolve.

A BSC industry-led working group has recently been established to discuss how this option might work in practice with a view to identifying and recommending a modification to the BSC. Ofgem would need to make a final decision confirming the modification, and Elexon would modify the BSC. We would be interested to receive views in this consultation on whether there are any benefits in this route compared to the ESC option.

### **Settlement Costs Levy**

ESC's operational costs during the standstill period will continue to be funded by the Settlement Costs Levy under either option.

### **Other amendments**

The calculation formula in paragraph 2(3) of Schedule 1 to the Regulations contains a typographical error and should refer to "PACMSCsx", which we will correct in the proposed regulations.

### **Next consultation**

We will consult at a later stage on any further amendments required to, for example:

- Require credit cover to be reposted by CMUs after the standstill period;
- Calculate reconciliation adjustments to the Supplier Charge paid by suppliers; and
- Calculate the deferred payments to be made to eligible capacity providers, including any deductions for termination fees and capacity market penalty charges, and how this will be paid to capacity providers.

## **Question 7**

Do you agree there is a strong case for re-starting collection of the Supplier Charges? If so, what is your preferred option?

**Question 8**

Do you have any comments on the possible technical changes to regulations or rules that would be required to clarify the operation of the collection of the Supplier Charge during the standstill period or make payments in respect of the proposed T-1 agreements?

**Question 9**

Are any changes desirable to the supplier credit cover, mutualisation and enforcement provisions that apply during the standstill period?

## Annex A – existing obligations and milestones following a T-1 auction (as set by the current Capacity Market Rules)

The below table lists the obligations and milestones for each CMU type, as set by the current Capacity Market Rules. To give an idea of indicative timings we have listed the deadlines following the T-1 2018 auction for the 2018/19 delivery year, concluded on 1 February 2018.

<b>CMU type</b>	<b>Obligation</b>	<b>2018/19 T-1 Deadlines</b>
Existing Generating	Metering Assessment	31/05/2018
	Metering Test	14/09/2018
	Satisfactory Performance Dates	01/05/2019
Refurbishing	Financial Commitment Milestone	11/05/2018
	Metering Assessment	28/09/2018
	Metering Test	28/09/2018
	Substantial Completion Milestone	28/09/2018
	Long Stop Date	01/05/2019
New Build	Connection Agreement (Distribution only)	29/03/2018
	Six monthly progress reporting date 1	30/04/2018
	Financial Commitment Milestone	11/05/2018
	Six monthly progress reporting date 2	30/07/2018
	Metering Assessment	28/09/2018
	Metering Test	28/09/2018
	Substantial Completion Milestone	28/09/2018
	Long Stop Date	01/10/2018
	Satisfactory Performance Dates	01/05/2019
Proven DSR	Metering Assessment	31/05/2018
	Metering Test	14/09/2018
	Satisfactory Performance Dates	01/05/2019
Unproven DSR	Metering Assessment	31/05/2018
	DSR Test	31/08/2018

## Proposals for technical amendments to the Capacity Market

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	Metering Test	14/09/2018
	Satisfactory Performance Dates	01/05/2019

## Annex B – main obligations and milestones that are due under existing agreements in 2019

Obligation	CMU type	Auction and delivery year	Deadline
Six monthly progress report	New build	T-4 2018, T-4 2019, T-4 2020, T-4 2021	30/11/2018, 31/05/2019, 29/11/2019
Satisfactory Performance Days	All	T-4 2018	1/05/2019 (30/09/2019)
		T-1 2018	1/05/2019 (31/07/2019)
Extended Performance	Generating (storage)	T-1 2018	1/05/2019 (31/07/2019)
Metering assessment	New build	T-4 2018	30/09/2019
	Refurbishing	T-4 2019	30/09/2019
	Unproven DSR	T-4 2019	31/05/2019
	Existing, Proven DSR	T-4 2021	30/09/2019
Metering test - provision	Existing, Proven DSR	T-4 2020	29/03/2019
	New build	T-4 2018	30/09/2019
	Refurbishing	T-4 2019	30/09/2019
	Unproven DSR	T-4 2019	16/09/2019
Connection agreement	New build (distribution only)	T-4 2020	29/03/2019
DSR test	Unproven DSR	T-4 2019	30/08/2019
Financial commitment milestone	New build	T-4 2021	20/06/2019
Minimum Completion Requirement	New build Refurbishing	T-4 2018, T-4 2019	30/09/2019



Proposals for technical amendments to the Capacity Market

Substantial Completion Milestone (Long stop date)	New build Refurbishing	T-4 2018, T-4 2019	30/09/2019
Evidence of total project spend	New build, Refurbishing	T-4 2018	01/01/2019
Updated funding declaration	New build, Refurbishing	T-4 2018	01/01/2019
Credit cover increase to be posted	New build, Refurbishing	T-4 2021	13/03/2019

<b>Other obligations without specific deadlines</b>
<p>Credit cover maintenance</p> <p>TEC maintenance</p> <p>Notification of changes to construction timetables</p> <p>Transfer, sale or disposal of CMUs</p> <p>Opt-out notifications</p> <p>Sterilisation of CMUs due to insolvency and termination</p> <p>No longer meets General Eligibility Criteria</p>

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This consultation is available from: <https://www.gov.uk/government/consultations/capacity-market-technical-amendments>

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