



Department for  
Energy Security  
& Net Zero

# Capacity Market Appeals Process

Guidance

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# 1. Introduction

This document provides guidance on the Capacity Market appeals process for Capacity Providers with a Capacity Agreement. It provides guidance on Termination Notices (see section 2), Reduction Notices (see section 4) and appeals to the Secretary of State (see section 3 & 5). The Electricity Capacity Regulations 2014 (“the Principal Regulations”) and the Capacity Market Rules (“Rules”) set out the obligations of a Capacity Provider and details the appeals process.

This guidance should be read by all Capacity Providers holding a Capacity Agreement who are considering making an appeal to the Secretary of State in relation to Termination and Reduction Notices.

For clarity we have included a separate FAQ section for Termination Notices and Reduction Notices.

Unless otherwise defined, capitalised terms throughout this document have the same meaning as in the Rules and Principal Regulations. This document provides guidance only and should not be relied on as a substitute for reading the Principal Regulations, the Rules, or obtaining independent legal advice.

The government publishes amendments to the Capacity Market Rules on its website and can be found here:

<https://www.gov.uk/government/publications/capacity-market-rules>

The government also publishes amendments to the Principal Regulations which can be found here:

<https://www.legislation.gov.uk/ukdsi/2014/9780111116852/contents>

## 2. Termination Notices

Rules 6.10.1 and 6.10.1A of the Capacity Market Rules specify the events (“Termination Events”) that will cause a Capacity Agreement to be terminated. Should such an event occur, the Delivery Body will issue a Termination Notice to a Capacity Provider under Rule 6.10.2(a).

The Delivery Body will issue a Termination Notice, along with an appeal template to the Capacity Provider specifying the ground for termination and informing them that the Capacity Agreement will terminate in 60 Working Days from the issue date of the Termination Notice (“the Termination Notice period”).

In accordance with Rule 6.10.2(e), the Capacity Agreement will automatically terminate at the end of the Termination Notice period, unless the Termination Notice period is extended, or the Termination Notice is withdrawn.

A Capacity Provider may be issued multiple Termination Notices in respect of the same Capacity Market Unit throughout their Capacity Agreement, if more than one Termination Event has arisen. Each Termination Notice is in respect of one Termination Event and each Termination Notice can only be appealed once. A separate completed appeal template is required in respect of each Termination Notice being appealed by a Capacity Provider.

Under Regulation 33, the Secretary of State may direct the Delivery Body to withdraw the Termination Notice or extend the date by which the Capacity Provider must meet the requirement.

## 3. Appealing Termination Notices to the Secretary of State

### 3.1. Termination Events

A Termination Notice can be issued for any Termination Event listed in Rule 6.10.1 and 6.10.2 of the Capacity Market Rules.

<b>Rule</b>	<b>Termination Event</b>
6.10.1(a)	Insolvency
6.10.1(b)	Failure to achieve Financial Commitment Milestone (New Build)
6.10.1(ba)(i)	Failure to lodge Credit Cover (New Build)
6.10.1(ba)(ii)	Failure to maintain Credit Cover (New Build)
6.10.1(c)	Failure to achieve Minimum Completion Requirement (New Build)
6.10.1(d)	Failure to satisfy General Eligibility Criteria

6.10.1(e)	Failure to provide Distribution Connection agreement (New Build)
6.10.1(ea)	Failure to comply with the terms of declaration
6.10.1(f)	the Capacity Provider has made a declaration in its Application in accordance with Rule 3.6.3(b) for a CMU but has not provided a copy of its Grid Connection Agreement evidencing the matters specified in Rule 8.3.1(b) as required by that Rule
6.10.1(fa)	Failure to provide Grid Connection Agreement
6.10.1(g)	Ceases to have a Grid Connection Agreement with the sufficient Transmission Entry Capacity, except if the insufficiency is due to the sole failure of the GB System Operator to provide a connection (Generating or Interconnector)
6.10.1(ga)	Capacity Provider reduces its Transmission Entry Capacity secured by its Grid Connection Agreement to below obligation, except if the reduction is due to the sole failure of the GB System Operator to provide a connection (Generating or Interconnector)
6.10.1(h)	Failure to provide Metering Test Certificate
6.10.1(ha)	Failure to complete Metering Assessment
6.10.1(i)	Failure to provide DSR Test Certificate (Unproven DSR)
6.10.1(k)	Where the Delivery Body has not received a copy of a notice in accordance with Rule 4.6.2 and Rule 4.6.4A applies;
6.10.1(l)	Invalidated the Metering Test Certificate on three separate occasions (Generating)
6.10.1(m)	Failure to lodge Credit Cover (Unproven DSR)
6.10.1(n)	Transfer, sale or disposal of the Generating Unit without retaining Despatch Control and submitting an Aggregator Transfer Declaration (Generating)
6.10.1(o)	Failure to comply with information or declaration submitted
6.10.1(p)	Failure to submit an update Funding Declaration
6.10.1(q)	Funding Declaration does not comply
6.10.1(r)	Failure to demonstrate three additional Satisfactory Performance Days
6.10.1(s)	Failure to demonstrate extended performance
6.10.2	Procedure for automatic termination: 5.12 Prohibition on Market Manipulation 5.13 Prohibition on other unreasonable business methods

The Delivery Body will issue a Termination Notice to the Capacity Provider once it is aware that a Termination Event has been triggered.

Once a Termination Notice has been issued by the Delivery Body, a Capacity Provider will have 20 working days to submit an Appeal to the Secretary of State.

An appeal to the Secretary of State may request that their discretion under regulation 33 of the Principal Regulations be exercised to:

- (a) direct the Delivery Body to withdraw the Termination Notice; or
- (b) extend the date that the Capacity Provider must meet the requirement specified in the Termination Notice by.

If no appeal is submitted to the Secretary of State, the Capacity Agreement will automatically terminate at the end of the 60 Working Day period from the date on which the Termination Notice is given.

## 3.2. When must I submit my appeal?

As set out in regulation 33(5)(a) of the Principal Regulations, a Capacity Provider issued with a Termination Notice may, within 20 Working Days after the date on which the notice is given, submit an appeal to the Secretary of State. Appeals submitted within 20 Working Days must be considered by the Secretary of State.

The Termination Appeals template can be found under the 'Templates' section on the Delivery Body's website along with the Delivery Body's termination guidance which can be found under the 'Agreement Management' section:

<https://www.emrdeliverybody.com/CM/Guidance.aspx> .

### 3.2.1. Requesting a withdrawal of a Termination Notice

A Capacity Provider may request a withdrawal of a Termination Notice by providing evidence, in writing, that demonstrates that the circumstances giving rise to the Termination Event specified in the Termination Notice have been resolved.

In order for a Termination Notice to be withdrawn, the Capacity Provider will have to have submitted the relevant required documentation linked to that Termination Event on to the Delivery Body's Portal and have had it approved by them. Once confirmation of this is received, a Capacity Provider may request a Withdrawal of The Termination Notice.

### 3.2.2. Requesting an extension of the notice period

A Capacity Provider can request an extension of the Termination Notice period.

The Capacity Provider must specify the reasons for requesting an extension and include a cure plan demonstrating that they will address the grounds for termination specified in the Termination Notice within the requested extension period.

When requesting an extension, the Capacity Provider must specify the length of extension they are seeking. The maximum extension length a Capacity Provider can request is 60 working days.

The cure plan should set out the specific actions the Capacity Provider will take, including dates and any relevant Capacity Market Rules that the Capacity Provider believes will permit the cure plan to be carried out within the extension timeframe.

### 3.2.3. Delivery Body reviewable decision

Under Regulation 68, a delivery body reviewable decisions include:

- A prequalification decision;
- A refusal of a request to rectify the capacity market register due to a factual inaccuracy;
- A refusal of a request to amend a capacity agreement notice on the basis of a factual inaccuracy;
- The issue of a Termination Notice or notice of intention to terminate due to a factual inaccuracy.

If a Capacity Provider thinks a Termination Notice was issued in error, they must contact the Delivery Body within 5 working days to ask for a reconsidered decision pursuant to Regulation 69. These requests are separate to appeals made to the Secretary of State regarding the withdrawal or extension of a Termination Notice.

A reviewable decision by the Delivery Body, may be further appealed by the Capacity Provider to the Authority (Ofgem) to dispute the reconsidered decision, in accordance with regulation 70 of the Principal Regulations, within five Working Days after the date the Capacity Provider received the Delivery Body notice of the reconsidered decision.

### 3.2.4. How do I submit an appeal?

Appeals should be submitted by email to: [CMappeals@beis.gov.uk](mailto:CMappeals@beis.gov.uk)

## 3.3. Frequently asked questions

### 3.3.1. Can I make different types of appeal (e.g., withdrawal, extension) when submitting an appeal against a single Termination Notice?

No, only one type of appeal can be made for each Termination Notice. Secretary of State may use their discretion to deliver a different outcome to what was requested. For example, Secretary of State may decide to provide an extension of a different length of time to that requested in the appeal.

### 3.3.2. What happens if my appeal is unsuccessful?

A Capacity Agreement will automatically terminate on the date specified in the Termination Notice unless the Termination Notice is withdrawn or extended by the Delivery Body under Regulation 33(2).

### 3.3.3. What happens if an extension is granted but I am unable to meet the requirement by the end of the extension period granted?

If an extension is granted and you are unable to meet the requirement for which the Termination Notice was issued by the end of this extension period, the Capacity Agreement will automatically terminate on the date specified in the Extension Notice.



### 3.3.4. What happens if I don't appeal?

If no appeal is submitted to the Secretary of State, the Capacity Agreement will automatically terminate at the end of the 60 Working Day period from the date on which the Termination Notice is given. A termination fee may be incurred (as set out in Rule 6.10.3) and repayment of capacity payments required (Rule 6.10.3A).

Once a Capacity Agreement has automatically terminated, it is not possible to make an appeal seeking the Secretary of State to exercise discretion under regulation 33 of the Principal Regulations.

## 4. Reduction Notices

Following an instance of non-compliance with either Extended Years Criteria or Total Project Spend, under Rule 8.3.6D of the Capacity Market Rules, a Reduction Notice will be issued to the Capacity Provider. The Reduction Notice will inform the Capacity Provider of its failure to meet the relevant criteria and that its agreement length will be reduced with effect from 60 Working Days after the date the Reduction Notice is given.

As set out in regulation 33A of the Principal Regulations, a Capacity Provider can request the Secretary of State to instruct either a withdrawal of the Reduction Notice, or an extension in which to provide the relevant evidence.

At the expiry of the notice period the duration of the Capacity Agreement of the relevant CMU is reduced to the period specified in the Reduction Notice unless the Reduction Notice has been withdrawn or has been extended (rule 8.3.6D(f)).

## 5. Appealing Reduction Notices to the Secretary of State

### 5.1. When must I submit my appeal?

As set out in regulation 33A of the Principal Regulations, a Capacity Provider issued with a Reduction Notice may, within 20 Working Days after the date on which the notice is given request the Secretary of State to exercise their discretion under regulation 33A(2).

## 5.2. What can I appeal?

You can request the Secretary of State exercise their discretion under regulation 33A(2) of the Principal Regulations to:

- (a) direct the Delivery Body to extend the date by which the Capacity Provider must meet a specified requirement; or
- (b) direct the Delivery Body to withdraw the Reduction Notice.

The types of appeal that may be made to the Secretary of State are explained in more detail below.

### 5.2.1. Requesting a withdrawal of a Reduction Notice

A Capacity Provider may request a withdrawal of a Reduction Notice and should provide evidence, in writing, that demonstrates that the circumstances giving rise to the Reduction Notice being issued specified in the Reduction Notice have been resolved.

### 5.2.2. Requesting an extension of the date to meet a specified requirement

A Capacity Provider may request the Secretary of State to extend to the length of time for them to meet the requirement in the Rules upon which the noncompliance resulted in the issue of a Reduction Notice.

When requesting an extension, the Capacity Provider should specify the length of extension they are seeking. The maximum period the Secretary of State may extend the date by which a Capacity Provider must meet a specified requirement is 6 months after the date on which the reduction notice was given.

The Capacity Provider must specify the reasons for requesting an extension of time to comply with the requirement and include a cure plan that explains how and when they will comply with the requirement that gave rise to the Reduction Notice being issued within the proposed extended timeframe sought.

### 5.2.3. How do I submit an appeal

Appeals for Reduction Notices should also be submitted by email to:

[CMappeals@beis.gov.uk](mailto:CMappeals@beis.gov.uk)

## 5.3. Frequently asked questions

### 5.3.1 What happens if my appeal is unsuccessful?

The duration of a Capacity Agreement will automatically be reduced to the period specified in the Reduction Notice on the date specified in the Reduction Notice – unless the Secretary of State directs the Delivery Body to withdraw or extend the Reduction Notice under regulation 33A(2).

### 5.3.2 What happens if an extension is granted but I am unable to meet the requirement by the end of any extension period granted?

If an extension of time is granted and you are unable to meet the requirement for which the Reduction Notice was issued by the end of the extension period, the duration of the Capacity Agreement will automatically be reduced on the date specified in the written notice provided by the Delivery Body.

### 5.3.3 What happens if I don't appeal?

If no appeal is submitted to the Secretary of State, the duration of the Capacity Agreement will automatically be reduced with effect from 3 months after the date the Reduction Notice was given (unless the Reduction Notice is withdrawn or extended by the Delivery Body).

Once the duration of a Capacity Agreement has been reduced, it is not possible to make an appeal seeking the Secretary of State to exercise their discretion under regulation 33A of the Principal Regulations to extend the Reduction Notice period to meet the requirement for which the Reduction Notice was issued or direct the Delivery Body to withdraw the Reduction Notice.

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