Department for
Business, Energy
& Industrial Strategy

Capacity Market: 2021 consultation on improvements

Government response

June 2021

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Executive summary

Since its introduction in 2014, the Capacity Market (CM) has ensured that we maintain and bring forward sufficient capacity to ensure secure supplies of electricity.

This Government Response summarises the comments submitted by respondents to the Capacity Market 2021 consultation, which ran between 05 March and 16 April 2021, and describes the government's consideration of these comments in reaching its final policy position.

In total, 38 responses were received from a range of stakeholders, including trade associations and Capacity Providers. The proposals were widely supported by the respondents to the consultation, although some concerns were raised with respect to the proposal to require Capacity Market Units (CMUs) to be registered as Balancing Mechanism Units (BMUs) particularly in respect of the timeframe to which the proposal could be implemented. Stakeholders also highlighted the need for further coronavirus easements.

We can confirm that we will proceed with most of the changes as proposed, with a few refinements in the light of the responses to the consultation. This will include extensions to some of the existing coronavirus easements but will not include the proposal for CMUs to register as BMUs at this time, as we will continue to develop this proposal with stakeholders and act on feedback received. In summary, we intend to:

- **Make changes to certain formulae and clarifications to the legislation relating to Carbon Emissions Limits in the CM.** This will ensure that the formulae allow for a better reflection of certain technologies' actual carbon emissions. It will also ensure that the legislation gives full effect to our policy intent and is as easy to understand as possible.
- **Give the CM Delivery Body greater flexibility to consider information which corrects non-material errors in prequalification applications.** This will reduce the risk of prequalification applications being rejected due to minor, administrative errors.
- **Prevent certain secondary trades from being rendered ineffective if the transferor's Capacity Agreement is terminated.** This will make it easier to replace capacity which closes prematurely and at short notice, after a T-1 auction.
- **Extend the coronavirus easements relating to the extended long-stop date, the extended deadlines for Metering and DSR Tests for DSR CMUs, and Independent Technical Expert certificates in relation to progress reports. The easement around appeals will not be changed and continues to be in place for CMUs that were awarded an agreement before 1 April 2020.** These easements will allow management of any delays to operator's fulfilment of CM milestones, caused by the pandemic. We have not extended the easements on Satisfactory Performance Days, DSR baseline data or the Metering Test deadline, as these are expected to be of limited impact and no requests were made for continuation of these easements.
- **Extend the deadline for meeting the Extended Years Criteria so that it aligns with the requirement to provide evidence of Total Project Spend, and make the sanction for breaching both (a reduction in agreement length) referable to the**

Secretary of State. This will ensure consistency across CM obligations and deadlines and enable Capacity Providers to refer matters to the Secretary of State if they believe they have sufficient grounds.

- **Allow refurbishing plant to have the same Long-Stop Date as new build plant.** This will provide refurbishing plant that secure agreements in a T-4 auction with the option of an additional 12 months to deliver their capacity if it suffers delays to works.
- **Disable the net welfare algorithm for T-1 auctions that are held only to meet the 50% set-aside commitment.** Under the Electricity Capacity Regulations 2014 ("the Regulations") we are committed to auctioning at least 50% of the capacity that was set aside for the T-1 auction. This proposal will ensure that when an auction is held for the sole purpose of meeting this commitment, the costs to the consumer of the auction are minimised.
- **Maintain the minimum capacity threshold at 1MW.** This will ensure that the CM continues to be aligned with other markets and that the costs of administration are balanced with broad market access.
- **Make several minor improvements and corrections to the legislation.** These involve minor corrections to the Capacity Market Rules[1], primarily to address cross-references to EU law.

Next steps

The government will lay the draft Electricity Capacity (Amendment) Regulations 2021 in Parliament on the same day that this Government Response is published. The draft Regulations must be debated and approved by both Houses of Parliament before they can be made and come into force.

The Capacity Market (Amendment) Rules 2021 are being prepared and will be laid in Parliament shortly. They will come into force the day after they are laid.

[1] https://www.gov.uk/government/publications/capacity-market-rules

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1. Introduction

1.1. Background

The Capacity Market (CM) is at the heart of the government's plans for a secure and reliable electricity system. The CM provides all forms of capacity capable of contributing to security of supply with the right incentives to be on the system and to deliver during periods of electricity system stress, for example during cold, still periods where demand is high and wind generation is low.

The CM works by allowing eligible Capacity Providers to bid into competitive, annual auctions – either four years (T-4) or one year (T-1) ahead of delivery. Capacity Providers who are awarded an agreement in an auction receive a steady payment intended to ensure sufficient reliable capacity is in place to meet demand at times of system stress. Revenue from Capacity Payments incentivises the necessary investment to maintain and refurbish existing capacity, and to finance new capacity. Capacity Providers face penalties if they fail to deliver when needed.

The CM is technology neutral, meaning it does not seek to procure specific volumes of capacity from particular types of technology. All types of capacity are able to participate – except for Capacity Providers in receipt of other specific categories of government support – but they must demonstrate sufficient technical performance to contribute to security of supply. The CM operates alongside the Great Britain (GB) wholesale electricity market and the services National Grid Electricity System Operator (NGESO) contracts to provide ancillary services to ensure second-by-second balancing of the electricity system.

To ensure the CM continues to function effectively in a changing world, the government consults from time-to-time upon technical amendments to the Electricity Capacity Regulations 2014 (the Regulations)[2] and the Capacity Market Rules (the Rules)[3] that underpin the CM's design.

1.2. Summary of proposals

In the Capacity Market 2021 consultation on improvements, the government proposed to:

- **Require all Capacity Market Units (CMUs) to be registered as Balancing Mechanism Units (BMUs).** The intent was to improve NGESO's visibility of assets on the system and therefore their ability to manage security of supply, and also allow it to greater utilise and value the flexibility of CMUs.
- **Make changes to certain formulae and clarifications to the legislation relating to Carbon Emissions Limits in the CM.** The aim was to ensure that the formulae allow for a better reflection of certain technologies' actual carbon emissions. It will also ensure that the legislation gives full effect to our policy intent and is as easy to understand as

[2] S.I.2014/2043 https://www.legislation.gov.uk/uksi/2014/2043/contents/made

[3] An informal consolidation of the Rules as well as previous amendment instruments are available at: https://www.gov.uk/government/publications/capacity-market-rules

possible. We intend to introduce robust reporting and verification requirements that minimise the regulatory burden on businesses.

- **Give the CM Delivery Body greater flexibility to consider information which corrects non-material errors or omissions in prequalification applications.** This was intended to reduce the risk of prequalification applications being rejected due to non-material administrative type errors.
- **Prevent certain secondary trades from being rendered ineffective when the transferor's Capacity Agreement is terminated.** Our intent was to make it easier to replace capacity which closes prematurely and at short notice, after a T-1 auction.
- **Review the existing coronavirus easements.** These situation specific modifications were implemented in July 2020 to allow management of any delays to operator's fulfilment of CM milestones, caused by the pandemic and government's measures related to the pandemic. Views were sought on whether additional easements are necessary, given the national lockdown which was implemented on 4 January 2021.
- **Extend the deadline for meeting the Extended Years Criteria[4] so that it aligns with the requirement to provide evidence of Total Project Spend[5], and make the sanction for breaching both (a reduction in agreement length) subject to the Secretary of State's discretion.** The aim of this proposal was to ensure consistency across CM obligations and deadlines, and to enable Capacity Providers to refer matters to the Secretary of State if they believe they have sufficient grounds.
- **Allow refurbishing plant to have the same Long-Stop Date[6] as new build plant.** Our aim was to refurbishing plant that secure agreements in a T-4 auction with the option of an additional 12 months to deliver their capacity if it suffers delays to works.
- **Disable the net welfare algorithm for T-1 auctions that are held only to meet the 50% set-aside commitment.** Under the Electricity Capacity Regulations 2014 ("the Regulations") we are committed to auctioning at least 50% of the capacity that was set aside for the T-1 auction. This proposal was designed to ensure that when an auction is held to meet this commitment, the costs to the consumer of the auction are minimised.
- **Maintain the minimum capacity threshold at 1MW.** This was to ensure that the CM continues to be aligned with other markets and that the costs of administration are balanced with broad market access.
- **Other minor improvements and corrections to the Rules.** These involved minor corrections to the Rules, primarily to address cross-references to EU law.

[4] As defined in Rule 8.3.6B.
[5] See Rule 8.3.6.
[6] As defined in Rule 1.12.1

1.3. Summary of responses to the consultation

In total, 38 responses were received from a range of stakeholders, including Capacity Providers, system operators and trade associations. The proposals were broadly supported by the respondents to the consultation. Specifically:

- Overall, we received a split response to our proposals to require all future CMUs to register as BMUs from prequalification 2022. A small majority disagreed with this proposal, highlighting concerns around becoming a BMU and explained current market barriers. Others did not object to this proposal, but highlighted concerns around the current market barriers and the timing for implementation being too soon. However, a large portion of respondents were supportive, discussing the benefit to both the CM and wider market this change would provide.

- Most respondents were supportive of our proposals to allow for a better reflection of certain technologies' actual carbon emissions by introducing new formulae for carbon capture, utilisation and storage (CCUS) and combined heat and power (CHP) technologies and for units burning mixed fuels. A majority also supported our proposals in relation to allowing plant without 12 months of data to apply these formulae, as well as on the extension of the transitional phase for independent verification of Fossil Fuel Emissions Declarations.

- All respondents were supportive of allowing the Delivery Body the flexibility to consider information submitted by applicants to correct non-material errors or omissions in their prequalification applications. Views were mixed on whether the timescales should be extended, with some respondents concerned that additional time could negatively impact overall timescales. Several respondents took the opportunity to provide sensible suggestions for improving the prequalification process.

- All respondents were supportive of increasing flexibility around secondary trading and terminations. Clarification of the legislation was also welcomed. In addition, many felt that preventing partial secondary trades from being cancelled when the transferor's Capacity Agreement is terminated would both improve security of supply and reduce risk for transferees. No potential for gaming or other risks were identified.

- The large majority of respondents thought that further coronavirus easements were necessary, and many felt that we should not solely rely on the continuation of the appeals easement. The main easement that was requested to be extended was the extension to the Long-Stop Date, as well as the easement in relation to Independent Technical Expert (ITE) certificates. Respondents cited continued disruption to global supply chains and noted that smaller businesses are being disproportionately affected.

- All respondents supported aligning the dates to provide evidence of Total Project Spend and Extended Years Criteria. All respondents also supported applicants having the ability to refer a reduction in agreement length for breaching certain obligations to the Secretary of State.

- Most respondents were supportive of our proposal to make Refurbishing CMUs Long-Stop Date consistent with New-Build CMUs. A few gave feedback that it was their view that the Long-Stop Date for Refurbishing CMUs should be linked to the other criteria, such as the agreement length secured.

- Most respondents were supportive of disabling the net-welfare algorithm, where an auction is held only to meet the 50% set-aside commitment.
- All respondents were supportive of maintaining the Minimum Capacity Threshold at 1MW, in broad agreement with the justifications raised in the consultation document.
- All respondents supported the proposal to make a minor correction to Rule 6.10.1. Several respondents identified other cross-references to EU law in the Rules, in addition to those identified in the consultation document.
- The majority of respondents agreed with the assessment of impacts set out in the consultation document. A number of respondents requested that impacts be fully assessed for the BMUs proposal, before any policy decisions are taken.

1.4. Next steps

Owing to the generally supportive feedback, we will proceed with most of the changes as proposed, with a few refinements in the light of consultation. This will include extensions to some of the coronavirus easements but will not include the proposal to register as BMUs at this time, as we will continue to develop this proposal with stakeholders and act on feedback received. The full detail of our settled policy on each proposal is set out below in this government response.

The government will lay the draft Electricity Capacity (Amendment) Regulations 2021 in Parliament on the same day that this Government Response is published. The draft Regulations must be debated and approved by both Houses of Parliament before they can be made and come into force.

The Capacity Market (Amendment) Rules 2021 are being prepared and will be laid in Parliament shortly. They will come into force the day after they are laid.

2. CMU interactions with the Balancing and Settlement Code

Question 1

Do you agree with our proposal to require CMUs to register as BMUs? Do we need to require all CMUs to set their Final Physical Notification Flag to “True” (T)?

Question 2

In your view, are there any types of CMU that should be exempt from these proposals and/or are there any aspects of these proposals that would be unsuitable for certain types of CMU? Please provide supporting evidence.

Question 3

In your view, does our suggested implementation in time for the opening of the Prequalification Window in 2022 afford sufficient time for participants to meet the obligation to be registered as a BMU?

Question 4

In your view, what further CM obligations could be simplified or otherwise modified if the proposal for CMUs to register as BMUs is implemented?

Question 5

Are there any alternative approaches that could provide the same visibility ahead of time of a CMU’s market position, in place of being a BMU?

2.1 Summary of responses

Thirty-four responses were received in regard to our proposal to require CMUs to also be registered as BMUs. Of these responses, feedback in support and against such a change was split. Some were not opposed but suggested further developments were necessary to either the CM or the Balancing Mechanism (BM) (or both) ahead of implementation, and therefore the proposed implementation timeframe should be delayed.

Those respondents that disagreed with the proposals noted various concerns around the cost of becoming a BMU and complying with the BM. Some also argued that requiring CMUs to also be BMUs potentially did not fit with the purpose of the CM as the BM is concerned with paying for energy, whereas the CM is intended to pay for capacity.

A significant portion of respondents were supportive of the proposal, acknowledging the increased visibility that this would offer to NGESO and the wider market, and the benefits that such a change would provide.

Many respondents described current barriers to entry of the BM that should be addressed before the BM would be suitable for their asset. A few respondents also claimed that the BM may not be suitable for certain units, such as smaller embedded units (a de minimis threshold was suggested by a couple of respondents), Demand Side Response and Combined Heat and Power – either due to running profile or how they participate in the market.

Some respondents who did not deem it suitable for their units to participate in the BM suggested alternative methods, such as using historic half hourly metered data to assume availability of units, or to provide a separate data feed of either availability or assumed generation/demand reduction to NGESO.

Most respondents noted that the proposed implementation timeframe of 2022 prequalification (from Delivery Year 2023/24 for those successful in the 2023 T-1 auction) was unsuitable, and that more time would be required to implement this requirement if it were to proceed.

2.2 Government response

We welcome the comments and views submitted on this proposal. We continue to view this as a worthy change for the future to assist with delivery of our objectives of an affordable, secure electricity system – and will work towards bringing this change forward in the future. From our engagement and consultation responses, we believe that this change would be beneficial to the CM – in particular the CM Notice process and its reflectivity of market conditions - and could have benefits to the wider system and market including:

- Calculation of Loss of Load Probability and De-Rated Margin;
- Transmission charging;
- Forecasting of electricity margins; and
- Wholesale power prices more reflective of market and system conditions.

However, reflecting on the range of concerns raised through the consultation, we recognise that before we move forward more needs to be done to understand barriers to entry and concerns associated with the BM, and address them. We will, therefore, not bring about this change for 2022 prequalification. Although we deemed this timeframe suitable to coincide with the implementation of relevant BSC Modifications[7], we acknowledge that more time is needed to address concerns around the short lead time from implementation of other BM reforms and the proposed CM requirements being satisfied.

Our next steps will be to engage further with NGESO, Elexon and Ofgem to establish a work plan to further explore solutions the issues raised by stakeholders surrounding BM participation. This will then inform our implementation timelines. We will also undertake work to fully assess the impacts of such a change on the CM and capacity providers. We will then develop policy proposals addressing issues raised in the consultation with respect to implementation within the CM, such as how aggregation rules in the CM and the BM differ and whether certain exclusions may be warranted.

[7] P375 'Settlement of Secondary BM Units using metering behind the site Boundary Point' – available here, and P376 'Utilising a Baselining Methodology to set Physical Notifications' – available here.

We have considered alternative processes and methods which have been suggested to us through consultation responses. We deem our preferred option to be data submission to NGESO through existing BM avenues. However, if we identify and justify in our continued engagement a subset of CMUs that cannot participate in the BM, we will look to develop more suitable processes and methods for data sharing that would be suitable for us, NGESO and CMUs.

3. Emissions Limits

3.1. Carbon Capture, Utilisation and Storage

Question 6

Do you have any comments or concerns regarding our proposed method for discounting emissions captured through CCUS by introducing a 'Transferred CO_2 Factor' to the calculation of Fossil Fuel Emissions? Please explain your reasoning and provide supporting evidence where available.

Question 7

What are your views on our proposals for reporting requirements described in section 2.2.2.3 of the consultation for CMUs equipped with CCUS? Please explain your reasoning and provide supporting evidence where available.

3.1.1. Summary of responses

Twelve responses were received in relation to our proposals on plant equipped with Carbon Capture, Utilisation and Storage (CCUS) technology. A clear majority of respondents supported the government's proposals. Several respondents expressed the belief the government's proposed approach is appropriate for the current stage in the development of CCUS technology.

A number of technical points were raised relating to whether certain end uses of the CO_2 captured as part of this process should be discounted from the plant's emissions. One respondent questioned whether captured CO_2 should be discounted unless it is permanently sequestered.

3.1.2. Government response

In light of this broad support from respondents, we intend to implement the proposals as set out in the consultation. We will introduce, into Schedule 8 of the Rules, a dedicated formula for calculating the carbon emissions of a generating unit equipped with CCUS technology which a person may choose to apply. This will includes determining the value of a 'Transferred CO_2 Factor' using the new formula in section 2.2.2.1 of the consultation.

As noted, some respondents argued that captured CO_2 with certain end uses should not be permitted to be discounted from a plant's fossil fuel emissions. On this issue, the government's view is that the administrative burden imposed by requiring CMUs to demonstrate the end uses of captured CO_2 for the purposes of the CM would not be justified at this time. Captured CO_2

that is used for industrial processes displaces CO_2 expressly produced for the same purpose, effectively avoiding those extra emissions, so our position remains that unless the CO_2 is simply released after capture, it should be discounted from the plant's emissions. However, changes to these arrangements might be necessary in future as CCUS technology becomes more established and the industry and policy landscape evolves; we note that this was alluded to by several respondents who argued for alignment with the broader CCUS policy regime where possible. We therefore reiterate that we intend to review this arrangement in due course, in line with broader CCUS policy evolution.

3.2. CMUs in the CHP Generating Technology Class

Question 8

Do you have any comments or concerns with regards to our proposed method for calculating the design efficiency of CHP installations? Please explain your reasoning and provide supporting evidence where available.

Question 9

Do you have any comments or concerns on our proposed reporting arrangements set out in sections 2.2.3.3 and 2.2.3.4 of the consultation for CHP CMUs? Please explain your reasoning and provide supporting evidence where available.

Question 10

Do you have any comments or concerns regarding our proposal that only CHP schemes which are covered by the CHPQA Programme will be able to calculate their design efficiency according to Equation 4 at section 2.2.3.2 of the consultation? Please explain your reasoning and provide supporting evidence where available.

3.2.1. Summary of responses

Eleven responses were received in relation to our proposals on CMUs in the CHP Generating Technology Class, with a clear majority expressing support. Some respondents raised technical concerns relating to potential unintended consequences associated with the CHP formulae as proposed in section 2.2.3 of the consultation.

3.2.2. Government response

In line with the broad support for our proposals with respect to the calculation of carbon emission of CMUs in the CHP Generating Technology Class, we will implement the proposals detailed in section 2.2.3 of the consultation with some technical modifications as detailed below. In summary, we will introduce formulae which will be available to apply for CMUs prequalifying from prequalification 2021 onwards and which allow for the use of certification provided under the Combined Heat and Power Quality Assurance (CHPQA) programme.[8] This will include a dedicated 'Design Efficiency' formula in Schedule 8 of the Rules for use when

[8] https://www.gov.uk/guidance/combined-heat-power-quality-assurance-programme

determining carbon emissions of a generating unit in the CHP Generating Technology Class[9], which will allow for use of values taken from a CHPQA certificate.10

As we noted in the consultation, CHPQA certification is typically obtained between January and June and covers the previous calendar year, while the prequalification period for the CM normally falls between July and September. Therefore, CHP schemes applying the new formulae for inclusion in a declaration to be provided during prequalification (or to be included in a declaration provided outside of a prequalification period), will take the required information from the CHPQA certificate provided to it in respect of the calendar year prior to the relevant prequalification period (or deadline for submission of a declaration).

CHP schemes applying the new formulae will be required to use the 'Total Fuel Input', 'Total Power Output', and the 'Percentage of Fuel Input Referable to Electricity Generation' figures from their CHPQA certificate in carrying out calculations. Units burning mixed fuels wishing to apply the new CHP formulae will also be required to refer to the percentage of each fuel burned that is referable to electricity generation.

3.2.2.1 Amendment to new 'Design Efficiency' formula for CHP plant

Some respondents drew our attention to potential unintended consequences of the new CHP formulae as proposed in section 2.2.3.2 of the consultation. In their view, the use of Qualifying Power Output (QPO) would not provide an accurate reflection of the design efficiency of certain types of CHP plant. This is because, in the case of certain CHP plant, QPO as reported on the CHPQA certificate does not represent the entirety of the electricity output of the plant. When used to calculate the design efficiency of the plant in question, the use of QPO as an input could lead to underestimating the efficiency of electricity generation relative to fuel input.

We have considered this feedback and agree that the new formula as proposed would risk having unintended consequences. For this reason, when implementing the new formula for calculating the design efficiency of CHP schemes, we will substitute QPO with Total Power Output (TPO[11]). The new formula which will be included in Schedule 8 of the Rules will therefore be as follows:

Formula for calculating design efficiency of a CHP scheme (as amended from the formula in section 2.2.3.2 of the consultation)

$$\eta des = \frac{TPO}{TFI \times F_e} = [\%]$$

where:

ηdes is design efficiency;

TPO is the Total power output (MWh);

TFI is the total fuel input (MWh); and

[9] The Rules will be amended to ensure that the Design Efficiency formula for use by CMUs in the CHP Generating Technology Class which was introduced prior to prequalification in 2020 will be available for use by CMUs which prequalified in 2020, renamed as the 'Design Efficiency Steam formula'.

[10] We will amend Rule 1.2.1 to introduce new defined terms for 'CHPQA certificate' and the nature of what a 'Qualifying CHPQA certificate' is for the purposes of the CM.

[11] TPO is a value that can also be found on the CHPQA certificate.

F_e is percentage fuel referable to electricity generation.

Having considered the implications of this amendment, we are confident that it will ensure that all types of CHP plant are able to better demonstrate their design efficiency while eliminating the unintended consequences detailed above.

3.2.2.2 Clarification regarding use of gross calorific value for 'Total Fuel Input'

One respondent highlighted that the CHPQA Programme requires Total Fuel Input (TFI) to be reported on a gross calorific value (GCV) basis, while the CM considers fuels on a net calorific value (NCV) basis.[12] Using values calculated on the basis of GCV for the purposes of the CM Emissions Limits would therefore slightly overstate the fuel input of the plant in question, leading to efficiency being understated relative to CMUs that are not in the CHP Generating Technology Class.

The policy intent behind our proposals is to ensure that CMUs in the CHP Generating Technology Class are able to provide an accurate reflection of their true efficiency, and therefore of their fossil fuel emissions. For this reason, we will reflect in the Rules which describe TFI that CHPs making use of the new arrangements will need to convert the TFI value from their CHPQA certificate into an NCV value for the purposes of the calculation for the CM. This value then needs to be used to calculate design efficiency in line with the new design efficiency formula. This will ensure that the fuel input of CHP plant is considered on the same basis as that of other generation types, in line with our policy intent.

We will implement amendments to Schedule 9 which will require the conversion from GCV to NCV to be performed in line with standardised conversion factors for the fuel in question.

3.3. Plant burning mixed fuels

Question 11

What are your views on our proposals to account for the carbon emissions of plant burning mixed fuels? Do you have any views on whether calculations ought to be based on primary fuel alone or whether our proposed approach is justified? Please evidence your response as much as possible.

Question 12

Do you have any comments or concerns on Equations 5 and 6 in sections 2.2.4.1 and 2.2.4.2of the consultation? In particular, what kind of impact do you expect Equations 5 and 6 to have on the ability of generating units burning mixed fuels to demonstrate compliance with the Fossil Fuel Emissions Limit? Please explain your reasoning and provide supporting evidence where available.

Question 13

[12] See for example Schedule 9.

Do you have any comments or concerns on the proposed reporting arrangements described in section 2.2.4.3 of the consultation for CMUs burning mixed fuels? Please evidence your response as much as possible.

3.3.1. Summary of responses

Nine responses were received in relation to our proposals on plant burning mixed fuels, with a clear majority expressing support for the proposals in the consultation.

One respondent, who supported the government's proposals, also questioned whether it is necessary to consider emissions from a unit's secondary fuel if usage of that fuel is very small. Another respondent echoed this, recommending that allowances be made for secondary fuels if used only for start-up and flame control activities.

Only one respondent objected to the government's proposal that mixed fuel plants will be required to calculate CO_2 emissions on the basis of operational data, which they view as unduly burdensome. The stakeholder does however support the policy intent behind the proposal.

3.3.2. Government response

In line with the majority support for the proposals with regards to mixed fuels, the government intends to implement the proposals in section 2.2.4 of the consultation.

In respect of the questions around the necessity of introducing a regime to account for emissions resulting from secondary fuels, our proposals have been developed to be as consistent with our broader policy intent of ensuring that emissions calculations reported for the purposes of the CM Emissions Limits are as accurate as possible. Furthermore, the new Rules will help to future-proof the CM for potential future scenarios in which plant blend hydrogen with fuels such as natural gas to generate electricity.

With regards to the response which said that CMUs should not be required to account for emissions from fuels that are used only for start-up and flame control purposes, it is already our policy that only fuels burned to produce electricity for output are considered in any of the calculations applied, i.e. fuels burned only for start-up and flame control are not secondary fuels for the purposes of the CM.

3.4. CMUs seeking to apply one or more of the CCUS, CHP and/or mixed fuels formulae without the required 12 months of data

Question 14

What are your views on our proposals described in sections 2.2.5.1, 2.2.5.2, and 2.2.5.3 of the consultation respectively, in respect of plant without 12 continuous months of operational data? Please evidence your response as much as possible.

3.4.1. Summary of responses

Thirteen responses were received in relation to Question 14. There was broad support for the government's proposals, though several respondents sought clarifications over penalties that could be imposed in the event of a CMU failing to submit a Fossil Fuel Emissions Declaration by the deadline 14 months after the Capacity Agreement coming into force.

3.4.2. Government response

In line with the broad support, we will implement the proposals as detailed in section 2.2.5 of the consultation.

Our intention in developing these proposals was to ensure that, where possible and proportionate, plant relying on the new CCUS, CHP and mixed fuel formulae will be able to apply to participate in the CM if they do not have access to operational data from 12 consecutive months at the time of prequalification.

In respect of the queries raised around the penalties that could be imposed should a CMU fail to submit a Fossil Fuel Emissions Declaration by the deadline 14 months after the start of their Capacity Agreement. Where a deadline for the submission of a Fossil Fuel Emissions Declaration falls after the end of the Delivery Year of an agreement, it will not be possible to terminate the Capacity Agreement, as the agreement will have already expired. In this situation, however, Ofgem will be able to consider whether to pursue enforcement action for making false representations in relation to commitments made during prequalification to provide the declaration by the appropriate deadline and/or for the CMU to remain within the relevant emission limits during the Delivery Year.[13] Given that we expect very low levels of non-compliance, we believe this arrangement strikes an appropriate balance between providing a backstop to ensure compliance with the Emission Limits, and ensuring that plant that are not able to provide 12 months of the data until later in the process are not prevented from taking part in the Capacity Market.

3.5. CMUs applying multiple additional formulae to determine Fossil Fuel Emissions

Question 15

Do you have any comments or concerns on our proposal described in section 2.2.6.1 of the consultation document in respect of CHP CMUs equipped with CCUS?

Question 16

Do you have any comments or concerns on our proposal described in section 2.2.6.2 of the consultation document in respect of CMUs burning mixed fuels and equipped with CCUS?

[13] We will introduce a new Rule to the Rules which will require all CMUs (regardless of technology type) to confirm during prequalification they will not exceed the carbon emission limits. This will apply to all CMUs regardless of whether they do or will comprise a fossil fuel component or provide any other signed declaration in relation to carbon emissions.

Question 17

Do you have any comments or concerns on our proposal described in section 2.2.6.3 of the consultation document in respect of CHP CMUs burning mixed fuels?

Question 18

Do you have any comments or concerns on our proposal described in section 2.2.6.4 of the consultation document in respect of CHP CMUs equipped with CCUS and burning mixed fuels?

3.5.1. Summary of responses

Six responses were received in relation to our proposals on CMUs applying multiple additional formulae to determine their fossil fuel emissions, with a clear majority expressing support.

Several other points were raised. Two respondents argued that a technical adjustment should be applied to the formulae in the case of CMUs in the CHP Generating Technology Class equipped with CCUS in order to ensure that calculations account for emissions from electricity generation only. However, this was set out in section 2.2.6.1 of the consultation and will be addressed in the amendments being made.

3.5.2. Government response

In line with the broad support from respondents, the government will implement the proposals as described in section 2.2.6 of the consultation by including the formulae in Schedule 8 of the Rules. The Government will continue to monitor the operation of the new Rules and requirements in respect of these formulae and engage with stakeholders in respect of any proposed changes in the future if determined necessary.

3.6. General considerations of the implications of the new formulae

Question 19

Do you have any comments or concerns about any of the considerations described in section 2.2.7 of the consultation document? Please explain your reasoning and provide supporting evidence where available.

3.6.1. Summary of responses

Seven responses were received in relation to Question 19, with a majority indicating support for the government's proposals.

One respondent requested clarification with respect to potential interactions between the requirements in the Rules in respect of carbon emissions and the Secondary Trading regime. The stakeholder asked for information on whether a Capacity Provider holding only a partial transfer, even for only a short period of time, would be required to demonstrate compliance with the Emissions Limits for the entirety of the Delivery Year in question.

3.6.2. Government response

In line with the majority support for the proposals we will implement the proposals in section 2.2.7 of the consultation by way of changes to the Rules.

With regards to the obligations of Capacity Providers to demonstrate compliance with the Emissions Limits when engaging in Secondary Trading, Rule 9.2.6(e)(x) and 9.2.6(e)(xi) provide that a CMU is not an Acceptable Transferee unless it has provided a Fossil Fuel Emissions Declaration. Therefore, providing a Fossil Fuel Emissions Declaration is a prerequisite to taking part in secondary trading, irrespective of how long the traded Capacity Agreement is held.

3.7. Extension of transitional phase for independent verification of Fossil Fuel Emissions Declarations

Question 20

Do you have any comments or concerns on our proposal to extend the transitional phase which will not require independent verification of Fossil Fuel Emissions Declarations to the start of the Prequalification Window in 2022?

3.7.1. Summary of responses

Fourteen responses were received in relation to Question 20, with an overwhelming majority expressing support for the government's proposal to extend the transitional phase.

3.7.2. Government response

The transitional phase during which a Fossil Fuel Emissions Declaration will not need to be independently verified will be extended to the start of prequalification in 2022 by way of an amendment to the definition of 'Transitional Fossil Fuel Emissions Declaration' in Rule 1.2.1.

3.8. General consideration of the implications of the new formulae

Question 21

Do you have any comments or concerns with regards to our proposed clarifications to the Rules which relate to carbon emissions described in section 2.2.9.1 to 2.2.9.7 of the consultation document respectively?

Question 22

Do you have any comments or concerns regarding our proposals in section 2.2.9.8 of the consultation document in respect of use, disclosure and publication of carbon emissions values disclosed on a Fossil Fuel Emissions Declaration? Please explain your reasoning and provide supporting evidence where available.

Question 23

Do you have any further comments or concerns about our proposed changes to the Capacity Market Emissions Limits described in this document?

3.8.1. Summary of responses

Eleven responses were received in relation to Question 21. Five respondents indicated that they support the government's proposed clarifications to the Rules. The remaining respondents raised a number of requests, relating mainly to a further streamlining and clarification of the prequalification process in relation to the Emissions Limits.

Thirteen responses were received in relation to Question 22 on the disclosure and publication of carbon emissions data, with a variety of views expressed. Some respondents expressed support for the government's proposals. A minority of respondents indicated that, before determining their position with regards to the government's proposal, they would like more clarity on the information to be provided; others expressed that they would be willing to provide information to the government but were opposed to public disclosure of that information.

Four responses were received in relation to Question 23. A variety of views were expressed: one respondent reiterated their request for additional guidance to be published; one argued for more ambition with regards to aligning the CM with our net zero target; two expressed the belief that the administrative burden associated with the Emissions Limits is excessive.

3.8.2. Government response

3.2.2.1 Clarifications to Rules

We will be implementing the clarifications described in section 2.2.9 of the consultation. The proposal in section 2.2.9.1 to require all CM participants to make a commitment not to exceed the carbon emissions limits during the Delivery Year will be implemented by the introduction of a new Rule in Chapter 3. This new Rule will require the commitment to be made during the prequalification process, without the need for a separate declaration, and will be required from all technology types and regardless of whether the applicant is providing a Fossil Fuel Emissions Declaration or Fossil Fuel Emissions Commitment. In respect of the changes to Exhibit ZA and Exhibit ZB which are described in section 2.2.9.4 and 2.2.9.5 of the consultation, these will be made by introducing an amendment which will replace each exhibit entirely with more user-friendly templates. The new templates will be required in respect of any requirement to provide either exhibit after the Capacity Market (Amendment) Rules 2021 come into force.[14] We will also review and update the Guidance document.

3.2.2.2 Disclosure and publication of carbon emissions values

We are continuing to engage with the Delivery Body on potential future amendments with respect to the disclosure and publication of carbon emissions data, and have decided that, given the likely implementation timescales and the questions raised by respondents, we will not implement this proposal ahead of the 2021 prequalification period. However, we intend to do so before the 2022 prequalification period. This means that emissions values submitted as part of this year's prequalification process will not be published on the Capacity Market Register.

[14] This includes agreements awarded in the Capacity Auctions in early 2021.

3.2.2.3 Other points raised

We acknowledge the general points about the burden placed on participants by the Emission Limits requirements, but believe that the measures are necessary to ensure the CM framework better aligns with our broader decarbonisation objectives.[15] Furthermore, we are confident that these measures give due consideration to the aim of minimising the administrative burden on stakeholders where possible and appropriate. We intend to publish an updated Guidance document ahead of the 2021 prequalification window and we will continue to review the requirements to ensure they remain fit for purpose.

3.2.2.4 Clarification in respect of Schedule 9 of the Rules

We received a query from a stakeholder regarding plants burning fuels that are fossil fuels because they fall under the definition in the Rules[16] but are not listed in the table at Schedule 9. In respect of such fuels, it is not possible to apply the formula described in the Rules, for example where a standard Emission Factor is required, due to the absence of a specific value for use in Schedule 9. Where a fuel is not specified it is currently not possible to apply the relevant formulae to determine carbon emissions. We will consider the expansion of Schedule 9 to include any fossil fuels which are currently not listed in the table in the near future.

[15] In addition, upon the UK leaving the EU and the end of the UK-EU withdrawal agreement transition period at 11pm on 31 December 2020, carbon emissions limits are required in the CM by Article 22(4) of the retained domestic law version of the Electricity Regulation (2019/943) as amended by paragraph 21 of Schedule 4 to the Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020.
[16] See definition of ‘Fossil Fuel’ in Rule 1.2.1.

4. Additional flexibility to clarify errors and omissions in prequalification applications

Question 24

Do you agree with the proposal to amend Regulation 69 to allow the Deliver Body to consider information which corrects administrative or clerical errors in prequalification applications?

Question 25

In your view, should the timeframes for the Tier 1 disputes process be amended to provide applicants and the Delivery Body with additional time?

Question 26

Do you have any views on how else the prequalification process could be improved and/or simplified?

4.1. Summary of responses

Twenty-four responses were received in relation to Question 24. All were supportive of allowing the Delivery Body to consider information that corrects administrative errors in prequalification applications. A small number of these highlighted the need for clarity within the regulations and the importance of clear guidance for applicants on how the new regulations will be applied.

Twenty responses were received in relation to Question 25. Views were mixed on whether timeframes for the Tier 1 disputes process should be amended. The main reason given for not amending the timeframe was that it could potentially delay the timing of the auctions and lengthen the overall process; one respondent pointed out that the time between the auctions and delivery year is already shorter than intended (at three years and seven months, as opposed to four years).

Several responses were received in relation to Question 25. Respondents submitted a range of views which can be broadly grouped into the following themes:

- earlier publication of guidance for Capacity Providers;
- need for consolidated Rules to be published as soon as possible;
- improvements to the EMR Delivery Body portal;
- support for evergreen prequalification as a long-term solution;

- improvements to the emissions declarations forms;
- moving the prequalification window so that it opens earlier, such as in May.

4.2 Government response

We welcome the strong support for giving the Delivery Body the flexibility to consider information correcting errors in prequalification applications and confirm that this proposal will be implemented. We will allow the Delivery Body an additional week to assess applications as the broader scope may lead to an increase in the number of appeals and therefore the work required to assess the appeals against the updated criteria. We will continue to work with the Delivery Body and Ofgem towards a shared understanding of how the amendments will work in practice.

We appreciate the suggestions for improvements to the prequalification process. We will endeavour to publish a new version of the consolidated Rules as soon as practicable. As noted in Section 3, we have made a number of improvements to the process relating to the Emission Limits and intend to publish an updated Guidance Document ahead of the 2021 Prequalification Window. We have shared the feedback received with Ofgem and the Delivery Body for their consideration as they progress with workstreams to improve the prequalification experience.

5. Secondary trading and plant closures

Question 27

Do you agree that we should clarify the legislation concerning the application of termination events to CMUs that no longer hold a Capacity Obligation?

Question 28

In your view, will preventing partial secondary trades from being cancelled when the transferor's Capacity Agreement is terminated improve our ability to replace capacity which has closed at short notice during the Delivery Year? In your view, does the proposed change create any potential for gaming to avoid Termination Fees, or give rise to any other risks?

Question 29

Do you agree that we should revise the effect of Rules 9.2.3(a) and (b) in order to allow secondary trades initiated by transferors before the receipt of a Termination Notice to be maintained for the remainder of the relevant Delivery Year? In your view, would this proposal create any potential for gaming, or give rise to any other risks?

Question 30

Do you agree that we should amend the effect of Rule 9.2.3(c) so that it no longer applies to Termination Notices that are issued to insolvent transferors (Rule 6.10.1(a))? In your view, would this proposed rule change create any potential for gaming, or any other risks?

5.1 Summary of responses

There were 23 responses to Questions 27, 28 and 29, and 19 responses to Question 30. All respondents were supportive of the proposals. Clarification on the legislation concerning termination events and secondary trading was welcomed. In addition, many felt that preventing partial secondary trades from being cancelled when the transferor's Capacity Agreement is terminated would both improve security of supply and reduce risk for transferees. No potential for gaming or other risks were identified.

Several respondents noted the need for a wider review of secondary trading, focusing on simplification and clarification. In particular, the need to remove Rule 9.2.5 was raised. Rule 9.2.5 prevents trades from being registered for a Delivery Year until after the relevant T-1. Many thought that this Rule reduced the liquidity of the secondary trading market and made the T-1 auction more expensive.

Two respondents suggested that termination fees could be applied to the capacity obligation held at time of termination, rather than the capacity obligation of the original agreement, as this would create stronger incentives for CMUs facing termination to secure a partial secondary trade.

5.2 Government response

In line with the supportive responses, the government will implement these proposals without amendment. This will involve:

- Clarifying the legislation concerning the application of termination events to CMUs that no longer hold a Capacity Obligation. This will be implemented through an addition to Rule 6.10.1A.
- Preventing partial secondary trades from being cancelled when the transferor's Capacity Agreement is terminated. This will be implemented through an amendment to Regulation 30A.
- Enabling secondary trades which are submitted for registration to the Capacity Market Register before the receipt of a Termination Notice by the Transferor to remain effective for the remainder of the relevant Delivery Year, if applicable. This will be implemented through amendments to Rule 9.2.3. Transfers undertaken for future Delivery Years are not covered by this change.
- Enabling insolvent transferors that have received a Termination Notice to continue to secondary trade until end of the relevant termination period. This will be implemented through amendments to Rule 9.2.3. If the full capacity obligation is traded away after a Termination Notice has been received, the insolvent transferor will still have their capacity agreement terminated.

Once implemented, these changes will apply to all capacity agreements. They will improve security of supply by enhancing our ability to transfer capacity that is terminated during the Delivery Year at short notice. They will also improve transferee's ability to manage risk, and so may slightly increase liquidity in the secondary trading market.

We do not intend, at this time, to alter the way in which termination fees are applied to capacity obligation. This is because the current arrangements prevent the potential for gaming through secondary trading as a means to reduce or avoid termination fees.

6. Coronavirus easements

Question 31

Is there a need for further coronavirus easements, closely matching those that we implemented in July 2020? If so, please provide reasons and evidence, where possible, and describe the necessary easement/s and the Rules affected.

Question 32

What are your views on whether the modifications to the appeals process should be extended to agreements awarded in the upcoming early 2021 auctions? Please provide reasons and evidence, where possible.

6.1. Summary of responses

29 responses were received for Question 31 and 20 responses were received for Question 32. 21 respondents thought that further coronavirus easements were necessary. They cited continued disruption to global supply chains and noted that smaller businesses are being disproportionately affected. Although there was support for the extension to the easement relating to the appeals process, many respondents were concerned about relying on this easement rather than extending the full suite of easements, as termination – even with the possibility of appeal – creates uncertainty and difficulties with finance. Those that thought that further easements were unnecessary stated that the third lockdown is coming to an end and markets are returning to business as usual.

The main easement requested by respondents was a further extension to Long-Stop Dates, especially for 2015 T-4 agreements, which already had their Long-Stop Date extended to September 2021 as part of the 2020 easements, and for 2016 T-4 agreements whose Long-Stop Date is currently set to September 2021. One respondent requested an extension for 2021 T-1 agreements, which also have a Long-Stop Date in September 2021.

Several respondents noted continuing difficulties around procuring ITEs. They requested that the requirement for ITE reports be removed from the progress report due on 1 June and other milestones this year, such as Total Project Spend and extended years criteria.

6.2. Government response

The government recognises the concerns raised, and the continued impacts of the pandemic. Whilst we understand the importance of supporting capacity providers who are struggling due to the pandemic, we must also consider the impact of the easements on security of supply and whether there is any potential for misuse. We have therefore carried out analysis on the utilisation of the 2020 easements. Data provided by the Delivery Body combined with Capacity Market Register[17] showed:

[17] https://www.emrdeliverybody.com/CM/Registers.aspx

- 14 Prospective Generating CMUs (totalling around 300 MW) utilised the extended Long-Stop Date.
- 20 Prospective Generating CMUs (totalling around 200 MW) used the Satisfactory Performance Days easement. This is around 5% of eligible CMUs and less than 1% of eligible capacity.
- With regard to appeals to the Secretary of State, No CMUs used the termination event related to the coronavirus pandemic that carries no fee. However, one CMU successfully appealed a termination to secure more time to implement a cure plan, using the easement that increased the time available for this from the usual 6 months up to 12 months.
- 20 Prospective Generating CMUs (totalling around 800 MW) with agreements in the T-4 for 2020/21 used the ITE certificate easement, as well as 23 CMUs (totalling around 800MW) with agreements in the T-4 for 2021/22.

As capacity making use of the Long-Stop Date easement was less than 1% of capacity holding agreements for Delivery Year 2020/21, the impact on security of supply has been limited. Allowing CMUs with T-4 agreements for Delivery Year 2020/21 to make use of this easement could slightly increase the impact, as around 700MW (1% of total capacity) of new build and refurbishing generation would be eligible for the easement.

Whilst the measures relax obligations and deadlines in the short-term, we do not expect this to have an adverse effect on short-term security of supply, because projects whose delivery time frames are delayed because of the coronavirus pandemic would not have met their obligations and deadlines anyway. The measures allow these projects additional time to reach completion, without having their capacity agreement terminated. Whilst these measures may slightly weaken the incentives to complete projects promptly, by postponing the threat of termination fees, there is still a financial incentive for capacity providers to deliver as soon as possible because capacity payments will not be made until projects are complete.

More substantial volumes of capacity made use of the ITE certificate easement. This does not directly affect security of supply but could mean that NGESO has less forewarning of non-delivery risks from new build, particularly in regard to modelling and advice on the T-1 auction. However, this risk is expected to be minimal as CMUs are still required to provide progress reports.

Therefore, in line with the majority view of respondents, the government will implement extensions to certain coronavirus easements, as described in the sections below. Note that these extensions are time limited, similar to the original easements that were put in place in 2020.

6.2.1. The Long-Stop Date and DSR deadlines

We will implement a 12-month extension to the Long-Stop Date for the following CMUs:

- CMUs that qualified for the extended Long-Stop Date last year, and therefore currently have a Long-Stop Date of 30 September 2021.
- T-4 CMUs that have a Long-Stop Date of 30 September 2021 and have not yet had an extension.

We will not be implementing the extension for 2021 T-1 CMUs, as these CMUs had visibility of the pandemic and its impacts when they entered the capacity auctions this year.

As per the easement already in place, an ITE certificate must be submitted by CMUs that wish to qualify for the extended Long-Stop Date. As set out in our response to the consultation in 2020[18], it would not be reasonable to ask ITEs to confirm that the deadline for the Substantial Completion Milestone (SCM) would have been met if the pandemic had not happened. We will, therefore, only require that the ITE report confirms the CMU was on track to meet the deadline for the SCM when the pandemic began. We will define the start date of the pandemic as 12 March 2020, in line with the announcement by the World Health Organisation. Only one ITE report will need to be submitted, even if it is submitted ahead of the start of the Delivery Year. For CMUs which are being included in the extension this year (i.e. T-4 CMUs that have a Long-Stop Date of 30 September 2021 and have not yet had an extension), the deadline for submitting the ITE report will be 30 September 2021, the last day before the start of the Delivery Year. For CMUs which already had an extension last year and are being given another extension this year (i.e. CMUs that qualified for the extended Long-Stop Date last year, and therefore currently have a Long-Stop Date of 30 September 2021) another ITE report will not be required in order to qualify for the further extension, as the requirements have not changed since last year.

As per the easement already in place, the further extension to the long-stop date will be enacted through changes to the definition of the Long-Stop Date in Rule 1.2.1 to refer, where a CMU meets certain eligibility requirements, to the Extended Long-Stop Date. The new Rule 6.7.4A, which was inserted into the Rules as a modification, will be maintained to set out the eligibility requirements for a New Build CMU or a Refurbishing CMU to qualify for the Extended Long-Stop Date, including the requirements for the ITE report. Capacity Payments for eligible CMUs will only begin once the SCM or Minimum Completion Requirement (MCR) has been met, and the modifications to Rule 6.7.4(a)(ii) will be maintained to enable this. The changes to the long-stop date for Refurbishing CMUs (section 8) have been taken into account in our drafting of the easements.

To complement the extended Long-Stop Date, the milestones below will also be extended for eligible CMUs, as per last year:

- the expenditure windows in the definition of Total Project Spend (Rule 1.2)
- The deadline for the ITE report on the evidence of Total Project Spend (Rule 8.3.6)
- The deadline for the ITE report on the Extended Years Criteria (Rule 8.3.6A) – note that we are also changing the deadline for the Extended Years Criteria for all CMUs as part of this government response (see Section 6).

For the changes to the definitions of Total Project Spend and the Extended Years Criteria, we will maintain the modification to the definition of the expenditure windows for all New Build and Refurbishing CMUs so that if the Long-Stop Date or the extended Long-Stop Date is utilised, the spending window closes when the SCM or MCR has been met, rather than at the start of the first Delivery Year of the agreement.

For CMUs which are eligible for the extended Long-Stop Date, we will waive the requirement to provide a remedial plan alongside their six-monthly Progress Reports

[18] See section C.2.3.2 of the government response here: https://www.gov.uk/government/consultations/capacity-market-proposals-for-future-improvements

To mirror the extended Long-Stop Date for generation, for DSR we will again implement a 12-month extension to the DSR Test and Metering Test deadlines for Unproven DSR CMUs holding a T-4 agreement which will begin to have effect in the 2021/22 Delivery Year. An ITE report must be provided to the Delivery Body by 31 August 2021, in order to qualify for the extension. We will not be implementing the extension for 2021 T-1 Unproven DSR CMUs, as these CMUs had visibility of the pandemic and its impacts when they entered the capacity auctions this year.

6.2.2. Independent Technical Expert reports

We will maintain the modifications to the requirement for ITE reports in relation to six monthly Progress Reports and associated remedial plans (if applicable) for New Build and Refurbishing CMUs in the financial year 2021/22 (i.e. from 1 April 2021 until 31 March 2022, and including in relation to the progress report that was due on 1 June 2021). The progress reports themselves must still be submitted to the Delivery Body by the required deadlines.

6.2.3. Appeals

We will maintain the modifications relating to the appeals process which apply to all capacity agreements awarded before 1 April 2020. We can see no reason to apply these modifications to capacity agreements awarded this year and therefore do not intend to make any changes to the legislation on the appeals easements. In summary, the appeals modifications already:

- Allow a longer period for a person to appeal to the Secretary of State, the Delivery Body and the Authority (where a Termination Notice was given before 1 May 2021);
- Maintain the time the Secretary of State can grant as an extension before an agreement is terminated; and
- Maintain the termination event that carries no termination fee where non-compliance is owing to the exceptional circumstances of the Capacity Provider's situation arising from the effects of coronavirus

6.2.4. Coronavirus easements which have not been extended

The following coronavirus easements have not been extended:

- The easement on Satisfactory Performance Days. This was not mentioned by any respondents to the consultation and utilisation of the easement last year was very low with less than 1% of eligible capacity making use of it. Therefore, we have not deemed it necessary to extend this easement. No requests were made for this easement to be extended.
- The two-week extension to the metering test deadline for all CMUs. As this extension was relatively short, we have not considered it necessary to apply it again. No requests were made for this easement to be extended.
- The reduction to the amount of data required to establish baseline demand for certain DSR CMUs. This was not mentioned by any respondents to the consultation. We have made the assumption that it is now reasonable to expect a full six weeks of data to be provided.

Going forward, we will continue to monitor the need for further extensions and analyse the impact they are having on the market. If you are experiencing issues due to the pandemic, then please get in touch with us directly to discuss.

7. Extended Years Criteria and Evidence of Total Project Spend

Question 33

Do you agree the deadlines for meeting Extended Years Criteria and providing Evidence of Total Project Spend should be aligned?

Question 34

Do you agree the sanction for non-compliance with these obligations of a reduction in agreement length should be subject to the Secretary of State's discretion?

Question 35

Do you think it is necessary to make a reduction in agreement length appealable to the Authority as well as subject to the Secretary of State's discretionary powers?

7.1. Summary of responses

All responses to Question 33 supported aligning the deadlines for meeting the Extended Years Criteria and providing Evidence of Total Project Spend.

A number of responses were received to Question 34 which all supported the penalty for non-compliance with these requirements (an agreement length reduction) being referrable to the Secretary of State. Respondents commented that reducing the agreement lengths of operational and financed CMUs with no recourse to appeal may effectively remove them from the capacity process.

A small number of responses were received to Question 36, with a few saying that an agreement length reduction should be appealable to the Authority (Ofgem), three requesting further clarity, and one not supporting the proposal.

7.2. Government response

Based on this broad support we intend to align the deadlines for the Extended Years Criteria and Evidence of Total Project Spend so that each ITE certificate must be provided within three months of the start of the first delivery year.

We intend to take the opportunity to make some housekeeping changes to the Rules around Extended Years Criteria and remove Rule 8.3.6A(c), most of which is not relevant and therefore not used in practice. However, we intend to retain the ability for new build CMUs to meet the Extended Years Criteria prior to becoming operational if they comply with the relevant requirements.

We intend to put in place a new referral process to the Secretary of State, which closely follows the existing process for Termination Events. Following an instance of non-compliance with either Extended Years Criteria or Total Project Spend, 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 to either one or three years (depending on Total Project Spend). We intend to put in place a new Regulation which will allow the Capacity Provider to request that the Secretary of State instruct either a withdrawal of the Reduction Notice, or an extension in which to provide the relevant evidence.

We do not intend to make a reduction in agreement length appealable to Ofgem in addition to the Secretary of State.

8. Refurbishing CMU Long-Stop Date

Question 36

Do you agree that Refurbishing CMUs should be provided with the same Long-Stop Date as New Build CMUs? Please provide reasons and evidence where possible.

8.1. Summary of responses

Twenty responses were received in response to our proposal to provide Refurbishing CMUs with the same Long-Stop Date as New Build CMUs.

A large majority of responses were in support of this proposal, some citing that Refurbishing CMUs can experience similar delays to develop and build CMUs as New Build CMUs. A few suggested that rather than providing a blanket 12-months Long-Stop Date to all Refurbishing CMUs, this change should be constrained to 15-year agreements, with those Refurbishing CMUs with 3-year agreements being afforded a shorter Long-Stop Date linked to the agreement length,

A few respondents did not agree with this proposal, one suggesting that rather there should be an element of discretion on flexibility on delivery based on evidence of delays and attempt to deliver on time.

8.2. Government response

In line with the majority of supportive responses, we will proceed with making the Refurbishing CMUs Long-Stop Date consistent with New-Build CMUs. This will provide all future Refurbishing CMUs, and those currently in development and are yet to commence delivering capacity, the optionality of a 12-month Long-Stop Date. This will mean that if a Refurbishing CMU has already secured a Capacity Agreement in a previous T-4 auction (including the T-4 auction held in March 2021) and the deadline for the SCM has not passed, that CMU will be able to take advantage of a 12-month Long-Stop Date.

In order to implement this change, we will make a change to Rule 1.2.1 (Definitions), substituting paragraph (a) under the definition for “Long-Stop Date” to reflect the 12-month Long-Stop Date being extended to Refurbishing CMUs, mimicking the existing provision for New-Build CMUs. As part of the change to the definition of the Long-Stop Date in Rule 1.2.1, we have omitted a redundant reference to the Supplementary Auction in paragraph (c).

We will also be making complementary amendments to:

- Rule 6.7.4, so that a Refurbishing CMU’s agreement may become active on the date that the SCM is met, if this is after the start of the first Delivery Year of the agreement.
- Rules 8.3.6 (Evidence of Total Project Spend) and 8.3.6A (Extended Years Criteria), to amend the deadline for these submissions if the SCM is met after the start of the first Delivery Year of the agreement.

We considered feedback on implementing a Long-Stop Date that was linked to the agreement length or other criteria. However, there was not compelling evidence that this was necessary. Implementing this change in such a way that it was linked to agreement length would have added undue complexity and so be inconsistent with our ambition, outlined in the 5-year Review of the CM[19], for simplification of the Rules.

Moreover, we do not believe that an arrangement which extended the Long-Stop Date on a discretionary basis would provide capacity providers with enough certainty. The appeals process already provides for this possibility but, as noted in Section 5.1, the process of termination and associated risk of losing CM revenues can create difficulties with project finance arrangements.

[19] https://www.gov.uk/government/publications/capacity-market-5-year-review-2014-to-2019

9. Net welfare algorithm

Question 37

Do you have any comments or concerns regarding our proposal to disable the net welfare algorithm where a T-1 is held only to meet the 50% set-aside commitment?

9.1. Summary of responses

18 responses were received to Question 37. Most respondents were supportive of the proposal. Some felt it was quite blunt and questioned whether a more flexible solution could be found, for example giving the Secretary of State discretion, or having a lower tolerance around the algorithm when a T-1 is held only to meet the 50% set-aside commitment. Several respondents queried whether alternatives have been considered and requested that a full review of the algorithm be carried out.

9.2. Government response

The government will implement the proposal without amendment, by disabling the net-welfare algorithm where a T-1 is held only to meet the 50% set-aside commitment. It is important that costs to the consumer of the CM are minimised. Making this change will reduce the risk of over procurement in the T-1 auctions. Whilst we recognise that a more sophisticated solution might be possible, we do not think that this would be proportionate given the expected frequency of such auctions, and the relatively small volumes of capacity involved.

10. The Minimum Capacity Threshold

Question 38

Do you agree that the Minimum Capacity Threshold should be maintained at 1MW?

10.1. Summary of responses

24 responses were received in relation to question 38. All respondents were supportive of our proposal to maintain the Minimum Capacity Threshold at 1MW.

Numerous responses welcomed the reduction in the Minimum Capacity Threshold from 2MW to 1MW in July 2020, highlighting the potential benefits to auction clearing price through increased competition and increased auction liquidity. Respondents also agreed that the 1MW threshold aligns with wider markets and allows for different revenue streams to be combined more efficiently. The corresponding amendments to secondary trading arrangements were also supported by some respondents, who noted improved efficiencies in obligation management and the potential benefits to auction liquidity.

Several respondents mentioned the impacts on administrative processes of a lowered Minimum Capacity Threshold below 1MW. Points highlighted include that a further reduction would increase the administrative complexity for both capacity providers and the Delivery Body, with the associated costs incurred potentially outweighing any potential benefits.

10.2. Government response

The government welcomes the collective agreement from respondents that the 1MW Minimum Capacity Threshold remains appropriate. The government does not believe it is necessary to reduce the Minimum Capacity Threshold further and intends to maintain it at 1MW. This threshold continues to align with other energy markets and strikes the correct balance between increased auction liquidity and minimising administrative costs.

The government intends to reassess the threshold when there are changes to the CM scheme and wider electricity market structures that would substantiate a further review. For example, this would include wider consideration of the impacts and development of the proposal to require all CMUs to be registered as BMUs included within this consultation. Any future reviews of the Minimum Capacity Threshold will take into consideration the wider system arrangements required to implement any potential changes effectively.

11. Other minor amendments to the legislation

Question 39

Do you agree with the correction to Rule 6.10.1? Are there any other specific and minor errors in the Rules which we should consider? Are there cross references to EU law in the CM legislation, other than the one we have identified in section 2.10.2, that may be causing issues?

11.1. Summary of responses

16 responses were received for Question 39. All respondents agreed with the correction to Rule 6.10.1. One additional cross-reference to EU law was identified, in addition to the two identified in the consultation document (Rules 3.4.1, 1.2.1, 8.3.8A and 8.3.8B) which was the reference to the EU Industrial Emissions Directive in Rules 8.3.6B and 8.3.6C.

11.2. Government response

In line with the views of respondents, we have corrected the error in Rule 6.10.1A. Regarding cross-references to EU law, we have:

- Removed the requirement to confirm whether the Applicant is an 'SME' or 'Large Enterprise' (Rule 3.4.1(h)). The original intent behind requiring this information was in part to satisfy EU transparency requirements. We believe that the CM ought to continue to maintain this underlying rationale however this information has not been used for enforcement or monitoring by our Delivery Partners so we are removing it to reduce the administrative burden on CM applicants.

- Added references to 'subsidy' in Rules 8.3.8A and 8.3.8B, to ensure that they apply to the subsidy control regime which applies under the terms of the UK-EU Trade and Cooperation Agreement (TCA)[20] from 11pm on 31 December 2020[21] to GB energy schemes such as the CM[22].

- Retained, with refinements, references to 'state aid authority', 'state aid' and 'union funding' in Rules 1.2.1, 8.3.8A and 8.3.8B, to ensure that funding received before IP

[20] https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union

[21] We will introduce a defined term in Rule 1.2.1 for 'IP Completion Day' which means 11pm on 31 December 2020.

[22] The Government is considering the responses to its consultation on a bespoke domestic subsidy control regime and a response will be published in due course: https://www.gov.uk/government/consultations/subsidy-control-designing-a-new-approach-for-the-uk

Completion Day is also accounted for when considering the cumulation of benefits received by a CMU.

- Removed the reference to the Competition and Markets Authority from the definition of 'State aid authority' in Rule 1.2.1 to avoid confusion.

- Retained, with refinements, the references to the EU Industrial Emissions Directive and BREF in Rules 8.3.8B and 8.3.8C[23].

[23] The government introduced secondary legislation (The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018) to ensure that the relevant provisions of the Industrial Emissions Directive operate domestically and existing BAT Conclusions continue to have effect in the UK. The Government have consulted on proposals around the domestic regime for BREFs: https://consult.defra.gov.uk/airquality/industrial_emissions_bat/ and we will closely monitor any need to amend the Rules in light of this.

12. Assessment of impacts

Question 40

Do you agree with the considerations of impacts in section 2.11 of the consultation document? Are there any additional impacts which we have not considered? Please provide supporting evidence where possible.

12.1. Summary of responses

13 responses were received for Question 40. The majority of respondents agreed with the impacts set out in section 2.11 of the consultation document. Several respondents requested that the impact for the BMUs proposal be fully assessed, before any policy decisions are taken. One respondent noted that the changes to Regulation 69 have the potential to reduce costs for Ofgem due to fewer appeals, although it may increase costs for the Delivery Body.

One respondent highlighted the potential reduction in metering administration costs and simplification of the Capacity Market Rules that could ensue from the requirement for CMUs to be comprised of BMUs, particularly around metering.

12.2. Government response

We agree with respondents that impacts should be fully assessed for the BMUs proposal. We have set this in motion and will provide the assessment alongside any further consultation on the proposal.

We have carried out further analysis on the impacts of coronavirus easements, as this is the only area where there has been substantive change compared to our original proposals. Please see Section 6 for details.

Annex A – List of respondents

Quinbrook	The Association for Decentralised Energy
Noriker	RWE
Arlington	Shell
Uniper	Sembcorp
Centrica	Inspired Energy
Intergen	EDF
The Flexible Generators Group	SIMEC
The Electricity Settlements Company	Drax
New Anglia Energy	Tk law
Scottish Power	AMP
Energy UK	Elexon
EnelX	Zenobe
Individual respondent	Infinis
Apex Power	ESB
Britned	National Grid Electricity System Operator
SSE	ENGIE
Fichtner	ElecLink
Welsh Power Group	VPI
National Grid Ventures	Flexitricity
Veolia	

This consultation is available from: www.gov.uk/government/consultations/capacity-market-2021-proposals-for-improvements

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