



Department
of Energy &
Climate Change

Electricity Market Reform- Capacity Market

Electricity Market Reform: Consultation on proposed amendments to the Capacity Market Rules 2014 and explanation of some immediate amendments to the Capacity Market Rules 2014

August 2014



Department of Energy and Climate Change

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The consultation can be found here:

<https://www.gov.uk/government/consultations/consultation-and-amendments-to-capacity-market-rules-2014>

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General information

Purpose of this consultation:

The Department of Energy and Climate Change (DECC) is seeking views on whether it is necessary to amend the Capacity Market Rules 2014 in order to clarify eligibility for a fifteen-year capacity agreement. The Department will shortly publish a draft set of amending rules to illustrate the fifteen-year policy proposals¹.

Also within this consultation document (see Chapter 3), but not part of the consultation itself, are explanations for some immediate technical amendments which will be made shortly to the Capacity Market Rules. A copy of the immediate amendments, concerning minor and technical drafting issues, will shortly be available at

<https://www.gov.uk/government/consultations/consultation-and-amendments-to-capacity-market-rules-2014>.

This consultation is particularly relevant to electricity generators, electricity suppliers, electricity consumers and their representatives, network operators, Ofgem, the Delivery Body (National Grid), environmental and energy efficiency organisations, electricity service companies, the construction sector, financial institutions and other stakeholders with an interest in the energy sector. DECC invites interested parties to submit comments and evidence.

Issued: 19th August 2014

Respond by: 5pm on 9th September 2014

Responses and Enquiries to:

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4th Floor Area A,

3 Whitehall Place,

London, SW1A 2AW

Email: thor.sodha@decc.gsi.gov.uk

Consultation reference: URN 14D/318 – [Consultation on proposed amendments to the Capacity Market Rules 2014 and explanation of some immediate amendments to the Capacity Market Rules 2014]

¹ We will endeavour to have an illustrative draft of the amendments needed to implement our preferred proposals by Friday 22 August or as soon thereafter as is practicable.

Territorial extent: Great Britain

How to respond:

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome. Electronic responses should be enclosed to the email above.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at: <https://www.gov.uk/government/consultations/consultation-and-amendments-to-capacity-market-rules-2014>

Other versions of the document in Braille, large print or audio-cassette are available on request. This includes a Welsh version. Please contact us under the above details to request alternative versions.

Confidentiality and data protection:

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at www.decc.gov.uk/en/content/cms/consultations/. This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance:

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator

3 Whitehall Place

London SW1A 2AW

Email: consultation.coordinator@decc.gsi.gov.uk

Executive Summary

1. This consultation seeks views on whether it is necessary to amend the Capacity Market Rules 2014 (“the Rules”) in order to clarify eligibility for fifteen-year capacity agreements. The Department believes that it would be beneficial to make amendments to the Rules which clarify the circumstances in which a fifteen-year capacity agreement might be offered to a successful applicant.
2. Following the consultation and subject to consideration of any responses, the intention is for an amended set of Rules to be made and brought into force in time for the second capacity auction in 2015. For the purposes of illustrating the policy proposals underpinning the amendments a draft of the proposed amendments will shortly be published in a separate document alongside this consultation.
3. Responses are invited from all interested parties by 5pm on 9th September 2014.
4. Alongside this consultation, Government will shortly bring into force an amended set of Rules, ‘The Capacity Market (Amendment) Rules 2014’² (“the Amended Rules”) containing a number of immediate technical amendments which correct drafting errors in the Rules. These amendments are summarised in Chapter 3 and will come into force for the 2014 auction. These amendments are separate from the consultation and draft set of Rules mentioned in paragraph 2 above.

Capacity Market

5. The Capacity Market is part of the Government’s Electricity Market Reform (EMR) programme and is designed to ensure security of electricity supply by providing a payment for reliable sources of capacity, alongside their electricity revenues, to ensure they deliver electricity when needed and are likely to be paid alongside the electricity revenues which a generator is already receiving.
6. The Capacity Market is designed to get the best out of existing generation and to encourage the investment we need to replace older power stations and provide backup for more intermittent and inflexible low carbon generation sources. The Capacity Market has also been designed to support the development of more active demand management in the electricity market.
7. The legal framework which implements the Capacity Market is made up of a combination of the Electricity Capacity Regulations 2014 (“the Regulations”) and the Rules:
 - **The Regulations** provide the overarching strategic framework for the Capacity Market and include the aspects of the Capacity Market where it is appropriate that the Secretary of State retains responsibility, including decisions on the amount of capacity to procure in an auction, eligibility for capacity auctions and whether to hold capacity auctions.
 - **The Rules** provide the technical and administrative detail for implementing the operating framework set out in the Regulations. As such, the Rules provide many of the technical rules and procedures as to how the Capacity Market will operate. Following the

² A link to the Amended Rules will be placed on this page: <https://www.gov.uk/government/collections/electricity-market-reform-capacity-market>

publication of the first capacity auction's results, Ofgem will have the power to make and amend the Rules.

8. Government published its response to the October 2013 EMR consultation on 23rd June 2014³, confirming the final design for the Capacity Market and in parallel laid before Parliament for approval the Regulations and the draft Rules.
9. Following parliamentary approval of the Capacity Market's implementing secondary legislation and the European Commission granting State aid approval to the scheme in July 2014 the Capacity Market came into force on 1st August 2014. The Secretary of State also announced on 1st August 2014 that the first four-year ahead (T-4) auction will take place in December 2014 for delivery in 2018/19 and confirmed the auction parameters, including the amount of capacity to procure for this auction in a letter to National Grid⁴.
10. Prequalification for the December 2014 T-4 auction opened on 4th August and applicants are required to submit their applications to the Delivery Body (National Grid) by 5th September 2014⁵. The Delivery Body will announce the prequalification results on 3rd October 2014.

Context of this consultation

11. The Secretary of State is required by section 41 of the Energy Act 2013 to consult on the proposed changes to the Capacity Market Rules with interested parties⁶. It should be noted that there is no parliamentary approval required before any amending Rules are brought into force.
12. This consultation raises the question as to whether it is necessary to change the current Rules for the purposes of clarifying when an applicant can apply for a fifteen-year agreement. The Department believes that a clarification is necessary and would be beneficial. Accordingly, subject to the views of stakeholders, this consultation proposes changes to the Rules which will clarify the position.
13. This document also explains a number of immediate technical clarifications and corrections to the Rules that will shortly be made and brought into force as the Capacity Market (Amendment) Rules 2014. These clarifications and corrections are designed to implement the policy proposals which have previously been consulted on and are therefore not part of this consultation. The need for these changes has been identified following the Rules coming into force on 1st August. These changes correct minor omissions and inconsistencies in the Rules and are needed to ensure that the Rules are technically correct for the first capacity auction.

Next steps

14. This consultation will close at 5pm on Tuesday 9th September 2014.
15. Following the close of the consultation, the Secretary of State will consider responses and finalise any amendments to the Rules which he considers are necessary relating to eligibility for fifteen-year capacity agreements. Subject to the views received through this consultation, the Department's preference is to make amendments to the Rules clarifying eligibility for fifteen-

³ The Government's response to the October 2013 EMR consultation can be found at

<https://www.gov.uk/government/consultations/proposals-for-implementation-of-electricity-market-reform>

⁴ Copy of letter from Ed Davey, Secretary of State for Energy and Climate Change to Nick Winser Executive Director at National Grid, dated 1st August 2014 can be found at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/339366/140729_SoS_to_NG_Dem_and_Curve_Parameters.pdf

⁵ On 19 August, the Secretary of State directed the Delivery Body to extend the prequalification window. It was due to close on 29 August.

⁶ For the avoidance of any doubt, the Secretary of State is consulting only on his proposals for potentially amending the Rules to clarify the policy on when a fifteen-year capacity agreement can be secured.

year capacity agreements and for any such changes to be in place in time for the second capacity auction, in 2015. If necessary – for example, if existing plant were to prequalify for the first auction for a fifteen-year agreement – it may be necessary to bring this Rule change forward for the first auction. We will publish a response to this consultation by Spring 2015.

16. The immediate technical amendments to the Rules will be made not later than 22nd August 2014. In order to allow applicants to consider these amendments before finalising their prequalification applications, DECC has directed the Delivery Body to extend the prequalification window by five working days. This means that the pre-qualification window for the 2014 capacity auction will close on 5th September 2014, prequalification results day will be on 3rd October 2014 and the first capacity auction will commence on 16th December 2014.
17. Updated auction guidelines will be published by the Delivery Body shortly to reflect these changes.

Chapter 1: Aims of this Consultation

Consultation scope

18. This consultation is only on the question as to whether it is necessary to change the current Rules for the purposes of clarifying when an applicant can apply for a fifteen-year capacity agreement. When considering this question it is important to bear in mind existing Government policy and, crucially, the need to ensure that the Rules comply with the European Commission's State aid decision approving the Capacity Market scheme.
19. In Chapter 3, this document explains some minor and technical changes to the Rules which will shortly be made and brought into force ('The Capacity Market (Amendment) Rules 2014'). These amendments correct some drafting issues to ensure that the Rules are fit for purpose for the 2014 auction.

What the consultation does not cover

20. This consultation does not seek any additional suggestions for changes to either the Rules or Regulations, and as such, any responses that do not directly respond to the questions in this consultation will not be considered, nor responded to.
21. It should be noted that, to reflect new policy commitments and additional technical provisions to be added to the Regulations, DECC will be bringing forward additional amendments to the Regulations and Rules in autumn 2014 which will include:
 - New policy such as interconnection participation in the Capacity Market and Demand Side Response (DSR) metering pathways;
 - New technical provisions which implement established policy such as capacity obligation trading, reconciliation of payments to capacity providers and modifications to apply to the payment calculation formulae in cases where a capacity agreement is traded for part of the duration of the agreement; and
 - Clarifications to prequalification information in the Rules to have effect from the 2015 auction, for example, clarifying where a distribution connection agreement specifies a range of values for maximum export capacity, registered capacity, or inverter rating as relevant, the lowest value in the relevant range must be taken.
22. These new policy commitments and additional technical provisions will require amendments to the Regulations and further changes to the Rules. DECC will consult on the above changes in autumn 2014 before an amending set of Regulations is laid in Parliament in January 2015 for affirmative resolution. It is expected that a revised set of Regulations and Rules will come into force about March 2015.
23. Ofgem will, after the first capacity auction, have the power to make and amend the Rules. If you would like to suggest additional future changes to the Rules, you should contact Ofgem in line with their published guidance which sets out the process and timescales for doing this⁷.

⁷ Ofgem 'The change process for the Capacity Market Rules' <https://www.ofgem.gov.uk/publications-and-updates/final-guidelines-capacity-market-rules>

What we will do with responses and next steps

24. This consultation closes for responses by 5pm on 9th September.
25. The Secretary of State will then analyse responses and make any appropriate changes to the Rules. Final decisions will be announced in a Government response to the consultation which is expected to be published by Spring 2015. If any amendments to the Rules are believed to be necessary, these will be made and brought into force in time for the second capacity auction, in 2015⁸.
26. **How to respond to this consultation**
27. DECC welcomes responses to the questions posed within this consultation. These questions are captured within blue boxes throughout the document.
28. If you disagree with the policy underpinning a particular amendment, or if you feel that the policy underpinning a particular amendment is not accurately captured by the proposed drafting, and have alternative suggestions, it would be helpful if you can provide supporting text to explain this.
29. We welcome electronic responses sent to the email address supplied or hard copy responses sent to the address supplied.

⁸ In the event that an application is submitted on the basis of the current Rules for a fifteen-year agreement which the Secretary of State does not believe is consistent with the European Commission's State aid decision then the Secretary of State will need to consider how to ensure that such an application does not put the UK in breach of state aid rules. One option might be for the Secretary of State to apply the rule change to the first auction (which might require any existing applications to be withdrawn and updated). See paragraph 53.

Chapter 2: Proposed Amendments to the Capacity Market Rules 2014 – eligibility for a fifteen-year capacity agreement

Introduction

30. This chapter explains why the Department is considering amending the Rules as they relate to eligibility for a fifteen-year capacity agreement. Shortly, the Department will publish a draft set of proposed amendments to the Rules which reflect the Department's preferred position to clarify in the Rules the circumstances in which an applicant can apply for a fifteen-year capacity agreement⁹.
31. The Capacity Market seeks to provide confidence to investors that they will be able to earn revenue equal to the 'missing money' that they would otherwise be able to secure in a properly functioning energy-only market. This is achieved by providing revenue certainty in the form of regular retainer payments to capacity to ensure they deliver electricity when needed. We believe that the vast majority of capacity providers will be awarded one-year capacity agreements, giving them revenue certainty for a period of one year.
32. In developing the policy design of the Capacity Market we recognised that both new supply and supply which is undertaking significant refurbishment – both of which are likely to involve significant capital expenditure – would require a period of certainty longer than one year. For reasons of simplicity and deliverability, we sought to define "new" supply and "refurbishing" supply by reference to the level of capital expenditure incurred.
33. We did not seek to further define refurbishing or new plant as, based on the best evidence available and extensive consultation with relevant stakeholders, it was felt that these thresholds would provide an effective proxy to limit eligibility for fifteen-year agreements to new build plants and three-year agreements to refurbished plants.
34. Today, on the basis of how the current Rules are drafted, we recognise that in some circumstances they might be construed as allowing existing generation capacity to apply for fifteen-year agreements – an outcome which was not intended and an outcome which we believe would be contrary to the Commission's State aid decision. Therefore, in order to clarify how the Rules implement our policy intent we are considering amending the Rules to make clear that only new generation capacity is eligible for the maximum fifteen-year agreement. The basis for our proposed amendments is described in the next section (proposal to clarify eligibility for fifteen-year agreements).
35. The proposed amendments to the Rules being consulted on (summarised in Table 1 in Annex A) are intended to be in place in time for the second capacity auction, in 2015.

Proposals to clarify eligibility for fifteen-year capacity agreements

36. We have designed the Capacity Market in order to get the best out of existing capacity and to ensure that new investment is brought forward. In doing so, we have recognised that new build

⁹ Readers are invited to consider the proposed draft set of amendments when they are published and to offer views on whether they accurately and clearly reflect the Department's preferred policy position.

generation requires a longer capacity agreement length than existing generation capacity. This is because new generation capacity has to secure finance for its capital expenditure, often requiring a greater degree of financial certainty than an existing plant in which investment has already been made. We have, though, also recognised that an existing plant might also require a slightly longer than one-year capacity agreement length to enable significant refurbishment to take place. In order to facilitate existing plants to refurbish as part of providing reliable capacity it was decided to enable existing plants to secure a three-year capacity agreement. This approach was designed to ensure security of electricity supply at least cost to consumers.

37. In order to implement this policy, two capital expenditure thresholds were set in the final design:

- one at £125/kW of de-rated capacity (at 2012 prices). This was intended to allow existing plant with very high capital expenditure (e.g. undergoing major refurbishment) to bid for three-year agreements; and
- a second threshold at £250/kW of de-rated capacity (at 2012 prices) was set and was intended to allow only new generation capacity to bid for fifteen-year agreements.

38. One-year agreements were made available for existing generation capacity which did not meet either of these two capital expenditure thresholds.

39. However, we recognise that in some circumstances the Rules, in isolation, might be construed as allowing *existing* generation capacity to apply for fifteen-year agreements – an outcome which was not intended. Our view is that, when considered together with the State aid decision, the position is clear that existing plant cannot be awarded a fifteen-year capacity agreement and payments could not lawfully be made to such plant. Therefore to clarify our policy intent and having regard to the basis upon which the Capacity Market received state aid approval¹⁰, we are proposing to amend the Rules to ensure that the Rules themselves only allow new generation capacity to access the maximum fifteen-year agreement. We propose that the Rules would then state that fifteen-year agreements should only be available to those who can satisfy the following requirements:

- a. fall within the definition of “New Build CMU” (if there is a simple adjustment to the definition of maximum obligation period as set out in paragraph 42 below);
Or, if a more complex amendment is required as set out in paragraphs 43 to 48,
- b. satisfy the proposed fifteen-year eligibility criteria.

State aid

40. In our view, State aid approval for the Capacity Market is granted on the basis that:

- a. a most existing plant will have access to one-year agreements;
- b. refurbishing plants undertaking capital expenditure above the £125/kW threshold will be entitled to three-year agreements; and
- c. new plants undertaking capital expenditure above £250/kW will be eligible for long-term capacity agreements of up to a maximum of fifteen years.

41. In our discussions with the Commission, we believe the Commission accepted the rationale for longer-term contracts of up to a maximum of fifteen years was to promote competitive new entry to the market and to enable new entrants to secure lower-cost financing for their investment. In contrast to new plants, we believe the Commission agreed with our view that long-term contracts are unnecessary for existing generation as they do not need to secure

¹⁰ The European Commission’s decision to grant state aid approval to the Capacity Market will be published shortly at http://publications.europa.eu/official/index_en.htm

finance. They recognised that one-year capacity agreements deliver other benefits through ensuring that annual auctions are liquid and this reduces the risk to consumers of locking in high prices for capacity.

Option 1

42. We are considering whether to simply amend the definition of maximum obligation period to clarify that fifteen-year capacity agreements are only available to New Build CMUs (retaining the existing definition of a New Build CMU and Refurbishing CMU). While this would be a relatively straightforward clarification, we recognise that, as well as entirely new generation capacity built on greenfield sites, new generation capacity can be developed on existing or former sites and may even utilise energy infrastructure which either pre-exists or is shared with an adjacent site. The relatively simple amendment which is proposed here would, in effect, exclude this type of new generation from applying for a fifteen-year capacity agreement. In our view, this outcome would not be desirable.

Option 2

43. Accordingly, we accept that there may be circumstances in which it is appropriate for generation capacity which utilises an existing or former site, or existing or shared infrastructure, to be considered as new build and hence eligible for fifteen-year agreements. We believe that this should be the case where generation capacity:
- a. represents new additional capacity rather than an upgrade to existing capacity
 - b. meets efficiency standards equivalent to new plant
 - c. comprises new major plant items (i.e. core generating equipment consisting of the turbine, generator, or other prime mover).
44. Under option 2 it would be possible for a plant to be considered as new build if only a proportion of the core generating equipment is new, provided that any other core generating equipment can be demonstrated to be equivalent to the efficiency and performance of equivalent new generating equipment.
45. We propose retaining the capital expenditure thresholds noted above in paragraph 37 and combining these with the option 2 proposal so that an applicant can apply for a fifteen-year capacity agreement if it meets the £250/kW threshold and the following two requirements:
- a. the CMU's core generating equipment must be new or a combination of generating equipment which is new and generating equipment which is to be rebuilt to as-new standards. The core generation equipment must not consist of existing plant items (whether from that site or another site). Existing plant items include items which are undergoing partial replacement or refurbishment other than being rebuilt to as-new standards; and
 - b. a CMU must, when completed, meet the efficiency standards set out for new combustion plant (as applicable) in the reference document on best available techniques for large combustion plants published by the European Commission (the "BREF"¹¹).

¹¹ http://eippcb.jrc.ec.europa.eu/reference/BREF/lcp_bref_0706.pdf

46. In our view, it seems appropriate, and in keeping with the original policy intent, to require refurbished plant to adhere to the standards that new generation capacity will have to adhere to. If they are not able to then they should not be able to apply for a fifteen-year agreement. Practically, requiring any existing generation capacity seeking a fifteen-year agreement to also satisfy (where applicable to that generation capacity) the efficiency standard for new capacity is likely to rule out older, less efficient plant from applying for a fifteen-year agreement. However, it may be feasible, particularly for older gas turbine plant, to meet the relevant efficiency standard.
47. A requirement for core generating equipment to be new is intended to ensure that only plant which is substantively new is able to benefit from a fifteen-year agreement. This is consistent with the policy rationale for limiting eligibility for fifteen-year agreements to new plant – to enable new plant to secure finance, promoting competition and new entry to the market – and is, in our view, compliant with the State aid approval for the Capacity Market.
48. It is not intended that a requirement for all core generating equipment to be new should preclude projects from coming forward which would otherwise be regarded as substantively new capacity and hence we are also considering whether a combination of new and existing core generating equipment should be reasonably regarded as “new build” capacity, provided that any existing core generating equipment is to be fully rebuilt such that it meets efficiency, performance and life expectancy standards equivalent to new equipment of that type. This should apply only in the context of specific generating units and would not apply to a combination of new and existing generating units within a single CMU (i.e. each generating unit has to have some core generating equipment which is new and a CMU which includes both new generating units and existing or refurbishing generating units which did not include new core generating equipment would not be classed as a New Build CMU under these proposals). We are considering whether this requirement should be further defined. This could include, for example, requiring a minimum percentage of core generating equipment to be new, albeit that it would be difficult to decide what an appropriate percentage of core generating equipment would be. Such an approach will also create evidential and administrative complications for applicants and the Delivery Body and as a result may reduce the certainty which we are seeking to achieve.
49. It is important to remember that applicants of existing generating capacity who do not meet the fifteen-year eligibility criteria would still be able to access agreements of up to three years’ duration (subject to meeting the capital expenditure threshold for three-year agreements).
50. It is also proposed that applicants seeking up to a fifteen-year agreement for a New Build CMU would need to satisfy themselves that, when the CMU is completed, it would meet the proposed eligibility criteria for a fifteen-year agreement as well as the relevant capital expenditure threshold and should, as part of the construction plan to be submitted in their application, provide a description of how the CMU will satisfy the eligibility criteria.
51. In the same way that the Independent Technical Expert will certify compliance with the relevant capital expenditure threshold, it is proposed that the eligibility of the CMU for a fifteen-year agreement is similarly certified by the Independent Technical Expert. It is therefore proposed to include a requirement that a CMU must submit, before the start of the Delivery Year, confirmation from an Independent Technical Expert that the CMU continues to meet the eligibility criteria for a fifteen-year agreement. A more complex project, for example one combining new equipment with items rebuilt to an equivalent new state, will likely require a

more complex assessment by the Independent Technical Expert and it is for applicants to determine that projects brought forward as New Build can properly satisfy the relevant criteria. If the Independent Technical Expert cannot certify that the CMU meets the eligibility criteria, the capacity agreement length would automatically be reduced from a maximum of fifteen years to a maximum of three years (subject to the CMU still meeting the capital expenditure threshold for a three-year agreement) or otherwise to one year.

52. Reflecting our preferred option (as described in paragraphs 43 to 51), we are proposing to amend the Rules along the following lines¹²:
- a. The definition of “maximum obligation period” would be amended to specify that only a Prospective Generating CMU which meets the eligibility criteria for a fifteen-year agreement will be eligible for capacity agreement lengths of up to fifteen years;
 - b. Adding a definition of “fifteen-year eligibility criteria” to specify
 - i. that for each generating unit in a CMU, the core generating equipment is new or is a combination of new and existing core generating equipment where any existing core generating equipment is to be rebuilt to a life expectancy, efficiency, and performance standard equivalent to that of a new item of that type; and
 - ii. that the CMU when completed must (in cases where it is applicable to that CMU) meet the efficiency standards set out for new combustion plant of that type in the BREF.
 - c. Adding new definitions of “BREF” and “Core Generating Equipment”;

“BREF” means the reference document on best available techniques for large combustion plants published by the European Commission in July 2006;

“Core Generating Equipment” means any combination of generators, turbines, or other prime movers that are to be physically connected and operated together as part of one Generating Unit;
 - d. Amending Rule 3.7 to include a requirement that, as part of the construction plan, the applicant must, if seeking a fifteen-year capacity agreement for a CMU, provide an explanation for how the CMU meets the fifteen-year eligibility criteria;
 - e. Amending Rule 8.3.6 to be “Evidence of Capital Expenditure and New Build” and including:

an additional requirement in Rule 8.3.6 (a) for the Independent Technical Expert to certify that where a capacity agreement has been awarded on the basis of the Prospective Generating CMU continuing to meet the fifteen-year eligibility criteria when it is completed;

an additional requirement in Rule 8.3.6 (b) that if the Independent Technical Expert has not certified, in accordance with Rule 8.3.6(a) that the CMU satisfies the fifteen-year eligibility criteria, the duration of the capacity agreement is reduced to three years or to one year, consistent with the amount of Capital Expenditure certified.

¹² These reflect our initial views on how we might implement our preferred option. What is suggested here is intended to be illustrative. The actual final drafting of the amendments necessary to implement the proposal may differ and indeed may need to take account of any changes to the proposal which the Secretary of State is minded to accept having considered consultation responses.

53. The intention is for the proposal described in this chapter, or a variation of it which is developed in line with consultation responses, to be implemented in time for the second capacity auction in 2015. For the first auction, subject to the views received in this consultation, an applicant applying for a fifteen-year agreement on the basis of an existing generating unit which does not meet the policy intention, as explained in paragraphs 36 to 38, will be prevented from securing a fifteen-year capacity agreement. The Secretary of State will rely on the European Commission’s State aid decision to preclude such applications from succeeding in the first auction.

Box 1: Consultation questions	Eligibility for fifteen-year agreements
CM1	<ul style="list-style-type: none"> Do you consider that the policy objective of restricting fifteen-year agreements to new generation capacity can best be achieved by clarifying that only New Build CMUs can access fifteen-year agreements (while retaining the current definitions of New Build CMU and Refurbishing CMU) (Option 1) or that as proposed more complex eligibility criteria are required (Option 2)?
CM2	<ul style="list-style-type: none"> Do you agree with the proposal that, to be eligible for fifteen-year agreement, a CMU must meet the efficiency standard for new plant contained in the BREF?
CM3	<ul style="list-style-type: none"> Do you agree with the proposal that the CMU’s core generating equipment must be new and /or can be a combination of new and existing plant items provided that any existing core generating equipment must be rebuilt to as new standards?
CM4	<ul style="list-style-type: none"> Do you agree with the proposal that where an existing site is utilised, the capacity must be new additional capacity and not an upgrade to existing capacity in order to qualify as a New Build CMU?
CM5	<ul style="list-style-type: none"> Do you believe a test based on requiring only a certain percentage of core generating equipment to be new or allowing a combination of new and existing core generating equipment provided that any existing items are rebuilt to as new standards would be preferable? If so please explain why and set out how the implementation issues identified in paragraph 48 could be overcome.
CM6	<ul style="list-style-type: none"> Do you agree with the proposed certification by the Independent Technical Expert of the CMU

	meeting the fifteen-year eligibility criteria?
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Chapter 3: Amendments to the Capacity Market Rules 2014

Introduction

54. Following the making of the Capacity Market Rules on 1 August 2014, a number of minor and technical drafting issues have been identified which need to be immediately corrected to ensure that the Rules governing prequalification for the first auction are clear and operate as intended.
55. Government therefore aims to make and bring into force by 22 August an amended set of Rules, 'The Capacity Market (Amendment) Rules 2014' correcting these issues.
56. The table below summarises the types of amendments that will be contained in the amended Rules¹³:

Table 2: Summary of amendments to the Capacity Market Rules 2014

Rule to be amended	Reason for amendment
Definition of "bidder"	Correct (a) in the definition to include all existing generating CMUs
Definition of "bidding CMU"	Correct so that this includes prequalified existing generating CMUs
Definition of "total project spend"	Amend the definition to be consistent with the definition of "Qualifying £/kW Capacity Expenditure"
Rule 2.2.2	Correct the mismatch between T-7 weeks' timeline and the obligation under Rule 4.6.4
Rule 3.3.3(c)	Add a Rule that explicitly states that a CMU that falls under the definition of a Mandatory CMU but does not meet the general eligibility criteria in the Regulations is under no obligation to participate in prequalification
Rule 3.4.3	To be amended to disapply Rules 3.4.3 (a) (ii), 3.4.3 (a) (iii) and 3.4.3 (b) for Unproven DSR CMUs
Rule 3.4.9	Amend the Rule to enable the sharing of information between the applicant and any shareholder of the Applicant and the members of the company group
Rule 3.12.5	Change reference from "applicant" to "the person submitting the opt-out notification"
Rule 4.2.3	Remove references to opt-out notification
Rule 4.3.1(b)	Make consistent with Rule 3.3.3(c), Rule 5.4 and definition of "defaulting CMUs" so that the defaulting CMU check is applied to generating and DSR CMUs
Rule 4.6.3	Corrected previous drafting of the Rules which incorrectly assumed that conditional prequalification under Rules 4.6 (credit cover) and 4.7 (planning consent) were mutually exclusive.
Rule 4.11.1	Clarify that the only time there will not be an option to opt-out if there is a change in auction parameters is when there is a change in target capacity which does not affect the price cap or other auction parameters
Rule 4.11.1	Clarify that this Rule applies to all Existing Generating CMUs
Rule 5.5.14	Clarify that this Rule applies to New Build CMU, Refurbishing CMU and DSR CMU

¹³ The amendments described in the table were being finalised at the time this consultation document was first published. Therefore, please regard the table as providing an indication of the changes that will shortly be made.

Rule 8.3.3	To add provision for metering assessments not specified for new build and refurbishing elements of a refurbishing CMU.
Rule 8.3.3 and 8.3.4	Sets out the process by which Unproven DSR must provide details of their final list of components to the EMR Delivery Body.
Various	Amendment of various references to “two directors” to be changed to “one director” in the case of a private company with only one director.
Schedule 3	Correct instances where oil burning reciprocating engines have been placed in the incorrect technology class
Exhibit C(e)	To be amended to align with Rule 3.4.9(e)

What this means for prequalification in the 2014 capacity auction

57. The amendments described in this Chapter should have little or no impact on the information that applicants submit as part of their pre-qualification applications. However, in order to allow applicants to consider these amendments before finalising their prequalification applications, DECC has directed the Delivery Body to extend the prequalification window by five working days.
58. This means that the pre-qualification window will close on 5 September 2014, prequalification results day will be on 3 October 2014 and the first capacity auction will commence on 16 December 2014.
59. Updated auction guidelines will be published by the Delivery Body prior to the amended Rules coming into force.
60. Pending these changes to the Rules coming into force, DECC has advised the Delivery Body not to accept any further applications until the new Capacity Market Rules are in force.
61. Any prequalification applications that have been submitted to the Delivery Body are encouraged to be withdrawn and resubmitted when the amended Rules are in force. This will ensure that the application takes account of the Rules as corrected.¹⁴

Amendments to Chapter 2 of the Rules: Auction Guidelines and De-Rating

62. We have identified that there is currently a mismatch between the timetable for the capacity auction contained within Rule 2.2.2 and the obligation under Rule 4.6.4 if the Delivery Body does not receive a copy of a notice stating that an applicant has approved “Applicant Credit Cover”. Therefore we will be amending Rule 2.2.2 to correct the mismatch between the T-7 weeks’ timeline in Rule 2.2.2 and the obligation under Rule 4.6.4.

Amendments to Chapter 3 of the Rules: Prequalification Information

63. As currently drafted, the Rules appear to be unclear about whether a CMU that meets the definition of “Mandatory CMU” but which does not meet the General Eligibility Criteria set out in the Regulations needs to participate in prequalification and submit an opt-out notification. We will therefore be amending Rule 3.3.3 to address this and clarify that a Mandatory CMU that

¹⁴ The new application may be materially identical to the application which has been withdrawn if the amendments to be made to the Rules have had no impact on the application. In other cases where the amendments to be made to the Rules do impact an application which was previously submitted then the application might need to be altered to take account of any applicable rule changes.

does not meet the General Eligibility Criteria does not need to submit an application or opt-out notification at prequalification.

64. We have identified that, for Unproven DSR CMUs, Rule 3.4.3 as drafted conflicts with Rule 3.10. This is because Rule 3.4.3 requires an applicant to specify information such as all relevant meters and meter point administration numbers while an Unproven DSR would not be able to provide this information, which is why Rule 3.10 sets out the additional information that an Unproven DSR CMU needs to provide. To avoid this conflict between the Rules, we will be amending Rule 3.4.3 so that Rules 3.4.3 (a) (ii), 3.4.3 (a) (iii) and 3.4.3 (b) do not apply to an Unproven DSR CMU. The effect will be that the Delivery Body will disapply these Rules in reaching its prequalification decision for Unproven DSR.
65. We recognise that Rule 3.4.9 requires an amendment to enable the sharing of information between the applicant and any shareholder of the applicant and the members of the company group. This will account for a situation where a special purpose vehicle (SPV) has been established as the shareholder in a joint venture. The current drafting of Rule 3.4.9 permits the disclosure to the shareholder (i.e. the SPV) but not further up the corporate structure to the SPV's shareholders.
66. We will be clarifying Rule 3.12.5 by changing the reference from "applicant" to "the person submitting the opt-out notification".

Amendments to Chapter 4: Determination of Eligibility

67. We have assessed that Rule 4.2.3 contradicts Rule 3.3.3(b), as Rule 4.2.3 suggests that, if an applicant were to submit more than one application or opt-out notification with respect to a CMU, then the most recent submission will prevail and earlier submissions will be ignored. However, Rule 3.3.3(b) expressly forbids this for opt-out notification. Therefore we will be amending Rule 4.2.3 to remove references to opt-out notification.
68. Rule 4.3.1 will be amended to make it consistent with Rule 3.3.3(c), Rule 5.4 and the definition of "defaulting CMUs". The effect is that the Delivery Body will apply the defaulting CMU check to Generating and DSR CMUs rather than just Generating CMUs, as currently drafted.
69. The current drafting of the Rules assumes that conditional prequalification under Rules 4.6 (credit cover) and 4.7 (planning consent) are mutually exclusive, which is not the policy intent. We will be amending Rule 4.6.3 so that the Delivery Body must only notify an applicant that it is fully prequalified within five working days of receiving a notice that the applicant's credit cover has been approved, where Rule 5.7 does not apply and the requirement to provide a declaration about planning consents is not outstanding. Where planning consent is still outstanding at the point of credit cover approval, fully prequalified notification will follow the process stipulated in Rule 4.7.2.
70. The current drafting of Rule 4.11.1 provides for certain prequalified participants to opt-out of the auction if the Secretary of State adjusts an auction parameter, with the exception of changes to the Demand Curve. This is not as clear as the Department would like as the Demand Curve includes parameters such as the price cap and Net CONE, so it is likely that the Demand Curve will also change if a parameter is changed. To make this clearer we will be amending this Rule to make clear the circumstances in which a change to the auction parameters may give certain prequalified participants the option of opting out of the auction.
71. We will also be making the following types of amendments to the Rule to clarify who the Rule applies to:
 - a. We will be clarifying that it is only changes to the auction parameters listed in paragraphs (c) to (h) of Regulation 11(1) that grant an applicant of an Existing

Generating CMU the opportunity to withdraw from a capacity auction following prequalification;

- b. We will be clarifying that this Rule applies to any Existing Generating CMU, rather than just Mandatory CMUs (this also applies to Rule 4.11.2). We do not feel that this should apply to other types of CMUs as Rule 5.5.14 applies to other types of CMUs enabling them to withdraw from an auction; and
- c. We will be clarifying the notices that an Existing Generating CMU and a Prequalified Mandatory CMU must submit to the Delivery Body if an applicant of one of these types of CMU wants to withdraw from the auction following a change in an auction parameter (this also applies to Rule 4.11.2).

72. The definitions of “Bidder” and “Bidding CMU” as currently drafted in the Rules excluded certain CMUs from being defined as a bidder or bidding CMU, therefore potentially affecting their involvement in the 2014 capacity auction. This is because:

- The definition of “Bidder” only refers to Mandatory CMUs rather than Existing Generating CMUs, excluding non-Mandatory Generating CMUs; and
- The definition of “Bidding CMU” only refers to those prequalified CMUs referred to in Rule 5.5.14, excluding all Existing Generating CMUs.

73. We will be amending both definitions to address this.

Amendments to Chapter 8: Obligations of Capacity Providers and System Stress Events

74. We have identified that there is a gap in Rule 8.3.3 as it does not include the metering requirements for Prospective Generating CMUs. We will therefore add an additional provision to Rule 8.3.3 to address this and clarify that all Prospective Generating CMUs awarded a capacity agreement to provide their metering assessment and line diagrams must do so as soon as reasonably practicable after the CMU becomes operational and not later than the Long Stop Date.

75. We will be adding a new provision to Rule 8.3.3 and amended Rule 8.3.4(a) to clarify the process by which Unproven DSR must provide details of their final list of components to the EMR Delivery Body.

76. References to “capital expenditure” in Rule 8.3.6 will be amended to read “total project spend”.

Amendments to references to “two directors” signing relevant declarations

77. We have identified that private companies with only one director will not be able to discharge the prequalification requirements for two directors to sign the relevant declarations. As such we propose to amend the references to two directors to one director where the applicant is a private company with only one director. This will prevent the unintentional exclusion of such capacity.

Amendments to Schedule 3: Generating Technology Classes

78. We have reconsidered the flawed artificial distinction between oil and gas burning reciprocating engines for the purposes of determining their generating technology class for de-rating purposes. As a result we will be amending Schedule 3 of the Rules to group all reciprocating

engines, where not used for autogeneration purposes, in the Open Cycle Gas Turbine generating technology class, irrespective of fuel utilised.

Amendments to Exhibit C: Form of Certificate of Conduct

79. We will be making a number of amendments to Exhibit C to ensure that the form is properly aligned with the requirements set out in Rule 3.4.9(e).

Annex A

Table 1: Summary of proposed amendments to clarify eligibility for fifteen-year capacity agreements (see Chapter 2)

Rule that will be clarified	Issue to be addressed
Definition of “maximum obligation period”, and additional definition of “Fifteen-Year Eligibility Criteria”	To clarify that only CMUs which are essentially new plant will be eligible for capacity agreement lengths of more than 3 years and up to 15 years
Include new definition of “Fifteen-Year Eligibility Criteria”	To require that core generating equipment in a plant must be new (or a combination of generating equipment which is new and generating equipment which is to be rebuilt to as-new standards) and that the CMU must meet the relevant efficiency standard for new plant in the reference document on best available techniques for large combustion plants published by the European Commission.
Include definitions of BREF and Core Generating Equipment	To define the reference document for best available techniques for large combustion plant and core generating equipment for the purposes of the Fifteen-Year Eligibility Criteria
Rule 3.7.2	To include a requirement that the applicant provides a description as to how the CMU meets the definition of the eligibility criteria for fifteen-year agreements
Rule 8.3.6	Add provision that in relation to a new build CMU, certification by the Independent Technical Expert is to include confirmation that the CMU meets the eligibility criteria for a fifteen-year agreement

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