

Indicative drafting for purposes of consultation

Draft requirements applying to Capacity Agreements awarded as a result of Capacity Auctions after the coming into force of the Capacity Market (Amendment) (No. 3) Rules 2017 or a Transferred Part in respect of such a Capacity Agreement

13.4 Demonstrating satisfactory performance

- 13.4.1 Subject to Rules 13.4.1A, and Rule 13.4.1B, and the modifications in Chapter 9, if a Capacity Committed CMU ~~has not demonstrated~~ **must demonstrate** to the Delivery Body in accordance with Rule 13.4.2 capacity at a level equal to or greater than its Capacity Obligation or aggregate Capacity Obligations for at least one Settlement Period (which Settlement Periods may fall within a System Stress Event) on three separate days (each a “Satisfactory Performance Day”) during the Winter of the relevant Delivery Year, **with at least one Satisfactory Performance Day occurring within the period from 1 January to 30 April (both dates inclusive) for that Delivery Year.:**
- ~~(a) the Capacity Committed CMU must demonstrate three additional Satisfactory Performance Days after 1 May in that Delivery Year or at any time in any subsequent Delivery Year;~~
 - ~~(b) the Capacity Committed CMU's entitlement to Capacity Payments will be suspended in accordance with the Regulations from 1 May in that Delivery Year until the later of 1 June in that Delivery Year and the day on which the third Satisfactory Performance Day is demonstrated pursuant to Rule 13.4.1(a) above; and~~
 - ~~(c) if the Capacity Committed CMU fails to satisfy the requirements of Rule 13.4.1(a) by the end of the relevant Delivery Year then, without prejudice to the ongoing suspension of Capacity Payment pursuant to Rule 13.4.1(b), the Capacity Provider with respect to such Capacity Committed CMU must repay all Capacity Payments received (net of any Settlement Period Penalties paid capacity provider penalty charges paid under Regulation 41) in that Delivery Year in accordance with the Regulations.~~
- 13.4.1ZA If the Capacity Committed CMU fails to satisfy the requirements of Rule 13.4.1 in the relevant Delivery Year:
- (a) the Capacity Committed CMU must demonstrate three additional Satisfactory Performance Days occurring during the period from 1 May to 31 July (both dates inclusive); and
 - (b) the Capacity Committed CMU's entitlement to Capacity Payments will be suspended in accordance with the Regulations from 1 May in that Delivery Year until the later of 1 June in that Delivery Year and the day on which the third Satisfactory Performance Day is demonstrated pursuant to Rule 13.4.1ZA(a).
- 13.4.1ZB If the Capacity Committed CMU is subject to, and fails to satisfy the requirements of, Rule 13.4.1ZA(a), the Capacity Agreement of the Capacity Committed CMU will be terminated in accordance with Rule 6.10.1(r).

- 13.4.1ZC (a) Paragraph (b) of this Rule 13.4.1ZC applies if a Capacity Committed CMU has received a Termination Notice in relation to termination on the ground specified in Rule 6.10.1(r) if:
- (i) after reconsideration under Regulation 69 by the Delivery Body or an appeal to the Authority under Part 10 of the Regulations, the Delivery Body does not terminate the Capacity Agreement; or
 - (ii) the Secretary of State has directed the Delivery Body to withdraw the termination notice.
- (b) Rule 13.4.1ZA(a) is modified such that the Capacity Committed CMU may demonstrate the three additional Satisfactory Performance Days required under Rule 13.4.1ZA(a) in the Delivery Year in which the Capacity Committed CMU failed to satisfy the requirements of Rule 13.4.1ZA(a) or any subsequent Delivery Year of its Capacity Agreement (if applicable).
- 13.4.1ZD In the case of a Capacity Committed CMU that was a New Build CMU, Rule 13.4.1ZB applies from the start of its first full Delivery Year as a Capacity Committed CMU.
- 13.4.1A For the purposes of the definition of “Satisfactory Performance Day” in Rule 13.4.1, 13.4.1ZA and 13.4.1ZC, in the case of an Interconnector CMU, the demonstration that is to be made is of Net Output at a level greater than zero as recorded for the purposes of the BSC by file CDCA-I041 of the Central Data Collection Agent (CDCA).
- 13.4.1B Subject to Rule 13.4.1D and for the purposes of the definition of “Satisfactory Performance Day” in Rule 13.4.1, 13.4.1ZA and 13.4.1ZC, in the case of a group of Capacity Committed CMUs with the same Capacity Provider (a “CMU Portfolio”), where those CMUs are:
- (a) DSR CMUs which consist of DSR CMU components on two or more different sites; or
 - (b) DSR CMUs which have successfully completed a Joint DSR Test as a CMU Portfolio; or
 - (c) Non-CMRS Distribution CMUs, where, for each such CMU the aggregate connection capacity of all generating units is no greater than 50MW.
- the demonstration that can be made instead of Rule 13.4.1 to meet the requirements of Rule 13.4.1, 13.4.1ZA or 13.4.1ZC is capacity delivered in aggregate by the CMU Portfolio at a level equal to or greater than their combined Capacity Obligations (subject to Rule 9.5.1) for at least one Settlement Period (which Settlement Periods may fall within a System Stress Event) on three separate days during the Winter of a relevant Delivery Year.
- 13.4.1C DSR CMUs or Non-CMRS Distribution CMUs demonstrating Satisfactory Performance Days in accordance with 13.4.1B, must for the purposes of Rule 13.4.1, 13.4.1ZA and 13.4.1ZC demonstrate Satisfactory Performance Days using the same CMU Portfolio.
- 13.4.1D Where a CMU has, either individually or as part of a CMU Portfolio, demonstrated the requisite number of Satisfactory Performance Days in a relevant Delivery Year, that CMU, or any components comprising that CMU, must not form part of any other CMU Portfolio as defined in Rule 13.4.1B and 13.4.1C.
- 13.4.2 The Capacity Provider of a Generating CMU, a DSR CMU or an Interconnector CMU must notify the Delivery Body of the occurrence of the requisite number of Satisfactory Performance Days it has demonstrated:
- (a) by the end of Winter;
 - (b) by 31 July of the Delivery Year, if Rule 13.4.1ZA applies;

- (c) by the end of each Delivery Year, if Rule 13.4.1ZC applies; and
- (d) where the Satisfactory Performance Days have been demonstrated in accordance with Rule 13.4.1B, must specify in the notification that this is the case and the DSR CMUs and Non-CMRS Distribution CMUs to which this applies.

- 13.4.3 The Delivery Body must notify the Capacity Provider within 10 Working Days of having received the settlement and metering information necessary to prove fulfilment of a Satisfactory Performance Day if it is aware that any Satisfactory Performance Day notified in accordance with Rule 13.4.2 is not a Satisfactory Performance Day properly notified in accordance with this Rule 13.4.
- 13.4.4 Any Satisfactory Performance Day demonstrated on a Winter day during a Delivery Year may be counted towards the obligation in Rule 13.4.1 with respect to that Delivery Year ~~and~~ or towards the obligation in Rule 13.4.1ZA(a) with respect to a previous Delivery Year.
- 13.4.5 If, in two or more months in which System Stress Events occur during Winter in a Delivery Year, a Capacity Committed CMU fails to achieve a calculation of E_j of 1kWh in relation to at least one System Stress Event in each such month, then each obligation pursuant to Rule 13.4.1 that requires the demonstration of three Satisfactory Performance Days during a period shall instead be a requirement to demonstrate six Satisfactory Performance Days in the same such period.
- 13.4.6 The Delivery Body must notify the CM Settlement Body of:
- (a) any failure by a Capacity Committed CMU to ~~demonstrate three Satisfactory Performance Days during Winter~~ **satisfy its obligations** pursuant to Rule 13.4.1;
 - (b) any failure by a Capacity Committed CMU to satisfy its obligations (where applicable) pursuant to Rule 13.4.1ZA(a) by the end of the relevant Delivery Year **(as modified by Rule 13.4.ZC)**; and
 - (c) the date on which a Capacity Committed CMU satisfies its obligations pursuant to Rule 13.4.1ZA(a) **(as modified by Rule 13.4.ZC)**.

6.10 Termination

6.10.1 Termination Events

Each of the following events is a Termination Event with respect to a Capacity Agreement (other than a Capacity Agreement that has been transferred under Rule 9.2.4(a)), and the Capacity Provider must notify the Delivery Body if any of the following events has occurred and is continuing:

[...]

- (r) where the Capacity Committed CMU is subject to, and fails to satisfy, the requirements of Rule 13.4.1ZA(a) (as modified by Rule 13.4.1ZC, where applicable) in respect of a Capacity Agreement awarded as a result of a Capacity Auction held after the coming into force of the Capacity Market (Amendment) (No. 3) Rules 2017, or a Transferred Part in respect of such a Capacity Agreement.

6.10.1A Termination Events: Transfers under Rule 9.2.4(a)

Each of the events specified in the following paragraphs of Rule 6.10.1 is a Termination Event with respect to a Capacity Agreement that has been transferred in its entirety under Rule 9.2.4(a), or with respect to a Transferred Part:

[...]

- (vi) paragraph (r) (Satisfactory Performance Days).

6.10.3 Termination Fees

[...]

- (i) Where a Capacity Agreement awarded as a result of a Capacity Auction held after the coming into force of the Capacity Market (Amendment) (No. 3) Rules 2017, or a Transferred Part in respect of such a Capacity Agreement, is terminated on the ground specified in Rule 6.10.1(r), the Capacity Provider is liable to pay a termination fee in accordance with Regulation 43.
- (j) The amount of a termination fee payable under Rule 6.10.3(g) is TF5, as determined in accordance with Regulation 43(3).

6.10.3A Repayment of Capacity Payments

[...]

- (cb) Where a Capacity Agreement awarded as a result of a Capacity Auction held after the coming into force of the Capacity Market (Amendment) Rules (No. 3) 2017, or a Transferred Part in respect of such a Capacity Agreement, is terminated on the ground specified in Rule 6.10.1(r), the Capacity Provider is liable to repay Capacity Payments in accordance with Regulation 43B.
 - (d) Where a Capacity Agreement or Transferred Part is terminated on the grounds specified in Rule 6.10.1(g), Rule 6.10.1(ga), [Rule 6.10.1\(r\)](#) or Rule 6.10.1A(b)(i), the Delivery Body must notify the CM Settlement Body of the date on which the Termination Event occurred.
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9.5 Transfers and testing

- 9.5.1 A Capacity Committed CMU which has not delivered the requisite capacity on the requisite number of Satisfactory Performance Days during Winter in accordance with Rule 13.4.1 must satisfy the requirements of (and will be subject to the consequences set out in) ~~Rules 13.4.1(a), 13.4.1(b) (if applicable) and 13.4.1(c)~~ Rules 13.4.1ZA and 13.4.1ZB to the extent specified in this Chapter 9, irrespective of whether some or all of the Capacity Obligations to which the testing requirements related have since been transferred pursuant to this Chapter 9.
- 9.5.2 In the case of a Capacity Committed CMU that has transferred all of its Capacity Obligation for the period from 1 January to 30 April (both dates inclusive) of a Delivery Year under Rule 9.2.4(a):
- (a) Rule 13.4.1 is modified such that the reference to “at least one Satisfactory Performance Day occurring during the period from 1 January to 30 April (both dates inclusive) of the relevant Delivery Year” is to be read as “at least one Satisfactory Performance Day occurring during the period from 1 May to 31 July (both dates inclusive) of the relevant Delivery Year”; and
 - (b) If the Capacity Committed CMU fails to satisfy the requirements of Rule 13.4.1 (as modified) in the relevant Delivery Year:
 - (i) Rule 13.4.1ZA(a) does not apply;
 - (ii) Rule 13.4.1ZA(b) applies with the modification that the words “1 May in that Delivery Year until the later of 1 June in that Delivery Year” are replaced with the words “1 August in that Delivery Year until the later of 30 September in that Delivery Year”; and
 - (iii) Rule 13.4.1ZB applies as if the Capacity Committed CMU had been subject to and failed to satisfy the requirements of Rule 13.4.1ZA(a).
- 9.5.3 In the case of a Capacity Committed CMU that has transferred part of its Capacity Obligation for the period from 1 January to 30 April (both dates inclusive) of a Delivery Year under Rule 9.2.4(a), Rule 13.4.1 is modified to replace the words from “its Capacity Obligation” to the end with “the highest level of Capacity Obligation or aggregate Capacity Obligations it held for the period from 1 January to 30 April (both dates inclusive) for at least one Settlement Period (which may fall within a System Stress Event) on one day (a “Satisfactory Performance Day”) during the period from 1 January to 30 April (both dates inclusive) of the relevant Delivery Year”.
- 9.5.4 In the case of a Capacity Committed CMU that has transferred all Capacity Agreements relating to that CMU outright under Rule 9.2.4(b) for the period from 1 January to 30 September (both dates inclusive):
- (a) the reference in Rule 13.4.1 to the requirement to demonstrate capacity on “three separate days (each a “Satisfactory Performance Day”) during the Winter of the relevant Delivery Year, with at least one Satisfactory Performance Day occurring during the period from 1 January to 30 April (both dates inclusive) of the relevant Delivery Year” is to be read as “two separate days (each a “Satisfactory Performance Day”) during the period from 1 October to 31 December (both dates inclusive) of the relevant Delivery Year”;

(b) If the Capacity Committed CMU fails to satisfy the requirements of Rule 13.4.1 in the relevant Delivery Year:

(i) Rule 13.4.1ZA does not apply; and

(ii) Rule 13.4.1ZB applies as if the Capacity Committed CMU had been subject to and failed to satisfy the requirements of Rule 13.4.1ZA(a).

9.5.5 In the case of a CMU Transferee to which a Capacity Obligation has been transferred for a period that does not include any days during the period from 1 January to 30 April (both dates inclusive) of a Delivery Year, Rule 13.4.1 is to be read omitting the words “with at least one Satisfactory Performance Day occurring during the period from 1 January to 30 April (both dates inclusive) of the relevant Delivery Year”.