



UK Government

# Capacity Market appeals process

Guidance

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# Contents

1. Introduction	3
2. Termination Notices	4
3. Termination Events	5
4. Appealing Termination Notices to the Secretary of State	8
4.1. When must I submit my appeal?	8
4.2. What can I appeal?	8
4.2.1. Requesting a withdrawal of a Termination Notice	8
4.2.2. Requesting an extension of the notice period	8
4.3. Frequently asked questions	9
4.3.1. What is the difference between an Appeal and a Reviewable Decision?	9
4.3.2. Can I make different types of appeal (e.g., withdrawal, extension) when submitting an appeal against a single Termination Notice?	10
4.3.3. How can I submit an appeal?	10
4.3.4. What does a cure plan look like?	10
4.3.5. What happens if my appeal is unsuccessful?	10
4.3.6. What happens if an extension is granted but I am unable to meet the requirement by the end of the extension period granted?	10
4.3.7. What happens if I don't appeal?	10
5. Reduction Notices	11
6. Appealing Reduction Notices to the Secretary of State	12
6.1. When must I submit my appeal?	12
6.2. What can I appeal?	12
6.2.1. Requesting a withdrawal of a Reduction Notice	12
6.2.2. Requesting an extension of the date to meet a specified requirement	12
6.2.3. How do I submit an appeal	12
6.3. Frequently asked questions	13
6.3.1. Can I make different types of appeal (e.g., withdrawal, extension) when submitting an appeal against a single Reduction Notice?	13
6.3.2. What happens if my appeal is unsuccessful?	13
6.3.3. What happens if an extension is granted but I am unable to meet the requirement by the end of any extension period granted?	13
6.3.4. What happens if I don't appeal?	13

# 1. Introduction

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

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

For clarity we have included separate FAQ sections for Termination Notices (section 3.3) and Reduction Notices (section 5.3).

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

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

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

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

<https://www.legislation.gov.uk/ukxi/2025/917/contents/made>

## 2. Termination Notices

Rules 6.10.1 and 6.10.1A of the Rules specify the events (“Termination Events”) that will cause a Capacity Agreement to be terminated. Should such an event occur, the Delivery Body will issue a Termination Notice to a Capacity Provider under Rule 6.10.2(a), specifying the ground for termination and informing them that the Capacity Agreement will terminate in 60 Working Days from the issue date of the Termination Notice (“the Termination Notice period”).

The Termination Appeal template is available on the EMR Delivery Body’s website.

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

Under Regulation 33 of the Principal Regulations, the Secretary of State may, if the Secretary of State thinks fit, within 3 months of the date on which the Termination Notice is given, direct the Delivery Body to withdraw the Termination Notice; or if the Termination Notice was given on the ground that the capacity provider has failed to meet a specified requirement, extend the date by which the capacity provider must meet that requirement.

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

Subject to Rule 6.10.1B (if applicable), at the expiry of the notice period referred to in Rule 6.10.2(a) or, where applicable, any extension period referred to in Rule 6.10.2(d), the Capacity Agreement for each relevant CMU is automatically terminated unless the Termination Notice has been withdrawn.

A Termination Event may also have associated Termination Fees that would need to be paid by the Capacity Provider. These fee levels are defined in Capacity Market Rules 6.10.3 with corresponding fee per level set out in the Principal Regulations. Additionally, a Termination Event may also require the Capacity Provider to repay Capacity Payments within a specified Repayment Period, as stated in Capacity Market Rule 6.10.3A. The Repayment Periods are defined in Regulation 43B.

### 3. Termination Events

A Termination Notice can be issued for any Termination Event listed in Rule 6.10.1 of the Rules (To note: this does not affect all CMU Types).

Rule	Termination Event
6.10.1(a)	an Insolvency Termination Event affecting the Capacity Provider or, in relation to an Interconnector CMU, any Joint Owner
6.10.1(b)	where the Capacity Agreement is in respect of a New Build CMU, a failure by the Capacity Provider to achieve its Financial Commitment Milestone for that New Build CMU as determined in accordance with Rule 6.6
6.10.1(ba)	where the Capacity Agreement is in respect of a New Build CMU and <ul style="list-style-type: none"> <li>(i) Rule 6.6A.2 applies, and the New Build Capacity Provider has failed to lodge credit cover in accordance with Regulation 59(4) and (5); or</li> <li>(ii) the New Build Capacity Provider has lodged that credit cover, but failed to maintain it in accordance with Regulation 60(1);</li> </ul>
6.10.1(c)	except where Rule 6.8.2B applies, where the Capacity Agreement is in respect of a New Build CMU, a failure by the capacity provider to achieve its Minimum Completion Requirement for that New Build CMU as determined in accordance with Rule 6.8.3 within the period specified in a Notice of Intention to Terminate issued by the Delivery Body to that Capacity Provider in accordance with Rule 6.8.2 or Rule 6.8.2F
6.10.1(d)	without prejudice to the operation of any Regulations which render the Capacity Agreement null and void, the Capacity Committed CMU to which the Capacity Agreement relates: <ul style="list-style-type: none"> <li>(i) no longer meets the first condition of the General Eligibility Criteria described in Regulation 15(3);</li> <li>(ii) no longer meets the second condition of the General Eligibility Criteria described in Regulation 15(4); or</li> <li>(iii) would not meet the third condition of the General Eligibility Criteria described in Regulation 15(5) if an Application for Prequalification were made in respect of that CMU, at any time after the Capacity Agreement is awarded (except in the case of a CCS CFD where the Capacity Provider complies with Rule 8.2.2(b) and Rule 6.10.4 so that Rule 6.10.6 applies in respect of termination of the Capacity Agreement);</li> </ul>
6.10.1(e)	the Capacity Provider has made a declaration or provided a letter in its Application in accordance with Rule 3.7.3(c) for a CMU but has not provided a copy of its connection offer, with evidence of the acceptance of that offer, to the Delivery Body for that CMU as required by Rule 8.3.1(a)
6.10.1 (g)	where the Capacity Agreement relates to a Generating CMU or an Interconnector CMU, the Capacity Provider ceases to have a Grid Connection Agreement that secures Transmission Entry Capacity for each relevant Delivery Year at least equal to the De-rated Capacity of the Capacity Committed CMU and any other CMUs to which the Grid Connection Agreement applies, except as a result of a failure by a

	Transmission Licensee to provide a connection point when required to do so in accordance with a valid Grid Connection Agreement
6.10.1 (ga)	<p>where the Capacity Agreement relates to a Generating CMU or an Interconnector CMU, the Capacity Provider reduces the Transmission Entry Capacity secured by its Grid Connection Agreement for a relevant Delivery Year so that it is no longer at least equal to the aggregate of all Capacity Obligations applying at any time in that Delivery Year in respect of:</p> <ul style="list-style-type: none"> <li>(i) the CMU to which the Capacity Agreement applies, and</li> <li>(ii) any other CMUs to which the Grid Connection Agreement applies,</li> </ul> <p>except where such a reduction in Transmission Entry Capacity arises as a consequence of a failure by a Transmission Licensee to provide a connection point when required to do so in accordance with a valid Grid Connection Agreement;</p>
6.10.1 (h)	Where the Capacity Agreement relates to an Existing CMU, a Proven DSR CMU or an Unproven DSR CMU which, in any such case, is subject to a Metering Test pursuant to Rule 8.3.3(c) (as applicable), the Capacity Provider has failed to comply with Rule 8.3.3(d)
6.10.1 (ha)	Where the Capacity Agreement relates to an Existing CMU, a Proven DSR CMU or an Unproven DSR CMU and, the Capacity Provider has failed to complete a Metering Assessment in accordance with Rule 8.3.3(a) or 8.3.3(b)
6.10.1 (i)	Where the Capacity Agreement relates to an Unproven DSR CMU, the Capacity Provider has failed to comply with Rule 8.3.2(a)
6.10.1 (k)	Where the Delivery Body has not received a copy of a notice in accordance with Rule 4.6.2 and Rule 4.6.4A applies
6.10.1 (l)	where the Capacity Agreement relates to a Generating CMU with a multi-year Capacity Obligation and the CM Settlement Body determines that the Capacity Provider has on three separate occasions invalidated the Metering Test Certificate relating to that Generating CMU;
6.10.1 (m)	Where the Capacity Agreement relates to an Unproven DSR CMU, Rule 4.5B.2 applies and the Capacity Provider has failed to lodge credit cover in accordance with Rule 4.5B.7
6.10.1 (n)	A Capacity Provider makes a transfer, sale or disposal of a Generating Unit contrary to Rule 9.2.10 without complying with the conditions in 9.2.10A(a)
6.10.1 (o)	Where any information or declaration submitted in or with an Application relating to the Capacity Agreement did not comply with the requirements in Rule 3.12.1
6.10.1 (p)	Where the Capacity Provider is required to submit an updated Funding Declaration under Rule 8.3.8, a failure by the Capacity Provider to submit such update in accordance with Rule 8.3.8(a) or Rule 8.3.8(b)
6.10.1 (q)	where a Funding Declaration made under Rule 6.6.1 or any update made under Rule 8.3.8 did not comply with the requirements in Rule 6.6.7
6.10.1 (r)	where the Capacity Committed CMU is subject to, and fails to satisfy, the requirements of Rule 13.4.1ZA(a) (or Rule 13.4.1ZE(b), 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. 4) Rules 2017
6.10.1 (s)	where the Capacity Committed CMU is subject to and fails to satisfy, the requirements of Rule 13.4A.7(a) (or Rule 13.4A.11(b), where applicable) in respect of a Capacity Agreement awarded to the CMU as a result of a Capacity Auction held after the coming into force of the Capacity Market (Amendment) (No. 4) Rules 2017.

The Delivery Body will issue a Termination Notice to a Capacity Provider when it is aware that a Termination Event has been triggered. Capacity Providers **must** inform the Delivery Body if they are subject to any of the Termination Events listed above.

For Transfers under Rule 9.2.4(a), Rule 6.10.1A(c) states that, the Capacity Provider must notify the Delivery Body if an event mentioned in paragraph (a) or (b) of that Rule occurs and is continuing during the period in which the transferred Capacity Obligation applies to the CMU Transferee.



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

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

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

<https://emrdeliverybody.nationalenergyso.com/IG/s/article/Agreement-Management-Terminations-and-Appeals>

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

### 4.2. What can I appeal?

A Capacity Provider may appeal to the Secretary of State to request that they exercise their discretion under Regulation 33 of the Principal Regulations to:

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

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

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

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

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

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

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

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

When requesting an extension, the Capacity Provider must specify the length of extension to the Termination Notice that they are seeking. The maximum extension length a Capacity Provider can request is 20 Working Days past the date of Termination for a T-1 agreement and 60 Working Days past the date of Termination for a T-4 agreement.

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

Under Regulation 33(2)(b), the Secretary of State may, if the Secretary of State thinks fits, within 3 months of the date on which the termination notice is given - if the termination notice was given on the ground that the capacity provider has failed to meet a specified requirement, extend the date by which the capacity provider must meet that requirement.

## 4.3. Frequently asked questions

### 4.3.1. What is the difference between an Appeal and a Reviewable Decision?

Under Regulation 68 of the Principal Regulations, Delivery Body reviewable decisions include:

- A prequalification decision.
- A refusal of a request for rectification of the capacity market register on the basis of factual inaccuracy.
- A refusal of a request to amend a capacity agreement notice on the basis of factual inaccuracy.
- The issue of a non-completion notice, a termination notice, or a notice of intention to terminate a capacity agreement or a transferred part.
- A low emissions determination.
- The issue of a CCS CFD transfer refusal notice.

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

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

after the date the Capacity Provider received the Delivery Body notice of the reconsidered decision.

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

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

#### 4.3.3. How can I submit an appeal?

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

#### 4.3.4. What does a cure plan look like?

When requesting an extension to the Termination Notice, it is essential to include a cure plan. A good cure plan should include:

- The reason as to why the Termination Notice should be extended. Setting out the specific actions that the Capacity Provider will take, including dates, to address the ground(s) for termination specified in the Termination Notice
- Details as to how the Capacity Provider intends to implement the cure plan within the requested extension period.
- Supporting evidence in the form of attachments and/or screenshots as appropriate.
- Where applicable, the Capacity Provider should reference the relevant Capacity Market Rules they believe will permit the cure plan to be carried out

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

If an appeal is unsuccessful, a Capacity Agreement will automatically terminate on the date specified in the Termination Notice unless the Termination Notice is withdrawn or extended by the Delivery Body under Regulation 33(2).

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

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

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

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

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

## 5. Reduction Notices

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

The Reduction Appeal template is available on the EMR Delivery Body's website.

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

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

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

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

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

### 6.2. What can I appeal?

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

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

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

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

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

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

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

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

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

#### 6.2.3. How do I submit an appeal

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

## 6.3. Frequently asked questions

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

No, only one type of appeal can be made for each Reduction Notice. The Secretary of State may use their discretion to deliver a different outcome to that requested.

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

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

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

If an extension of time is granted and you are unable to meet the requirement for which the Reduction Notice was issued by the end of the extension period, the duration of the Capacity Agreement will automatically be reduced on the date that the extension elapses.

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

If no appeal is submitted to the Secretary of State, the duration of the Capacity Agreement will automatically be reduced with effect from 60 Working Days after the date the Reduction Notice was given (unless the Reduction Notice is withdrawn or extended by the Delivery Body).

Once the duration of a Capacity Agreement has been reduced, it is not possible to make an appeal seeking the Secretary of State to exercise their discretion under Regulation 33A to extend the Reduction Notice period or direct the Delivery Body to withdraw the Reduction Notice.

This publication is available from: <https://www.gov.uk/government/publications/capacity-market-appeals-process>

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