

G11 - Termination of Capacity Agreements

EMRS Guidance

Public

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Table of Contents

Change Amendment Record	3
1. Introduction	4
2. Purpose	4
3. Who is this document for?	4
4. What can cause a Capacity Agreement to be terminated?	4
5. What happens if a termination event has occurred?	14
6. What happens once the agreement is terminated?	14
7. What is the role of EMRS in Capacity Agreement Terminations?	16
7.1 Termination Fees	16
7.2 Credit Cover draw down	16
7.3 Capacity Payment recovery	16
8. How can termination be appealed?	17
9. Acronyms and Definitions	17

Change Amendment Record

Version	Date	Description
1.0	7 September 2016	Go Live Version
2.0	25 January 2017	New Termination Fees and (Section 4 and 6) Previous Draw down of Credit Cover taken into account when calculating Termination Fees (Section 6) New Repayment Period Scenario (Section 6)
3.0	7 March 2017	Update to accommodate change in payment terms from 3 to 5 Working Days
4.0	16 June 2017	Added reference to the Termination fee taking into account Traded obligations (section 6) Added Termination Reason (6.10.1 ga) and (6.10.1A (b) (i)) to (Table 1) but only for obligations traded after July 2016. Added Termination Reason (6.10.1A(b)(i)) to (Table 2)
5.0	24 July 2017	Document transfer to new template
6.0	20 July 2018	Updates for R11. Table 1 and 2 Rules 6.10.1. (g) and (ga) specify only termination reason if reduction or loss of TEC is not due to failure of System Operator.
7.0	30 November 2018	Added new termination event (r).
8.0	3 April 2019	Updated Termination Events Tables
9.0	22 October 2019	Updated Termination Events Tables
10.0	12 December 2019	Updated to include the treatment for Relevant Expenditure and or Relevant Benefit for Transfer of Ownership during the Termination Recovery Period

1. Introduction

In order to partake in the Capacity Market (CM), Capacity Providers must first successfully complete the pre-qualification process, confirming they are suitable recipients of Capacity Agreements. Capacity Agreements are issued to parties who have agreed to deliver obligations and operate in accordance with the CM Regulations and Rules. The EMR Delivery Body is responsible for managing these agreements.

If the Capacity Provider fails to meet or breaches certain clauses in the agreement, then this can lead to the termination of the agreement and the incurring of consequential fees.

2. Purpose

The purpose of this document is to answer the following questions:

- What can cause a Capacity Agreement to be terminated?
- What happens once a Capacity Agreement has been terminated?
- Is there an appeals process?
- What happens if a termination fee is not paid?
- How does this affect Capacity Payments?

3. Who is this document for?

This guidance is for Capacity Providers and provides information on what happens following a termination.

4. What can cause a Capacity Agreement to be terminated?

There are a number of events that could lead to the termination of a Capacity Agreement with subsequent actions varying depending on the specific scenario and when the Capacity Agreement was awarded. The scenarios and actions can be seen in the below tables.

- Table 1 shows Termination Events and subsequent actions for Capacity Agreements awarded prior to July 2016;
- Table 2 shows Termination Events and subsequent actions for Capacity Agreements awarded between July 2016 and July 2017; and Table 3 shows Termination Events and subsequent actions for Capacity Agreements awarded after July 2016

- Table 1 - Termination events for Capacity Auctions Awarded prior to July 2016 (these include December 2014 and 2015 T-4 auctions for Delivery Years 2018/19 and 2019/20 and January 2016 DSR Transitional Auction for Delivery Year 2016/17).

CMU Type	Rule	Reason for Termination	Termination Fee rate	Credit Cover	Recollect Capacity Payments if terminated	Capacity Payment repayment period
All	(a)	Insolvency Termination Event	N/A	N/A	Yes	TP1
New Build	(b)	Failed to achieve its Financial Commitment Milestone within 16 months after Auction results day	TF1	Yes	N/A	N/A
New Build	(c)	Failed to achieve its Minimum Completion Milestone (non - completion for interconnector) by the Long stop date by achieving at least 50% of Capacity Obligation	TF2 (TF1 for interconnectors)	N/A	N/A	N/A
All	(d)	No longer satisfy the General Eligibility Criteria	N/A	N/A	Yes	TP1
New Build (not including interconnector) - Distribution Connected	(e)	Has not provided Distribution Connection Agreement within 18 months prior to Delivery Year	TF1	Yes	N/A	N/A
New Build - Transmission Connected	(f)	Has not evidenced sufficient Transmission Entry Capacity by 18 months prior to the start of the Delivery Year	TF1	No	N/A	N/A
Generating	(g)	Ceases to have a Grid Connection Agreement with the sufficient Transmission Entry Capacity, except if the reduction or loss of TEC is due to the sole failure of the GB System Operator to provide a connection	TF2	N/A	Yes	TP2

CMU Type	Rule	Reason for Termination	Termination Fee rate	Credit Cover	Recollect Capacity Payments if terminated	Capacity Payment repayment period
Generating or Interconnector*	6.10.1 (ga)	Capacity Provider reduces its Transmission Entry Capacity secured by its Grid Connection Agreement to below obligation, except if the reduction or loss of TEC is due to the sole failure of the GB System Operator to provide a connection	TF2	N/A	Yes	TP2
Existing Generating, Proven DSR and Unproven DSR	(h)	Failed to provide Metering Test Certificate by 18 months prior to start of the Delivery Year for T-4 auction or by 1 month prior to start of delivery year for T-1 auction or if Unproven DSR	TF1	N/A	Yes	TP3
Unproven DSR	(i)	Failed to provide DSR Test Certificate by no later than 1 month prior to start of Delivery Year	N/A	Yes	Yes	TP3
Opted out	(j)	Generating during Winter	N/A	N/A	N/A	N/A
All conditionally prequalified	(k)	Fail to lodge approved credit cover in line with the auction requirements	N/A	N/A	Yes	TP1
Generating	(l)	Invalidated metering certificate on 3 separate occasions	N/A	N/A	Yes	TP2
Unproven DSR	(m)	Fail to lodge replacement credit cover after draw down/release for previous auctions within 32 Working Days of initial notification	N/A	N/A	N/A	N/A
Generating	(n)	Transfer, sold or disposed of generating unit without retaining Despatch Control	TF1	N/A	Yes	TP1
All	(o)	Information submitted not true and correct	N/A	N/A	Yes	TP3

CMU Type	Rule	Reason for Termination	Termination Fee rate	Credit Cover	Recollect Capacity Payments if terminated	Capacity Payment repayment period
All	(p)	Failure to submit an updated Funding Declaration	TF4	N/A	Yes	TP3
All	(q)	Funding Declaration is not true and correct	N/A	N/A	Yes	TP3
All	(r)	Failure to demonstrate additional Satisfactory Performance Days	N/A	N/A	N/A	N/A
Storage	(s)	Failure to demonstrate extended performance	N/A	N/A	N/A	N/A
All	6.10.2(a)(ii)	Engaging in prohibited activities	N/A	N/A	Yes	TP1
Generating	6.10.4	Transferring to CfD or RO	N/A	N/A	N/A	N/A
Generating or Interconnector*	6.10.1A(b)(i)	Traded obligation takes Transferee's obligation above Transmission Entry Capacity secured by its Grid Connection Agreement	TF2	N/A	Yes	TP2
All	6.10.1AA	6.10.1AA -Undue Financial Hardship	N/A	N/A	Yes	TP3

* This is only applicable to obligations which have been traded after 21 July 2016

- Table 2 - Termination events for Capacity Auctions awarded between July 2016 and July 2017 - these include December 2016 T-4 (DY2020), February 2017 T-1 (DY2017), February 2017 TR (DY2017).

CMU Type	Rule	Reason for Termination	Termination Fee rate	Credit Cover Drawn Down	Recollect Capacity Payments	Capacity Payment Repayment Period
All	(a)	Insolvency Termination Event	N/A	N/A	Yes	TP1
New Build	(b)	Failed to achieve its Financial Commitment Milestone within 18 months after Auction results day	TF4	Yes	N/A	N/A
New Build	(ba)(i)	Failure to lodge Credit Cover	TF3	N/A	N/A	N/A
New Build	(ba)(ii)	Lodged Credit Cover but failed to maintain it	TF4	N/A	N/A	N/A
New Build	(c)	Failed to achieve its Minimum Completion Milestone (non-completion for interconnector) by the Long stop date by achieving at least 50% of Capacity Obligation	TF5 (TF4 for Interconnectors)	N/A	N/A	N/A
All	(d)	No longer satisfy the General Eligibility Criteria	N/A	N/A	Yes	TP1
New Build (not including interconnector) - Distribution Connected	(e)	Has not provided Distribution Connection Agreement within 18 months prior to Delivery Year	TF4	Yes	N/A	N/A
Existing or New Build in a Supplementary Auction - Distribution Connected	(ea)	Has not provided Distribution Connection Agreement within 6 months prior to Delivery Year	TF5	N/A	N/A	N/A
Existing or New Build in a Supplementary Auction -	(fa)	Has not evidenced sufficient Transmission Entry Capacity by 6 months prior to the start of the Delivery Year	TF5	N/A	N/A	N/A

CMU Type	Rule	Reason for Termination	Termination Fee rate	Credit Cover Drawn Down	Recollect Capacity Payments	Capacity Payment Repayment Period
Transmission Connected						
Generating	(g)	Ceases to have a Grid Connection Agreement with the sufficient Transmission Entry Capacity, except if the reduction or loss of TEC is due to the sole failure of the GB System Operator to provide a connection	TF5	N/A	Yes	TP2
Generating or Interconnector	(ga)	Capacity Provider reduces its Transmission Entry Capacity secured by its Grid Connection Agreement to below obligation, except if the reduction or loss of TEC is due to the sole failure of the GB System Operator to provide a connection	TF5	N/A	Yes	TP2
Existing Generating, Proven DSR and Unproven DSR	(h)	Failed to provide Metering Test Certificate by 18 months prior to start of the Delivery Year for T-4 auction or by 1 month prior to start of delivery year for T-1 auction or if Unproven DSR	TF3	N/A	Yes	TP3
Unproven DSR	(i)	Failed to provide DSR Test Certificate by no later than 1 month prior to start of Delivery Year	N/A	Yes	Yes	TP3
Opted out	(j)	Generating during Winter	N/A	N/A	N/A	N/A
All conditionally prequalified	(k)	Fail to lodge approved credit cover in line with the auction requirements	N/A	N/A	Yes	TP1
Generating	(l)	Invalidated metering certificate on 3 separate occasions	TF3	N/A	Yes	TP2

CMU Type	Rule	Reason for Termination	Termination Fee rate	Credit Cover Drawn Down	Recollect Capacity Payments	Capacity Payment Repayment Period
Unproven DSR	(m)	Fail to lodge replacement credit cover after draw down/release for previous auctions within 32 Working Days of initial notification	N/A	N/A	N/A	N/A
Generating	(n)	Transfer, sold or disposed of generating unit without retaining Despatch Control	TF3	N/A	Yes	TP1
All	(o)	Information submitted not true and correct	N/A	N/A	Yes	TP3
All	(p)	Failure to submit an updated Funding Declaration	TF4	N/A	Yes	TP3
All	(q)	Funding Declaration is not true and correct	N/A	N/A	Yes	TP3
All	(r)	Failure to demonstrate additional Satisfactory Performance Days	N/A	N/A	N/A	N/A
Storage	(s)	Failure to demonstrate extended performance	N/A	N/A	N/A	N/A
All	6.10.2 (a)(ii)	Engaging in prohibited activities	N/A	N/A	Yes	TP1
Generating	6.10.4	Transferring to CfD or RO	N/A	N/A	N/A	N/A
Generating or Interconnector	6.10.1A(b)(i)	Traded obligation takes Transferee's obligation above Transmission Entry Capacity secured by its Grid Connection Agreement	TF5	N/A	Yes	TP2
All	6.10.1AA	Undue Financial Hardship	N/A	N/A	Yes	TP3

- Table 3 - Capacity Agreement awarded as a result of a Capacity Auction held after the coming into force of the Capacity Market (Amendment) Rules 2017 (14th July 2017) - these include February 2018 T-4 (DY2021), February 2018 T-1(DY2018), June 2019 T-1(DY2019)

CMU Type	Rule	Reason for Termination	Termination Fee rate	Credit Cover Drawn Down	Recollect Capacity Payments	Capacity Payment Repayment Period
All	(a)	Insolvency Termination Event	N/A	N/A	Yes	TP1
New Build	(b)	Failed to achieve its Financial Commitment Milestone within 18 months after Auction results day	TF4	Yes	N/A	N/A
New Build	(ba)(i)	Failure to lodge Credit Cover	TF3	N/A	N/A	N/A
New Build	(ba)(ii)	Lodged Credit Cover but failed to maintain it	TF4	N/A	N/A	N/A
New Build	(c)	Failed to achieve its Minimum Completion Milestone (non-completion for interconnector) by the Long stop date by achieving at least 50% of Capacity Obligation	TF5 (TF4 for Interconnectors)	N/A	N/A	N/A
All	(d)	No longer satisfy the General Eligibility Criteria	TF3	N/A	Yes	TP1
New Build (not including interconnector) - Distribution Connected	(e)	Has not provided Distribution Connection Agreement within 18 months prior to Delivery Year	TF4	Yes	N/A	N/A
Existing or New Build in a Supplementary Auction - Distribution Connected	(ea)	Has not provided Distribution Connection Agreement within 6 months prior to Delivery Year	TF5	N/A	N/A	N/A
Existing or New Build in a Supplementary Auction -	(fa)	Has not evidenced sufficient Transmission Entry Capacity by 6 months prior to the start of the Delivery Year	TF5	N/A	N/A	N/A

CMU Type	Rule	Reason for Termination	Termination Fee rate	Credit Cover Drawn Down	Recollect Capacity Payments	Capacity Payment Repayment Period
Transmission Connected						
Generating	(g)	Ceases to have a Grid Connection Agreement with the sufficient Transmission Entry Capacity, except if the reduction or loss of TEC is due to the sole failure of the GB System Operator to provide a connection	TF5	N/A	Yes	TP2
Generating or Interconnector	(ga)	Capacity Provider reduces its Transmission Entry Capacity secured by its Grid Connection Agreement to below obligation, except if the reduction or loss of TEC is due to the sole failure of the GB System Operator to provide a connection	TF5	N/A	Yes	TP2
Existing Generating, Proven DSR and Unproven DSR	(h)	Failed to provide Metering Test Certificate by 18 months prior to start of the Delivery Year for T-4 auction or by 1 month prior to start of delivery year for T-1 auction or if Unproven DSR	TF3	N/A	Yes	TP3
Unproven DSR	(ha)	6.10.1(ha) - Failure to complete Metering Assessment	TF3	N/A	N/A	N/A
Unproven DSR	(i)	Failed to provide DSR Test Certificate by no later than 1 month prior to start of Delivery Year	N/A ¹	Yes	Yes	TP3
Opted out	(j)	Generating during Winter	N/A	N/A	N/A	N/A

¹ For the 2019 T-1 Auction only a Termination fee of TF1 is applicable as per Rule 6.10.3(l) of The Capacity Market (Amendment) (No. 2) Rules 2019

CMU Type	Rule	Reason for Termination	Termination Fee rate	Credit Cover Drawn Down	Recollect Capacity Payments	Capacity Payment Repayment Period
All conditionally prequalified	(k)	Fail to lodge approved credit cover in line with the auction requirements	N/A	N/A	Yes	TP1
Generating	(l)	Invalidated metering certificate on 3 separate occasions	TF3	N/A	Yes	TP2
Unproven DSR	(m)	Fail to lodge replacement credit cover after draw down/release for previous auctions within 32 Working Days of initial notification	N/A	N/A	N/A	N/A
Generating	(n)	Transfer, sold or disposed of generating unit without retaining Despatch Control	TF3	N/A	Yes	TP1
All	(o)	Information submitted not true and correct	N/A	N/A	Yes	TP3
All	(p)	Failure to submit an updated Funding Declaration	TF4	N/A	Yes	TP3
All	(q)	Funding Declaration is not true and correct	N/A	N/A	Yes	TP3
All	(r)	Failure to demonstrate additional Satisfactory Performance Days	TF4	N/A	Yes	N/A
Storage	(s)	Failure to demonstrate extended performance	TF4	N/A	Yes	N/A
All	6.10.2 (a)(ii)	Engaging in prohibited activities	N/A	N/A	Yes	TP1
Generating	6.10.4	Transferring to CfD or RO	N/A	N/A	N/A	N/A
Generating or Interconnector	6.10.1A(b)(i)	Traded obligation takes Transferee's obligation above Transmission Entry Capacity secured by its Grid Connection Agreement	TF5	N/A	Yes	TP2
All	6.10.1AA	6.10.1AA -Undue Financial Hardship	N/A	N/A	Yes	TP3

5. What happens if a termination event has occurred?

The Delivery Body is responsible for determining whether a termination event has occurred and issuing notices to the Capacity Provider, Secretary of State and the Settlement Body (where this role is being performed by EMRS on behalf of ESC), which detail the reason for the termination and the date on which the agreement will be terminated. The termination process can also be initiated by the Secretary of State if they become aware of prohibited activities.

Once the termination notice has been issued, the Capacity Provider has 60 Working Days before the agreement is ended for a particular CMU.

In certain situations, a notice of intent to terminate may be issued. This is issued prior to the termination notice and has no impact on settlement and therefore is not covered in further detail in this document.

Non-Completion Notices

In the case where a new build interconnector fails to meet their Minimum Completion Requirement and has no further obligations, a Non-Completion Notice (and subsequent non completion fee) is issued rather than a termination notice.

6. What happens once the agreement is terminated?²

Once an agreement is terminated, the Delivery Body will send a further notice to the Capacity Provider, Secretary of State and EMRS confirming the end date and reason for the termination.

Certain termination events have fees associated with them. There are five types of fee, depending on the type of termination event which has occurred. The fee is calculated by multiplying the applicable rate by the Capacity Obligation (MW) that is provided within the Capacity Agreement and also specified on the Capacity Market Register, this calculation takes into account the sum of any traded obligations on the date the Termination Notice is issued.

Termination Fees

TF1 Fee = £5,000/MW

TF2 Fee = £25,000/MW

TF3 Fee = £10,000/MW

TF4 Fee = £15,000/MW

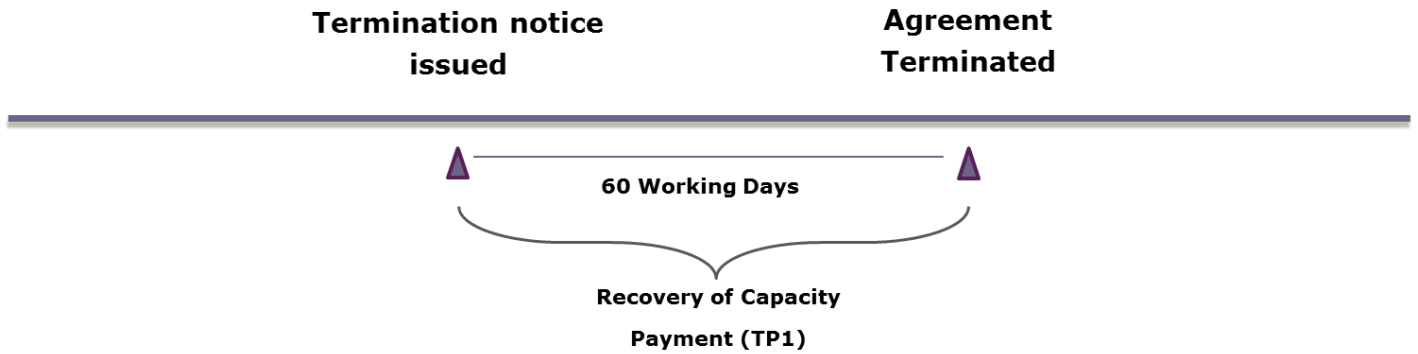
TF5 Fee = £35,000/MW

In the case of Unproven DSR Providers the termination fee calculation will take into account any previous drawn down of Credit Cover which related to the failure of the CMU to meet a proven capacity requirement.

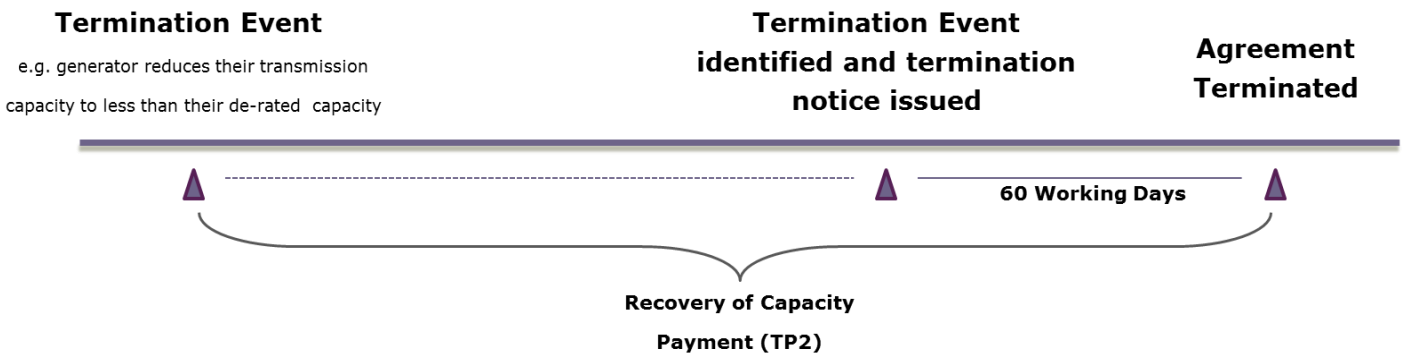
Termination events may also trigger the repayment of the monthly capacity payments that the Capacity Provider has received. Similar to the termination fee, the repayment period differs depending on the type of event that has occurred. The figures in Figure 1 depict the differing repayments periods.

² Traded obligations will be included in future versions

TP1 = date of termination notice to date of termination



TP2 = date the termination event occurred to date of termination



TP3 = the date on which capacity payments began under the relevant capacity agreement and ending with the date of termination

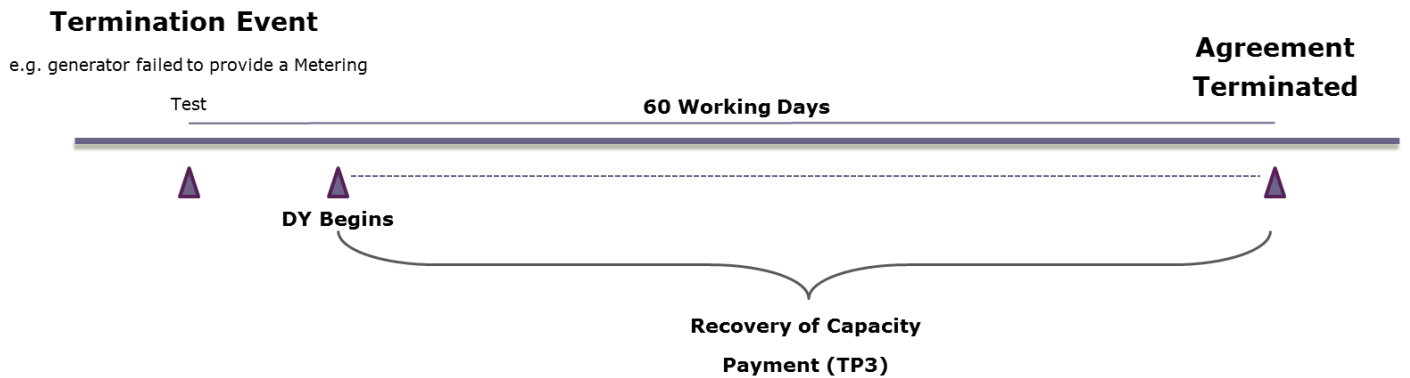


Figure 1: Repayment Periods.

7. What is the role of EMRS in Capacity Agreement Terminations?

7.1 Termination Fees

Once the Delivery Body has confirmed that a Capacity Agreement has been terminated, EMRS will calculate the termination fee and send the invoice to the Capacity Provider.

The Capacity Provider will have 5 Working Days to pay the invoice. EMRS are also responsible for monitoring for payment, calculating interest on late payment amounts and managing the credit cover process.

7.2 Credit Cover draw down

If the invoice is not paid on the due date, Credit Cover, if available, will be drawn down and treated as a late payment with late payment interest applied.

In cases where there is no Credit Cover available, interest will continue to accrue on the late amount and will be invoiced once the amount has been paid in full.

7.3 Capacity Payment recovery

Certain termination events lead to the recovery of Capacity Payments. EMRS are responsible for calculating the amount and issuing the invoices to the Capacity Providers. Similar to termination fees the Capacity Provider will have 5 Working Days to make the payment. In this situation, Credit Cover cannot be used. Interest will accrue on any late payment amounts.

When there has been a change of ownership on a CMU that has Relevant Expenditure and or Relevant Benefit within the Termination Recovery Period and the Capacity Payment is still outstanding for the original owner, the Relevant Expenditure and or Relevant Benefit amount will be deducted from the Party that owned the CMU at the Termination Date. This will be shown on the Capacity Payment invoices by Delivery Year and Month.

8. How can termination be appealed?

Once the termination Notice has been issued, the Capacity Provider can submit a request to either have the Notice withdrawn or request an extension³ to the termination date. Requests must be submitted to the Secretary of State, in writing, within 20 Working Days of the Notice. The request must contain reasons for why the request is being made and also detail a cure plan to address the issue that triggered termination.

Based on the outcome of the appeal, the Delivery Body will issue a further Notice rejecting or accepting the request. Should an appeal for a non-completion fee fail then the termination date will be brought forward to 5 Working Days after the appeal decision⁴.

Should the Capacity Provider be unhappy with the initial decision, the issue can be raised with Ofgem or, subsequently, the Court of Appeal.

9. Acronyms and Definitions

A full list of acronyms and definitions included within this document can be found on the EMRS website⁵.

³ Except where the Capacity Provider has failed to provide evidence to the Delivery Body of lodging Credit Cover by the required date

⁴ For further information on this process please contact the Delivery Body

<https://www.emrdeliverybody.com/sitepages/contact%20us.aspx>

⁵ <https://www.emrsettlement.co.uk/documents/2015/08/acronyms-definitions.pdf>



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