

G11 – Termination of Capacity Agreements

EMRS Guidance

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**EMR
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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
11.0	1 September 2021	Updated Termination Events Tables
12.0	16 December 2021	Updated Termination Events Table 3
13.0	30 March 2022	Updated Termination Events Table 3
14.0	20 December 2022	Updated Termination Events Table 3
15.0	24 April 2023	Updated Termination Events Table 3
16.0	6 December 2023	Updated Termination Events Table 3 and Annual Review

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 when a termination event occurs?
- What happens when a Capacity Agreement is terminated?
- What happens if a termination fee is not paid?
- How does this affect Capacity Payments?
- Is there an appeals process?

3. Who is this document for?

This guidance is for Capacity Providers and provides information on terminations.

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

As per Rule 6.10.1, 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 2016¹.

¹ Capacity Agreements awarded after July 2016 are subject to amended Rules and Regulations.

Table 1 - Termination events for Capacity Auctions Awarded prior to July 2016 (these include December 2014 and 2015 T-4 Auctions for DY 2018/19 and 2019/20 and January 2016 DSR Transitional Auction for DY 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)	Failure to achieve its Financial Commitment Milestone within 16 months after Auction results day	TF1	Yes	N/A	N/A
New Build	(c)	Failure 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)	Failure to provide Distribution Connection Agreement within 18 months prior to Delivery Year	TF1	Yes	N/A	N/A
New Build - Transmission Connected	(f)	Failure to evidence 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)	Failure 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)	Failure 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)	Failure 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)	Failure 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, sale or disposal of generating unit without retaining Despatch Control	TF1	N/A	Yes	TP1
All	(o)	Information submitted is false and incorrect	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 false and incorrect	N/A	N/A	Yes	TP3
All	(r)	Failure to demonstrate additional Satisfactory Performance Days	N/A	N/A	Yes	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	Transfer 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	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 (DY 2020), February 2017 T-1 (DY 2017), February 2017 TR (DY 2017).

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)	Failure to achieve its Financial Commitment Milestone within 16 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)	Failure to maintain Credit Cover	TF4	N/A	N/A	N/A
New Build	(c)	Failure 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)	Failure to provide 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)	Failure to provide 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)	Failure to evidence 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)	Failure 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)	Failure 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)	Failure 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)	Failure 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, sale or disposal of generating unit without retaining Despatch Control	TF3	N/A	Yes	TP1
All	(o)	Information submitted is false and incorrect	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 false and incorrect	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	Transfer 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 T-4 (DY 2021), T-1(DY 2018), T-1(DY 2019), T-1 (DY 2020), T-1 (DY 2021),T-3 (DY 2022), T-4 (DY 2022), T-4 (DY 2023), T-4 (DY 2024), T-1 (DY 2022), T-4 (DY 2025), T-1 (DY 2023), T-4 (DY 2026)

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 affecting the Capacity Provider	N/A	N/A	Yes	TP1
Interconnector	(a)	Insolvency Termination Event affecting any Joint Owner	N/A	N/A	Yes	TP1
New Build	(b)	Failure to achieve its Financial Commitment Milestone within 16 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)	Failure to maintain Credit Cover	TF4	N/A	N/A	N/A
New Build	(c)	<p>Failure to achieve its Minimum Completion Milestone by the Long Stop Date (non-completion for Generator and Interconnector by failing to exceed 50% of its Capacity Obligation) and either:</p> <p>i) following receipt of Notice of Intention to Terminate issued the Delivery Body, failed to achieve its Minimum Completion Milestone by the Long Stop Date a second time within 120 Working Days from the date of that notice; or</p> <p>ii) following receipt of Notice of Intention to Terminate issued by the</p>	TF5 (TF4 for Interconnect ors)	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
		<p>Delivery Body in respect of a T-1 Agreement, failed to achieve its Minimum Completion Milestone within 20 Working Days from the date of that notice.</p> <p>NOTE: New Build Interconnectors are awarded Capacity Agreements for one year at a time. 6.8.2C allows the Termination of a Capacity Agreement awarded for a Delivery Year Z, a Delivery Year immediately following Z and any subsequent Delivery Years for the termination reason mentioned above.</p>				
All	(d)	No longer satisfy the General Eligibility Criteria	TF3	N/A	Yes	TP1
New Build (not including interconnector) - Distribution Connected	(e)	Failure to provide Distribution Connection Agreement within 18 months prior to Delivery Year	TF4	Yes	N/A	N/A
Existing or New Build in a Supplementary Auction or T-1 Auction - Distribution Connected	(ea)	Failure to provide Distribution Connection Agreement within 6 months prior to Delivery Year	TF5	N/A	N/A	N/A
Existing or New Build in a	(fa)	Failure to provide Grid Connection Agreement evidencing sufficient	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
Supplementary Auction - Transmission Connected		Transmission Entry Capacity by 6 months prior to the start of the Delivery Year				
Generating or Interconnector	(g)	Ceases to have a Grid Connection Agreement with the sufficient Transmission Entry Capacity, except if the insufficiency 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 is due to the sole failure of the GB System Operator to provide a connection	TF5	N/A	Yes	TP2
Existing, Proven DSR and Unproven DSR	(h)	Failure to provide Metering Test Certificate by the relevant date as per Rule 8.3.3(d)	TF3	N/A	Yes	TP3
Existing, Proven DSR and Unproven DSR	(ha)	Failure to complete Metering Assessment	TF3	N/A	N/A	N/A
Unproven DSR	(i)	Failure to provide DSR Test Certificate evidencing a Proven DSR Capacity greater than 1MW by no later than 1 month prior to start of Delivery Year	N/A ²	Yes	Yes	TP3
All conditionally prequalified	(k)	Failure to provide the Delivery Body with a copy of CM Settlement Body's notice that it has approved the Applicant Credit Cover on the	N/A	N/A	Yes	TP1

² 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
		same day that the Applicant received CM Settlement Body's notice				
Generating	(l)	Invalidated the Metering Test Certificate on three separate occasions	TF3	N/A	Yes	TP2
Unproven DSR	(m)	Failure to provide the Delivery Body with a copy of CM Settlement Body's notice that it has approved the further Applicant Credit Cover (lodged after draw down/release for previous auctions) within 32 Working Days of the Delivery Body's notification that the further Applicant Credit Cover must be lodged	N/A	N/A	N/A	N/A
Generating	(n)	Transfer, sale or disposal of the Generating Unit without retaining Despatch Control and submitting an Aggregator Transfer Declaration	TF3	N/A	Yes	TP1
All	(o)	Information submitted is false and incorrect	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 false and incorrect	N/A	N/A	Yes	TP3
All	(r)	Failure to demonstrate additional Satisfactory Performance Days	TF4	N/A	Yes	N/A
All	(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	Transfer to CfD or RO	N/A	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
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

5. What happens when a termination event occurs?

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 intention 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 when a Capacity Agreement is terminated?³

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

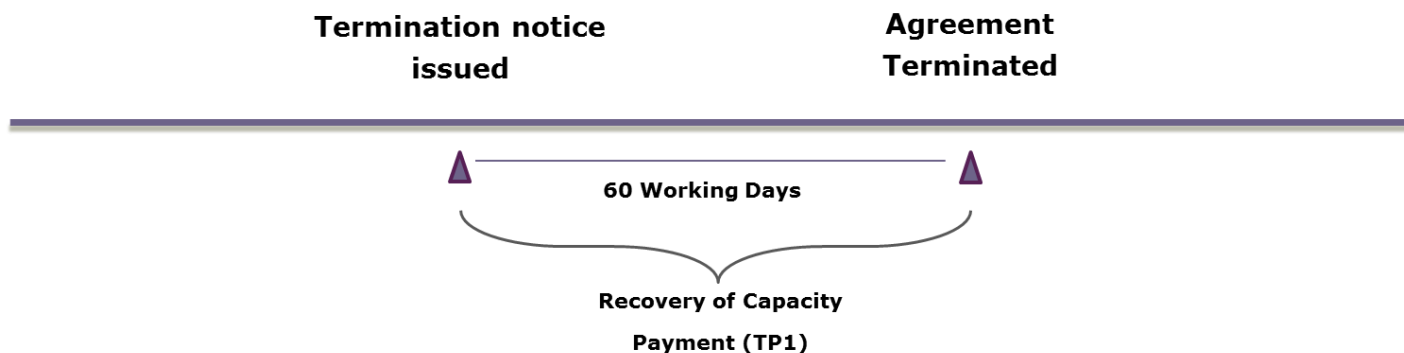
TF5 Fee = £35,000/MW

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.

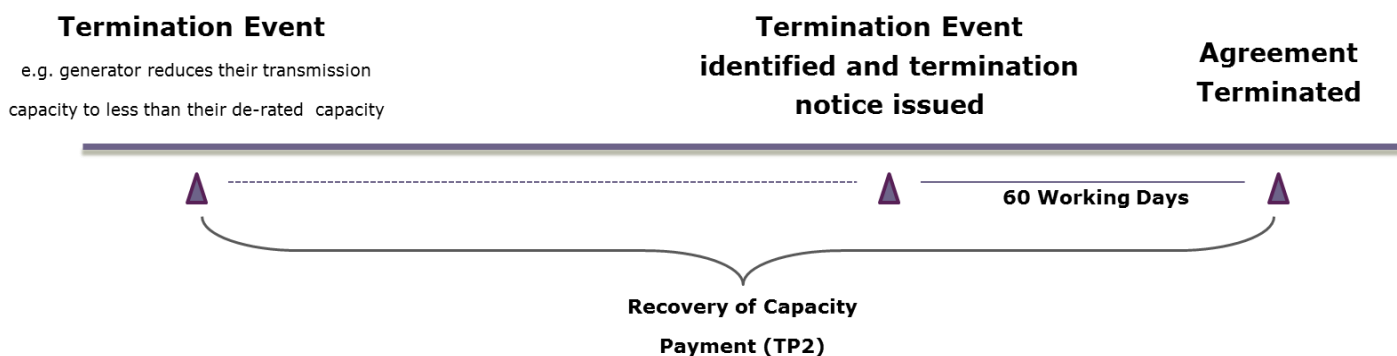
Termination events may also trigger the repayment of the monthly capacity payments that the Capacity Provider has received. Similar to the termination fee, the repayment period differs depending on the type of event that has occurred. The figures in Figure 1 depict the differing repayments periods.

³ 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

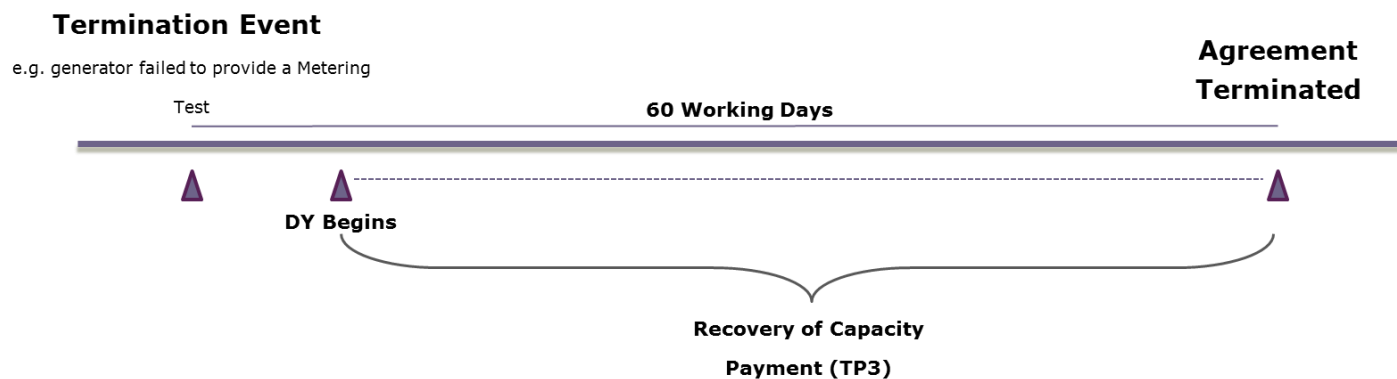


Figure 1: Repayment Periods.

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

7.1 Termination Fees

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

The Capacity Provider will have 5 Working Days to pay the invoice. EMRS are also responsible for monitoring 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, then any Credit Cover 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 payment amount and will be invoiced once the amount is 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 terminations be appealed?

Once the Termination Notice has been issued, the Capacity Provider can submit a request to either have the Notice withdrawn or termination date extended⁴. 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 the 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 decision⁵.

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 list of acronyms and definitions is available in our glossary on our website⁶.

⁴ Except where the Capacity Provider has failed to provide evidence to the Delivery Body of lodging Credit Cover by the required date.

⁵ Further information, please contact the Delivery Body: <https://www.emrdeliverybody.com/sitepages/contact%20us.aspx>

⁶ <https://www.emrsettlement.co.uk/glossary/>



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