
TERMS OF REFERENCE – Capacity Market Advisory Group (CMAG)

Effective Date **1 October 2022**

Classification **Public**

Document owner **Ofgem**

Document version **V2.0**

1. General Context

- 1.1 Unless otherwise stated or the context otherwise requires, words, expressions and general interpretation used in these Terms of Reference shall have the same meanings and application as under the CMAG Operating Procedure.
- 1.2 If there is a conflict between these Terms of Reference and the CMAG Operating Procedure, the provisions of the CMAG Operating Procedure shall prevail.
- 1.3 If there is a conflict between these Terms of Reference and the Capacity Market (CM) Rules, or The Electricity Capacity Regulations 2014, as amended (the “Regulations”), the provisions of the Capacity Market (CM) Rules or Regulations shall prevail.

2. Establishment and Role

2.1 Establishment

- 2.2 Ofgem created the CMAG to improve the effective functioning of the CM by enabling changes to the CM Rules i.e. the CM Rules change process, to become more dynamic and adaptive to changing market requirements and technology improvements, whilst also increasing transparency and promoting collaboration between experts and stakeholders.

2.3 Role

- 2.3.1 The CMAG shall act in accordance with this Terms of Reference and the CMAG Operating Procedure, and may do anything necessary or reasonably incidental to the discharge of its functions and responsibilities in respect of this Terms of Reference and the CMAG Operating Procedure.
- 2.3.2 The CMAG shall assess and develop CM Rules change proposals that are made by persons permitted to propose such CM Rules changes by the Regulations.
- 2.3.3 The CMAG shall act as a critical friend to industry, and provide well-reasoned and justified recommendations to Ofgem on whether CM Rules changes should be made.
- 2.3.4 In conducting its business, the CMAG shall act in a neutral and independent manner that seeks to better the CM arrangements in line with the CMAG Objectives as outlined in the CMAG Operating Procedure.
- 2.3.5 Where deemed appropriate by the CMAG Facilitator, the CMAG may provide expert views or opinion on matters related to the CM, to organisations or groups that are involved in the central operation of the CM. This may include but not be exclusive to Ofgem, the Department for Business Energy and Industrial Strategy (BEIS) and the Delivery Partners.

2.4 Delegation

- 2.4.1 The CMAG shall not delegate to any person or group, any of its powers, functions and responsibilities unless Ofgem expressly permits such delegation. For the avoidance of doubt, this does not prevent the forming of sub-groups/working groups to help support the CMAG developing CM Rules changes.

3. Composition of the CMAG

3.1 **Membership**

- 3.1.1 The CMAG shall be composed of Members, with each Member having experience and expertise in the electricity industry, with particular focus on the CM. It shall also include Representatives and the CMAG Secretariat.
- 3.1.2 Members and Representatives shall make reasonable endeavours to attend all CMAG Meetings and to carry out their duties and functions as a Member/Representative, which includes reasonable time outside of scheduled CMAG Meetings.
- 3.1.3 Members and Representatives shall confirm attendance, or non-attendance, in a timely manner. Where a Member is unable to attend, they shall endeavour to appoint an Alternate.
- 3.1.4 All attendees present at a CMAG Meeting shall engage in discussion respectfully, honestly, and in a manner deemed appropriate for a corporate meeting setting.
- 3.1.5 The CMAG membership shall comprise of the following:
- Members, which may include CM participants, trade associations (or groups that represent multiple stakeholders), consumer groups, or other interested stakeholders with relevant experience;
 - Representatives from each CM Delivery Partner;
 - Representative(s) from Ofgem; and
 - The CMAG Secretariat.
- 3.1.6 Ofgem shall appoint Members to the CMAG in line with the process set out in the CMAG Operating Procedure.
- 3.1.7 A Member of the CMAG shall remain a Member until the end of their appointment period, the CMAG is dissolved, until their resignation has been submitted in writing to the CMAG Secretariat, or until they are removed by Ofgem (whichever is earlier).
- 3.1.8 Ofgem may remove and/or replace CMAG Members from time to time, which may be on recommendation of the CMAG Secretariat, if:
- a) CMAG Members are unwilling, unable, unfit or otherwise are incapable for any reason to carry out their duties as a Member in accordance with the CMAG Operating Procedure or these Terms of Reference;
 - b) There becomes an actual or perceived conflict of interest, deemed of a level of impact that may interfere with a CMAG Member acting in accordance with the CMAG Operating Procedure or these Terms of Reference;
or
 - c) A situation arises involving a CMAG Member that either directly, or has the potential to, threaten or impact the reputation and/or integrity of the CMAG in delivering its functions outlined in the CMAG Operating Procedure or these Terms of Reference.
- 3.1.9 Without prejudice to the generality of membership provisions, Ofgem may review and alter the Membership of the CMAG at any time, but in any case will review the Membership annually in line with the CMAG Operating Procedure (except for the initial Member term commencing 1 October 2022, which shall be 24 months).

3.2 **Independence**

- 3.2.1 Each Member shall act independently and impartially, and shall not be representative of (and shall act without undue regard to) the particular interests of any particular company, body, person or class of persons, except where specifically requested by the CMAG Secretariat.
- 3.2.2 Each Member shall confirm in writing to the CMAG Secretariat that:
- a) They commit to acting independently and impartially whilst carrying out their business as a Member throughout their term as a Member.
 - b) Their employer confirms that it will not assert any undue influence on the Member to act in a manner that jeopardises, or could be perceived to jeopardise, the independence or impartiality of the Member.
- 3.2.3 Upon change in employment, the Member shall notify the CMAG Secretariat within 60 calendar days, and shall provide updated required documentation from their new employer. If such documentation is not provided, the provisions of paragraph 3.1.8 shall apply.

3.3 **Confidentiality**

- 3.3.1 CMAG Members acknowledge that in carrying out their duties and functions as a Member that they may be in receipt of confidential information.
- 3.3.2 Each Member shall sign a confidentiality agreement. For the avoidance of doubt, each Member shall not disclose any confidential information received in their capacity as Member to any person except where:
- a) expressly required under these Terms of Reference or the CMAG Operating Procedure;
 - b) the disclosure of data is to the Authority, or any other group/persons as directed by the Authority;
 - c) the data is in the public domain; or
 - d) required to do so in order to comply with any dispute resolution process or legal requirement.
- 3.3.3 For the avoidance of doubt, Representatives may share information internally within their organisations for the purposes of their role as a CMAG Representative.

3.4 **Conflict of Interest**

- 3.5 It is each Member's responsibility to disclose to the CMAG Secretariat any interests (including those that arise from time to time) which may constitute an actual or perceived conflict of interest with being a Member.
- 3.6 For the avoidance of doubt, an actual or perceived conflict of interest shall include where a Member is a registered Director of an organisation which participates in the energy markets, even where the Member has provided the required impartiality documentation.
- 3.7 If a Member identifies an actual or perceived conflict of interest during the discussion of an agenda item at a CMAG Meeting, the Member may wish to abstain from voting or discussing such agenda item.
- 3.8 If the CMAG Facilitator decides (which may include consultation with other Members (if necessary)) that a Member has an actual or perceived conflict of interest, and the Member does not volunteer to abstain from voting or discussions, the CMAG Facilitator may determine that the Member shall abstain from voting or discussing the agenda item.
- 3.9 The CMAG Secretariat shall keep a record of any declared conflict of interest of Members.
- 3.10 If there is a conflict of interest that prevents a Member from acting in line with these Terms of Reference or the CMAG Operating Procedure, the CMAG Facilitator may recommend to Ofgem that the Member is removed from the CMAG.

3.11 **Alternates**

- 3.11.1 Where a Member is unable to attend a CMAG Meeting, and/or carry out their duties and functions as a Member, they shall be entitled to appoint an Alternate to carry out their duties on their behalf.
- 3.11.2 Where an Alternate is acting in place of a Member, they shall be bound by these Terms of Reference and the CMAG Operating Procedure as if they were a Member.
- 3.11.3 A Member can appoint one of the following as their Alternate on a meeting-by-meeting basis upon notification to the CMAG Secretariat:
- a) An existing Member already approved by Ofgem; or
 - b) An Alternate that is not a Member, but who has been approved by Ofgem as having the relevant experience to act as an Alternate, and completes all required documentation that a Member must provide.
- 3.11.4 Where a CMAG Member is acting as an Alternate for another CMAG Member, they may only act as an Alternate for one CMAG Member at a time, and therefore have a maximum of two votes.
- 3.11.5 Where Members cannot attend a CMAG Meeting and do not appoint an Alternate, which results in the Meeting not being quorate, the CMAG Facilitator may designate a Member as an Alternate for a Member not in attendance. For the avoidance of doubt, the CMAG Facilitator is not required to use this power, and they should consider whether the use of this power would achieve the right outcome for the CMAG Meeting.
- 3.11.6 For the avoidance of doubt, Representatives are not subject to the 'Alternate' arrangements, and may send other Representative colleagues appropriate for the agenda items on a meeting-by-meeting or Agenda item basis.

4. **CMAG Facilitator and CMAG Secretariat**

4.1 **CMAG Facilitator**

- 4.1.1 There shall be a Facilitator to the CMAG, who shall be an employee of, and appointed by, the CMAG Secretariat.
- 4.1.2 The CMAG Facilitator shall coordinate the discussions at CMAG Meetings. In doing so, the Facilitator should promote participation from all Members and ensure inclusiveness, diversity of views, experience, and interests.
- 4.1.3 The CMAG Facilitator should ensure that all opinions and inputs from Members are duly considered in CMAG outputs and recommendations.
- 4.1.4 The CMAG Facilitator must act impartially and ensure that CMAG Members also act impartially.
- 4.1.5 The CMAG Facilitator shall not be considered a Member of the CMAG and shall have no voting rights.
- 4.1.6 The CMAG Facilitator may select a CMAG Vice-Facilitator. In the absence of the CMAG Facilitator, the CMAG Vice-Facilitator will fulfil the CMAG Facilitator role.

4.2 **CMAG Secretariat**

- 4.2.1 The CMAG Secretariat will provide resources to support the reasonable operation of the CMAG, which shall include meeting organisation, facilitation, and any other processes or obligations as outlined in these Terms of Reference or the CMAG Operating Procedure.
- 4.2.2 Any resources provided by the CMAG Secretariat shall act neutrally, shall not be considered Members, and so shall not have any rights to vote.

5. **Costs, Expenses and Remuneration**

- 5.1 Unless otherwise agreed, the costs, expenses and all other amounts incurred by the CMAG Secretariat on behalf of the CMAG, in association with its functions and responsibilities, shall be paid by the CMAG Secretariat.
- 5.2 For the time that Elexon is operating as the CMAG Secretariat, any payments made by Elexon as the Balancing and Settlement Code Company (BSCCo) shall be BSC Costs.
- 5.3 Members and Representatives shall not be remunerated for their role. However, reasonable expenses at the discretion of the CMAG Secretariat may be claimed through the CMAG Secretariat. This may include, but not be exclusive to travel and/or accommodation for CMAG related business.
- 5.4 If a Member wishes to claim for expenses through the CMAG Secretariat, the Member should first seek approval of the costs and business need before purchasing the item to be expensed.

6. **Proceedings of the Committee**

6.1 **Scheduled/standard Meetings**

- 6.1.1 CMAG Meetings shall usually be held monthly, and at minimum once every second month, at a time and place notified to Members and Representatives by the CMAG Secretariat in accordance with these Terms of Reference.
- 6.1.2 CMAG Meetings shall generally be held in open session (unless confidential items are being discussed).
- 6.1.3 The CMAG Secretariat shall publish a timetable of all scheduled Meetings for a calendar year on the CMAG website, once that timetable of Meetings has been approved by the CMAG.
- 6.1.4 Where scheduled CMAG Meetings are cancelled or re-arranged, the CMAG Secretariat should endeavour to provide at least five working days' notice to Members and Representatives.
- 6.1.5 A scheduled Meeting of the CMAG may be cancelled if:
 - a) the CMAG Facilitator determines that there is no business for the CMAG to conduct; or
 - b) the CMAG Meeting is not, or shall not achieve quorum in reasonable time, in the reasonable opinion of the CMAG Facilitator.
- 6.1.6 The CMAG may consider any item not contained in the agenda if, in the reasonable opinion of the CMAG Facilitator, the matter is sufficiently important and/or relevant to be considered by the CMAG at that meeting.

- 6.1.7 For the avoidance of doubt, the proceedings of a meeting of the CMAG shall not be invalidated by the accidental omission to send notice of the meeting or the relevant documentation, or any failure to receive such documentation by any persons entitled to receive it.
- 6.2 Urgent/non-standard Meetings**
- 6.2.1 If, in the opinion of the CMAG Facilitator, an exceptional matter arises which is of a sufficiently urgent nature so as to require a CMAG Meeting earlier than is possible under the next scheduled Meeting:
- a) the CMAG Secretariat shall convene an urgent Meeting and distribute an agenda and any papers in accordance with a notice period that the CMAG Facilitator considers appropriate to the nature of urgency of the matter(s) to be considered; and
 - b) The CMAG Secretariat will endeavour to organise the meeting at a time to suit Members and Representatives, and each Member/Representative shall be deemed to consent to the convening of the meeting on the notice provided by the CMAG Facilitator.
- 6.2.2 The remaining provisions of these Terms of Reference relating to the proceedings of Meetings (including but not limited to quorum and voting) shall apply to any urgent/non-standard Meeting.
- 6.3 Meeting materials**
- 6.3.1 The CMAG Secretariat shall endeavour to publish on the CMAG website all non-confidential meeting materials (agendas, papers etc.) at least five working days before the CMAG meeting. The CMAG Secretariat shall notify all Members of the publication of public materials, and shall distribute any confidential materials. For the avoidance of doubt, this shall include the time and place of the CMAG meeting.
- 6.3.2 The CMAG Facilitator may bring additional items to the attention of the CMAG as 'late agenda items' without advanced notice where they deem there is interest to the CMAG in considering such items at short notice.
- 6.3.3 If any Member, Representative or third party wishes to bring agenda items for the consideration of the CMAG, they shall endeavour to provide no less than seven working days' notice to the CMAG Secretariat. If this notice is not provided, the consideration of the agenda item will be down to the discretion of the CMAG Facilitator.
- 6.3.4 If an interested third party wishes to raise an agenda item, the inclusion of such agenda item will be down to the discretion of the CMAG Facilitator.
- 6.4 Attendance by Members, Alternates and other attendees**
- 6.4.1 Members, Representatives and the CMAG Secretariat shall be entitled to attend and speak at any Meeting.
- 6.4.2 Any other interested third party may attend and observe any open session business of the CMAG, and may be requested or allowed to speak by the CMAG Facilitator. Any interested third party shall not have a vote at the CMAG Meeting.
- 6.5 Any interested third party may not attend any confidential business of the CMAG unless explicitly invited by the CMAG Facilitator.
- 6.6 Quorum**
- 6.7 No business shall be discussed or considered at a Meeting unless a quorum of Members is present. A quorum shall comprise of at least 51% of Members (or their Alternates). A meeting shall be quorate if the necessary Members are present in person or by conference call.
- 6.7.1 If quorum is not achieved within a reasonable time of the scheduled meeting start time, the CMAG Facilitator may cancel the meeting.
- 6.8 Voting/Decisions/Recommendations**
- 6.8.1 At any Meeting, all matters for decision shall be put to a vote of the Members (or their appointed Alternate) present, in line with quoracy requirements. Representatives and the CMAG Facilitator may not cast a vote.
- 6.8.2 In deciding or recommending on any matters, each Member (or Alternate) shall cast one vote (unless a Member is also acting as an Alternate, in which case that Member shall have a maximum of two votes). All matters shall be decided by a simple majority.
- 6.8.3 Abstentions shall not be classed as votes and where there is a majority of votes by reason of abstention of votes then the CMAG Facilitator may defer the decision until further discussion has been had.

- 6.8.4 Where a vote is required outside of a scheduled or non-scheduled meeting, the CMAG Facilitator may request a vote from Members by correspondence (by suitable means).
- 6.8.5 A vote by correspondence shall be valid and effectual as if it had been passed at a quorate Meeting, subject to a quorum of Members responding to the vote by correspondence.
- 6.8.6 Where a decision cannot be made within reasonable time, due to the requirement for further information or evidence, the CMAG Facilitator may defer the decision until further information/evidence is available.

6.9 Minutes of Meetings

- 6.9.1 The CMAG Secretariat shall ensure that all key decisions and topic areas of CMAG discussion are recorded as minutes, and are distributed to Members and Representatives within five Working Days of each Meeting.
- 6.9.2 Members and Representatives shall receive a copy of the minutes (including confidential items) for their comment, the deadline for which shall be clearly outlined by the CMAG Secretariat. Once the deadline for comments has passed, the minutes of the meeting will be considered final.
- 6.9.3 Once considered final, the Public minutes of each meeting of the CMAG shall be published on the CMAG website.

7. General Data Provisions

- 7.1 The CMAG Secretariat shall process personal data in line with its company Privacy Policy, as set out on its website.

8. Amendment of the Terms of Reference

- 8.1 Any amendment of these Terms of Reference shall follow the amendment process outlined in the CMAG Operating Procedure.