

## Minded-to Decision on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors

<b>Publication date:</b>	24 February 2023
<b>Response deadline:</b>	31 March 2023
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We are consulting on a proposed new timelines and incentives framework to be applied throughout the Third Cap and Floor Window for new regulated electricity interconnectors. This includes the details of proposed new incentives and concepts to revise our treatment of project delays, such as the Reasonable Delay Event Mechanism and the Payback Mechanism for Delays. We are also proposing to introduce a modified approach to a project's Regime Start Date and Backstop Date. We welcome views from any interested stakeholders.

This document outlines the scope, purpose, questions of our consultation and how you can get involved. Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

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## 1. Introduction

### What are we consulting on?

1.1. Experience from previous cap and floor windows has shown that delays may occur during the development stage of an interconnector project, and that such delays can have a significant impact on project progress and delivery. We recognise that the approach used in previous windows of shortening the regime duration because of such delays may adversely affect a project's ability to raise financing or increase project costs.

1.2. In our December 2021 Interconnector Policy Review (ICPR) decision<sup>1</sup> we committed to building a more flexible regime for interconnector developers and to better manage adverse consequences where delays occur that are outside of a developer's control. This included a commitment to maintain a 25-year regime for all projects, and to make better use of project-specific connection dates.

1.3. To implement this revised approach, protect consumers from the impacts of undue delays, and maintain the risk-reward balance between consumers and developers, we are proposing to introduce:

- (1) a modified approach to the **Regime Start Date** (RSD) concept. This modified RSD replaces the Connection Date concept, introduced in our "Application Guidance for the Third Cap and Floor Window for Electricity Interconnectors"<sup>2</sup>.
- (2) the modified **Backstop Date**,
- (3) the **Payback Mechanism for Delays**,
- (4) a **Reasonable Delay Event** (RDE) mechanism,
- (5) a modified **Pre-Operational Force Majeure (Pre-Op FM) mechanism** contained in a proposed new licence condition (SLC) 26B – for interconnector

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<sup>1</sup> [Interconnector Policy Review - Decision | Ofgem](#)

<sup>2</sup> [Application Guidance for the Third Cap and Floor Window for Electricity Interconnectors | Ofgem](#)

projects in the post-FPA decision development phase; and a **complementary minded-to policy decision** – for interconnector projects in the pre-FPA decision development phase.

1.4. The purpose of this consultation is to obtain feedback from stakeholders on these proposed new regime concepts and incentives. A decision has already been made to amend the timelines and incentives framework for the Third Cap and Floor Window for Interconnectors, outlined in Section 3.47 onwards of the ICPR decision. Therefore, we welcome consultation feedback focusing on the implementation of our decision and whether the new mechanisms meet our previously stated commitments, or feedback on how they could be improved. Our consultation questions are:

1. Do you agree with the proposals of the modified Regime Start Date and modified Backstop Date concepts as part of the Timelines and Incentives changes to the Third Cap and Floor Window for Interconnectors?
2. Do you believe that there are any improvements that could be made to the development of the modified Regime Start Date and modified Backstop Date concepts?
3. Do you agree with the proposal to implement a Payback Mechanism for Delays as a proportionate incentive to encourage developers to deliver projects on time and protect consumers from the impacts of delays?
4. Do you believe that there are any improvements that could be made to the development of the Payback Mechanism for Delays?
5. Do you agree with the proposal to implement a Reasonable Delay Event mechanism as a means of assessing and managing delays in early project development?
6. Do you believe that there are any improvements that could be made to the development of the Reasonable Delay Event?

1.5. The following areas are not in the direct scope of this consultation but we are in parallel separately consulting on:

- The Minded-to Policy Decision document: Pre-Operational Force Majeure requests made in the Third Cap and Floor Window for Interconnectors around pre-FPA decision.

- The new standard condition (SLC) 26B: Pre-Operational Force Majeure requests made in the Third Cap and Floor Window for Interconnectors around post-FPA decision.

## Related publications

[Application Guidance for the Third Cap and Floor Window for Electricity Interconnectors | Ofgem](#)

[Interconnector Policy Review - Decision](#)

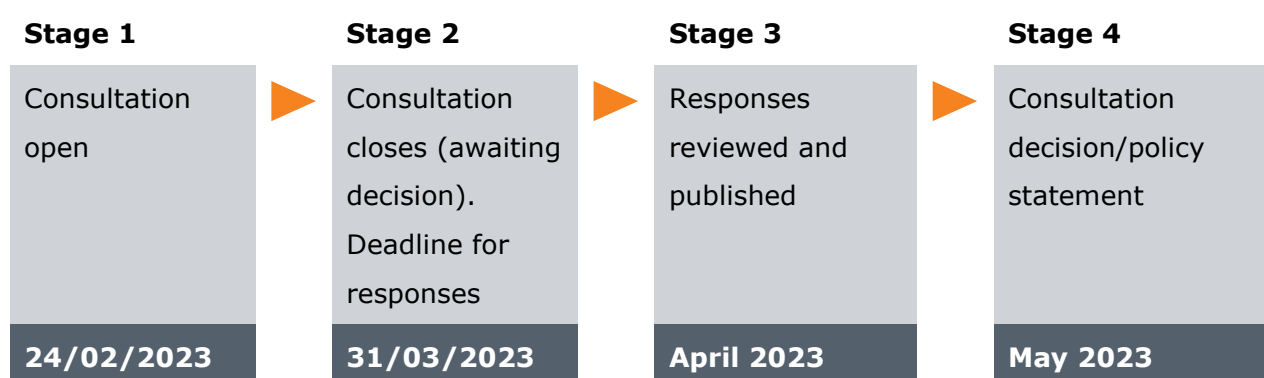
[Interconnector policy review: Working paper for Workstream 1 – review of the cap and floor regime | Ofgem](#)

## Consultation stages

1.6. This consultation will be open from 24<sup>th</sup> February to 31<sup>st</sup> March 2023, alongside a separate statutory and policy consultation on our proposed modified approach for considering Pre-Operational Force Majeure for the Third Cap and Floor Window for Interconnectors. After reviewing all responses and consolidating the findings from this consultation, we will aim to publish our decision in Q2 of 2023, and the decision will be applied to Third Window projects from the Initial Project Assessment (IPA) decision onwards.

1.7. Following this consultation, stakeholders will next have a chance to engage with the development of the Third Cap and Floor Window for Interconnectors through our modelling workshop for the IPA needs case assessment.

**Figure 1: Consultation stages**



## How to respond

1.8. We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document's front page.

1.9. We've asked for your feedback in each of the sections. Please respond to each question as fully as you can.

1.10. We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

## **Your response, data and confidentiality**

1.11. You can ask us to keep your response, or parts of your response, confidential. We'll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

1.12. If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

1.13. If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.

1.14. If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

## General feedback

1.15. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:

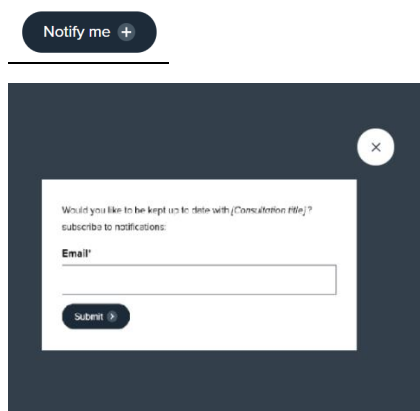
1. Do you have any comments about the overall process of this consultation?
2. Do you have any comments about its tone and content?
3. Was it easy to read and understand? Or could it have been better written?
4. Were its conclusions balanced?
5. Did it make reasoned recommendations for improvement?
6. Any further comments?

Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk)

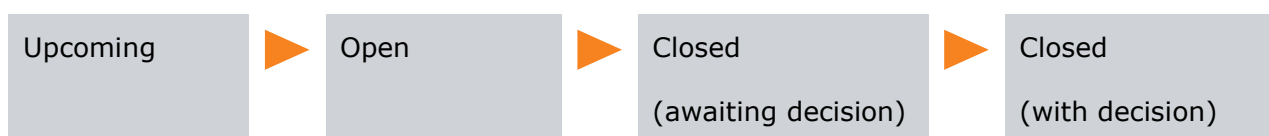
## How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website.

[Ofgem.gov.uk/consultations.](https://www.ofgem.gov.uk/consultations)



Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:





## 2. Minded-to Decision on our Timelines and Incentives Changes, including the Payback Mechanism for Delays (Third Window)

### Questions

**Q1:** Do you agree with the proposals of the modified Regime Start Date and modified Backstop Date concepts as part of the Timelines and Incentives changes to the Third Cap and Floor Window for Interconnectors?

**Q2:** Do you believe that there are any improvements that could be made to the development of the modified Regime Start Date and modified Backstop Date concepts?

**Q3:** Do you agree with the proposal to implement a Payback Mechanism for Delays as a proportionate incentive to encourage developers to deliver projects on time and protect consumers from the impacts of delays?

**Q4:** Do you believe that there are any improvements that could be made to the development of the Payback Mechanism for Delays?

### Purpose

2.1. Our proposed changes to the treatment of timelines and incentives throughout the cap and floor regime for the Third Window aim to increase flexibility for developers and better manage adverse consequences where delays outside of the developers' control have arisen. Ultimately, we want to maintain the existing risk-reward balance between consumers and developers, as well as provide certainty and flexibility to developers.

### Summary of our approach to timelines and incentives for the Third Cap and Floor Window for Interconnectors

2.2. At the application stage of the Third Window, applicant projects are assumed to meet

the Indicative Regime Start Date,<sup>3</sup> that is the end of 2028. A developer can request within their IPA application submission, with supporting justification, to deviate from the Indicative Regime Start Date. If this requested date is approved, it is confirmed through our IPA decision as the RSD-IPA.

2.3. For projects awarded a cap and floor regime in principle at the IPA decision stage of the Third Cap and Floor Window for Interconnectors, the regime is preserved for 25 years.<sup>4</sup> Any delays that would require an update of the RSD-IPA will be considered in relation to the Backstop Date (31<sup>st</sup> December 2032). If the Backstop Date is exceeded, the delay could be assessed through the Pre-Operational Force Majeure mechanism (if it meets the criteria) but not the Reasonable Delay Event mechanism. A delay exceeding the Backstop Date, may be subject to a needs case revisit and/or the Payback Mechanism for Delays.

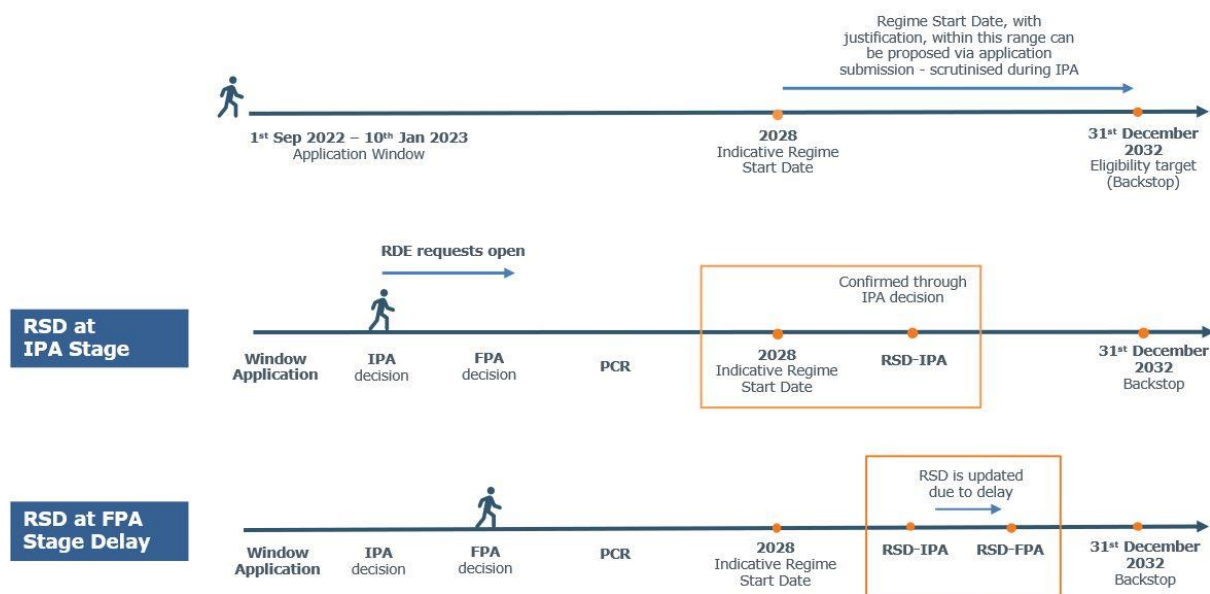
2.4. If the delay is within the Backstop Date, the delay could be assessed through the Reasonable Delay Mechanism or the Pre-Operational Force Majeure Mechanism if the respective criteria are met. Should the request to consider the project delivery delay be rejected under either of these two mechanisms, then the delay would become subject to the Payback Mechanism for Delays. Key dates we will use as parameters to measure delay will be the Regime Start Date approved at IPA (i.e. RSD-IPA), the Backstop Date (i.e. 31 December 2032) and the developer's proposed new Regime Start Date. More detail on these dates and processes is provided in subsequent paragraphs, Figure 2 below and the diagrams in Annex 1 and Annex 2.

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<sup>3</sup> The Indicative Regime Start Date is the date at which we expect a 'typical' interconnector to commercially operate by offering capacity to the market.

<sup>4</sup> This is consistent with our decision per the Interconnector Policy Review Decision and Application Guidance for the Third Cap and Floor Window for Electricity Interconnectors.

**Figure 2: Diagram demonstrating changes to the Regime Start Date (see Annex 1 and Annex 2 for details on further delay scenarios)**



## Options for managing delays affecting the Regime Start Date

### (1) Request made under the Reasonable Delay Event mechanism

2.5. If a developer's project experiences a delay that satisfies the criteria of the Reasonable Delay Event (see Chapter 3), they can submit a request. A developer would not be able to submit a request for the Reasonable Delay Event and the Pre-Operational Force Majeure mechanisms in tandem, as we would expect the developer to make an appropriate choice based on their circumstances.

2.6. We will review any request to update the Regime Start Date based on the grounds of a possible Reasonable Delay Event (see Chapter 3). Should we determine that the delay was caused by a Reasonable Delay Event, then the RSD-IPA will be updated, and the Payback Mechanism for Delays will not apply to the developer's project. If we conclude that the delay does not satisfy the Reasonable Delay Event criteria, the RSD-IPA will be updated to an RSD-FPA and the Payback Mechanism for Delays will apply.

(2) Request made under the Pre-Operational Force Majeure mechanism

2.7. If a developer experiences a delay that satisfies the criteria of the Pre-Operational Force Majeure, as detailed in our revised policy and statutory consultations on our assessment and decision-making for Pre-Operational Force Majeure requests (hereafter the Pre-Op FM consultations), published alongside this Mind-to Decision, they can proceed to submit a request. Again, a developer would not be able to submit a request for the Pre-Operational Force Majeure and the Reasonable Delay Event mechanisms in tandem as we would expect the developer to make an appropriate choice based on their circumstances.

2.8. We will review any request to update the RSD-IPA made under the Pre-Operational Force Majeure mechanism. Should Ofgem determine that the delay was a Pre-Op FM event, then the RSD-IPA will be updated, and the Payback Mechanism for Delays will not apply to the developer's project. If it is found that the delay does not satisfy the Pre-Op FM criteria, the RSD-IPA will be updated to the RSD-FPA and the Payback Mechanism for Delays will apply.

(3) No request made

2.9. If a developer chooses not to submit a request for project development delays, that affect the RSD-IPA, to be considered under one of the above mechanisms, the Regime Start Date will be updated via a policy decision letter or licence direction and the project will be subject to the Payback Mechanism for Delays. The 25-year duration of the regime is preserved. However, as a penalty for the delay, the project will become subject to the Payback Mechanism for Delays. If the project's Regime Start Date is delayed beyond the Backstop Date, then the needs case of the project may need to be revisited.

## **Relevant concepts for our timelines and incentives approach to the Third Cap and Floor Window for Interconnectors**

### **Regime Start Date**

2.10. The Regime Start Date means the earlier of (a) the successful completion of such procedures and tests in relation to the licensee's interconnector that are in accordance with, at the time they are undertaken, Good Industry Practice for commissioning that type of interconnector in order to demonstrate that the licensee's interconnector is available for the use of conveyance of electricity at the Rated Capacity and (b) the latest Regime Start Date

approved by the Authority. So that means the Regime Start Date may fall on a date before the successful completion of the 60 days continuous operation test.

2.11. Accordingly, the Regime Start Date is the date by which the project commercially operates by flowing electricity and offering capacity for sale to the market. The Regime Start Date approved at the IPA stage may, subject to Authority approval, be subsequently updated if necessary. We envisage that the Regime Start Date (as described within this paragraph and 2.10) will constitute a defined term under the special licence conditions granted to a developer at our FPA decision. In addition, we are proposing to include the definition of the Regime Start Date in standard condition SLC 26B (on which we are consulting in parallel).

2.12. As part of the eligibility criteria, we only accepted applications from projects with a Regime Start Date of 31 December 2032 or earlier. This is consistent with our position of advancing sufficiently mature projects within the Third Window, that can contribute to meeting Government ambitions of 18 GW of interconnection by 2030. The Indicative Regime Start Date for applicants of the Third Window is the end of 2028. The Indicative Regime Start Date is a default date for all applicants. Developers should specify where their expected Regime Start Date sits relative to the Indicative Regime Start Date and be mindful of the Backstop Date in their application submission. Developers should explain on what basis this Regime Start Date was chosen and why the Indicative Regime Start Date cannot be met. This request should include a justification with respect to a “typical”<sup>5</sup> interconnector project meeting the Indicative Regime Start Date. We will scrutinise developers’ reasoning for their chosen Regime Start Date. After our assessment of the project’s circumstances and characteristics, we will confirm the Regime Start Date in the IPA decision as the RSD-IPA. If the developer’s request is well-justified, we would confirm the developer’s proposed Regime Start Date.

### *Scope*

2.13. The Regime Start Date and its update, if required due to delays and/or requests approved by us, applies throughout the project development stage and until project delivery

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<sup>5</sup> We would expect a typical and eligible project, applying in the Third Window, to connect by the end of 2028. We compared the development timelines of Window 1 and 2 projects and established an average delay period across the projects. It was found that projects, that we would consider sufficiently mature for the Third Window, roughly developed over 6-8 years from the point of application.

of a particular interconnector. The RSD-IPA, the Regime Start Date determined at the IPA decision stage, may be updated or re-confirmed to an RSD-FPA in our FPA decision, based on the project's progress against its timelines. Dependent on the reasons for the delay and whether an appropriate request was made through the Reasonable Delay Event mechanism or Pre-Operational Force Majeure mechanism, the Payback Mechanism for Delays and/or a needs case revisit may apply. The Payback Mechanism for Delays would not apply to a delay that results in an update to the Regime Start Date, if a developer submits a Reasonable Delay Event request or a Pre-Operational Force Majeure request to Ofgem and the request to update the Regime Start Date is approved by us under either of these two mechanisms.

2.14. Beyond the point of an FPA submission, developers will not be able to submit a request for a Reasonable Delay Event. All updates to the Regime Start Date after our FPA decision will be subject to the Payback Mechanism for Delays, except where any delay is approved by the Authority under the Pre-Operational Force Majeure mechanism (see Pre-Op FM consultations).

2.15. The Regime Start Date also interacts with the IPA conditions, the details of which will be set out in our IPA decision. Any delays that affect the Regime Start Date, in such a way that the Regime Start Date falls after the Backstop Date, may subject the project to a needs case revisit, and/or the Payback Mechanism for Delays may apply.

### **Backstop Date**

2.16. Throughout project development, construction and until project delivery, the Backstop Date will apply for all projects connecting before 31 December 2032. This will be the date by which the project must connect to the grid and must achieve its Regime Start Date. If the Regime Start Date is so delayed that it falls after the Backstop Date, a licensee's interconnector may be subject to a needs case reassessment and/or the Payback Mechanism for Delays. By setting a Backstop Date, we aim to protect consumers from any change in the fundamental needs case of a project, and to ensure that all projects applying for the Third Window can contribute to wider Government interconnection ambitions by achieving commercial operations at the latest by 31 December 2032.

### *Scope*

2.17. The Backstop Date applies between the IPA decision and until project delivery i.e. the commissioning of the project. If there are delays to the Regime Start Date, placing it beyond the Backstop Date, for which a Pre-Op FM request was submitted before the FPA stage and

rejected before the FPA decision, the developer's interconnector would become subject to a needs case revisit under the relevant conditions of the IPA decision. If there are delays to the Regime Start Date, placing it beyond the Backstop Date, for which a Pre-Op FM request is submitted and rejected after the FPA decision, the developer's interconnector would become subject to the Payback Mechanism for Delays. However, if a Pre-Op FM request is submitted and approved after our FPA decision, neither the Payback Mechanism for Delays, nor a needs case revisit, would apply.

### **Payback Mechanism for Delays**

2.18. The Payback Mechanism for Delays aims to protect consumers from the material impacts of undue delays to project delivery and thus connection delays. This mechanism is designed to replace the penalty used in previous windows of reducing the cap and floor regime duration when undue delays had occurred. The mechanism requires developers to repay consumers any received floor top-up payments, incurred during the Exposure Period. The Exposure Period exposes the developer to the liability of having to repay any received floor top-up payments incurred during that period. Repayment then occurs in the Payback Period. For any outstanding repayments, the obligation to repay any received floor top-up payments, incurred in the Exposure Period, will continue to apply in the Post Regime Duration if necessary.

2.19. This mechanism applies if a project's delays (not approved under the Reasonable Delay Event or the Pre-Op FM mechanism) affect their approved Regime Start Date. Also, this mechanism applies where no request under the aforementioned mechanisms was submitted but the project delivery is delayed. We would set the duration of the Exposure Period equal to the undue delay period. If an Exposure Period has been accumulated<sup>6</sup> prior to our FPA decision, then any new delay to project delivery, that occurs after our FPA decision, will be added to any previously incurred Exposure Period.

### *Scope*

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<sup>6</sup> This is so where a request for a Reasonable Delay Event or the Pre-Operational Force Majeure event was unsuccessful, or no request was submitted but delays were experienced. With approval of the Reasonable Delay Event or the Pre-Operational Force Majeure no Exposure Period is incurred or accumulated.

2.20. This mechanism applies in circumstances where:

- The project's Regime Start Date is delayed beyond the Backstop Date;
- The project does not satisfy the Reasonable Delay Event mechanism criteria and an RDE request is not approved;
- The project does not satisfy the Pre-Operational Force Majeure event criteria and a Pre-Operational Force Majeure event request is not approved;
- The project is delayed, and the developer decides not to submit a request under the Pre-Operational Force Majeure or the Reasonable Delay Event mechanism;
- The project's delay occurs after our FPA Decision and does not satisfy the Pre-Operational Force Majeure mechanism criteria.

2.21. Any repayment<sup>7</sup> by developers of any cumulative outstanding balance of floor top-up payments to consumers under the Payback Mechanism for Delays would be in NPV-neutral terms and required in the Payback Period. The Payback Period requires repayment and would be triggered by the developer receiving the first floor top-up payment, incurred during the Exposure Period. So, there could be an overlap between the Payback Period and the Exposure Period; and the Payback Period can extend into the Post Regime Period.

2.22. By way of an example: The regime period for a project connecting by 31 Dec 2032 will be 2033 to 2057. If delayed by 3 years without a Pre-Operational Force Majeure decision by Ofgem approving the delay, the regime will still be 25 years (2036 to 2060) but with an unapproved delay period (i.e. Exposure Period) of 2058 to 2060. Developers shall repay any received floor top-up payments, incurred in the Exposure Period, in the Payback Period in NPV-neutral terms. So, repayment shall occur during the Payback Period and if relevant the requirement to repay will extend into the Post Regime Duration. Revenues over the floor level in years 2059, 2060 and during the Post Regime Duration will be used to repay any received floor top-up payments for year 2058 before Equity Distribution.<sup>8</sup> Similarly, revenues over the

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<sup>7</sup> We expect that any relevant floor top-up repayments will be made by the "equity side" investor(s) / stakeholder(s). This "equity side" floor top-up repayment arrangement may be particularly relevant to the interconnector projects delivered under the project finance route or any other route that involves considerable amounts of external debt finance that are repaid over the cap and floor regime duration.

<sup>8</sup> Equity Distribution means the distribution of any return and/or dividend on the equity investment in the licensee's interconnector (without prejudice to any existing 50% costs and revenues sharing principle of the cap and floor regime).



floor level in 2060 and during the Post Regime Duration will be used to repay any received floor top-up payments, incurred in year 2059 and so on. More detail on how the Authority will extend relevant provisions of a developer's special licence into the Post Regime Duration period to ensure that the developer can repay consumers in full, if necessary, will be set out in the special licence conditions for each developer and formally consulted upon.

### 3. Minded-to Policy Decision on our Reasonable Delay Event Mechanism

#### Questions

**Q1:** Do you agree with the proposal to implement a Reasonable Delay Event mechanism as a means of assessing and managing delays in early project development?

**Q2:** Do you believe that there are any improvements that could be made to the development of the Reasonable Delay Event?

#### Purpose

3.1. This Minded-to Policy Decision sets out the provisions that may apply in circumstances where a licensee (and a participant of the Third Window) considers that the licensee's interconnector Regime Start Date, as confirmed in our IPA decision (RSD-IPA), has been delayed due to a Reasonable Delay Event.

3.2. This Minded-to Policy Decision sets out the procedural steps, the assessment, and the decision-making processes applicable to a licensee's request for an adjustment to the RSD-IPA due to delays caused by a Reasonable Delay Event.

#### Scope

3.3. This Minded-to Decision applies to requests for an adjustment to the Regime Start Date due to delays caused by a Reasonable Delay Event, submitted by a relevant licensee to the Authority<sup>9</sup> during the period between:

- a) the date of Ofgem's Initial Project Assessment (IPA) decision relating to the licensee's interconnector project; and
- b) the point in time when the Authority issues the Final Project Assessment (FPA) decision with respect to the licensee's interconnector.

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<sup>9</sup> The words "Authority", "we", "our" and "us" are used interchangeably in this decision.

## Process for submitting requests

3.4. If a licensee considers that a Reasonable Delay Event has occurred and caused a delay to its interconnector project's Regime Start Date, the licensee may, within a reasonable timeframe<sup>10</sup> of that event or circumstance occurring, during the period specified in paragraph 3.3 above, submit a written request to us for the RSD-IPA to be adjusted to reflect the delay caused by a Reasonable Delay Event.

3.5. Any request submitted to us by the licensee under paragraph 3.4 of this Minded-to Decision must include:

- a) full details of the event or circumstance that the request relates to and the reason(s) why the licensee considers it to be a Reasonable Delay Event;
- b) the length of any resulting delay that the licensee considers to have been caused as a result of that event or circumstance and its proposed revised RSD-IPA;
- c) how the licensee has calculated the resulting delay; and
- d) any analysis or information, which the licensee considers sufficient to enable us to fully assess the event or circumstance to which the request relates.

3.6. For the purposes of paragraph 3.5, where any additional analysis or information is not available to the licensee at the time of the request, the licensee should:

- a) specify any such additional analysis or information items in its request together with an indication of when the licensee expects these items to become available; and
- b) provide these items as soon as reasonably practicable after they become available.

3.7. The licensee must provide us with any additional information that may be reasonably required to facilitate our consideration of the licensee's request. Such additional information

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<sup>10</sup> What constitutes a reasonable timeframe may differ from case to case, depending on the underlying circumstances. We would encourage relevant licensees to consider submitting their Reasonable Delay Event request alongside their Final Project Assessment (FPA) submissions where possible. However, equally we expect the licensees to exercise good judgement in deciding whether it is appropriate to submit their Reasonable Delay Event request alongside the FPA submissions. In particular, licensees are required to ensure the robustness of the evidence supporting their Reasonable Delay Event request.

should be submitted within a reasonable timeframe that is agreed between us and the licensee.

## Decision making process and application of the Payback Mechanism for Delays

### Approval

3.8. If, in our opinion,

- a) the RSD-IPA has been delayed by a Reasonable Delay Event and such event or circumstance has been appropriately mitigated and managed by the licensee; and
- b) the later Regime Start Date falls before or on the Backstop Date,

then the Regime Start Date shall fall on such later date as we may specify in a decision under this Minded-to Policy Decision.

### Rejection

3.9. If, in our opinion, the RSD-IPA has not been delayed by a Reasonable Delay Event and the proposed revised RSD-IPA falls **before or on** the Backstop Date, then the Authority shall confirm by way of a decision issued under this Minded-to Policy Decision:

- a) that the licensee's Regime Start Date shall be revised to fall on a new Regime Start Date; and
- b) that the licensee will be subject to the Payback Mechanism for Delays and shall repay<sup>11</sup>, during the Payback Period,<sup>12</sup> any received floor top-up payments, incurred during the Exposure Period; and
- c) the start and end dates of the Exposure Period.

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<sup>11</sup> We expect that any relevant floor top-up repayments will be made by the "equity side" investor(s) / stakeholder(s). This "equity side" floor top-up repayment arrangement may be particularly relevant to the interconnector projects delivered under the project finance route or any other route that involves considerable amounts of external debt finance that are repaid over the cap and floor regime duration.

<sup>12</sup> The exact repayment method, whether a single bullet repayment or more than one periodic repayment, is not being prescribed. The reasonable and appropriate repayment method can be proposed by the licensee and ultimately will be set by the Authority (following consultation with the licensee), taking into account any relevant provisions under the Connection and Use of System Code - CUSC.

3.10. Before we issue a decision under paragraph 3.8 or 3.9 of this Minded-to Policy Decision, we will give notice to the licensee of our minded-to decision, specifying:

- a) where we consider that project delivery **has been delayed** by a Reasonable Delay Event:
  - i. the length of any delay that, in our opinion, was caused by a Reasonable Delay Event; and
  - ii. a revised Regime Start Date that takes any such delay into account; or
- b) where we consider that project delivery **has not been delayed** by a Reasonable Delay Event:
  - i. that the licensee's Regime Start Date shall be revised to fall on a new Regime Start Date; and
  - ii. that the licensee shall be subject to the Payback Mechanism for Delays and shall repay, during the Payback Period, any received floor top-up payments, incurred during the Exposure Period; and
  - iii. the start and end dates of the Exposure Period.
- c) the reasons for our minded-to decision; and
- d) the period (not being less than 14 days from the date of the notice, or such other period as may be agreed in writing between the licensee and the Authority) within which the licensee may make representations or objections.

3.11. Before issuing a decision pursuant to paragraph 3.8 or 3.9, we shall consider any representations or objections raised by the licensee.

3.12. The decision we issue under paragraph 3.8 or 3.9 of this Minded-to Decision shall state the reasons for the decision.

3.13. We shall issue a decision under paragraph 3.8 or 3.9 of this Minded-to Policy Decision, as soon as reasonably practicable after receipt of all necessary information that we may reasonably require.

3.14. Table with defined terms below:

Reasonable Delay Event	means an event or a circumstance that:
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	<p>a. may not qualify as <b>Pre-Operational Force Majeure</b> event and which results in or causes a delay to the <b>licensee's interconnector Regime Start Date</b>, despite:</p> <ul style="list-style-type: none"> <li>i. the licensee acting in a prudent manner and in compliance with Good Industry Practice; and</li> <li>ii. the licensee taking reasonable and appropriate actions to avoid this event or circumstance and to mitigate its subsequent consequences;</li> </ul> <p>b. has occurred or commenced between:</p> <ul style="list-style-type: none"> <li>i. the date of the Authority's Initial Project Assessment Decision with respect to the licensee's Interconnector; and</li> <li>ii. the date of the Authority's Final Project Assessment Decision with respect to the licensee's Interconnector; and</li> </ul> <p>c. does not result in the new Regime Start Date falling after the Backstop Date.</p>
Backstop Date	means 31 <sup>st</sup> December 2032, the date set by the Authority and by which the licensee's interconnector project must connect to the grid and must achieve its Regime Start Date.
Exposure Period	<p>means a period in the final years of the licensee's Regime Duration which:</p> <ul style="list-style-type: none"> <li>a) corresponds to the length of the delay(s), experienced by the licensee's interconnector: <ul style="list-style-type: none"> <li>i) which were not approved by the Authority under the Pre-Operational Force Majeure mechanism or the Reasonable Delay Event mechanism; and/or</li> <li>ii) for which no request under the Pre-Operational Force Majeure mechanism or the Reasonable Delay Event mechanism was submitted by the licensee; and</li> </ul> </li> <li>b) exposes the licensee to the repayment obligation of any incurred floor top-up payments during this period.</li> </ul>
Good Industry Practice	means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.

Initial Project Assessment (IPA) Decision	means the Authority's decision, published on its website, on the initial project assessment for the licensee's interconnector.
Payback Mechanism for Delays	<p>means a mechanism:</p> <p>1) that applies in circumstances where the licensee's Regime Start Date:</p> <ul style="list-style-type: none"> <li>(a) has been delayed beyond the Backstop Date and has not been approved by the Authority under the Pre-Operational Force Majeure mechanism; or</li> <li>(b) has been delayed to a date that falls before the Backstop Date and that delay has not been approved by the Authority: <ul style="list-style-type: none"> <li>(i) under the Reasonable Delay Event mechanism; or</li> <li>(ii) under the Pre-Operational Force Majeure mechanism, or</li> </ul> </li> <li>(c) has been delayed but no request has been submitted by the licensee under the Reasonable Delay Event mechanism or the Pre-Operational Force Majeure mechanism; and</li> </ul> <p>2) through which, the licensee repays, during the Payback Period, any received floor top-up payments, incurred during the Exposure Period.</p>
Payback Period	<p>means a period:</p> <ul style="list-style-type: none"> <li>- that is triggered by the licensee receiving the first floor top-up payment, incurred during the Exposure Period;</li> <li>- during which the licensee repays any received floor top-up payments incurred during the Exposure Period; and</li> <li>- which applies until the licensee repays, during the Regime Duration and during the Post Regime Duration (if relevant), all received floor top-up payments incurred during the Exposure Period.</li> </ul>

Post Regime Duration	<p>for the purposes of this minded-to policy decision, means the period falling immediately after the end of the Regime Duration:</p> <ul style="list-style-type: none"> <li>- during which the licensee repays any outstanding floor top-up payments that it has incurred during the Exposure Period and which fall under the Payback Mechanism for Delays; and</li> <li>- which lasts and applies until the licensee repays all received floor top-up payments incurred during the Exposure Period.</li> </ul>
Pre-Operational Force Majeure	<p>has the meaning given to this term in the Minded-to Policy Decision on the framework applicable to the procedural steps, assessment, and decision-making for Pre-Operational Force Majeure requests made by Third Window licensees, dated [24/02/2023].</p>
Rated Capacity	<p>means the maximum capacity of the relevant interconnector (in MW hours).</p>
Regime Duration	<p>means a period of 25 years.</p>
Regime Start Date	<p>means the earlier of:</p> <ul style="list-style-type: none"> <li>(a) the successful completion of such procedures and tests in relation to the licensee's interconnector that are in accordance with, at the time they are undertaken, Good Industry Practice for commissioning that type of interconnector in order to demonstrate that the licensee's interconnector is available for the use of conveyance of electricity at the Rated Capacity;</li> <li>(b) the latest Regime Start Date approved by the Authority.</li> </ul>
Final Project Assessment (FPA) Decision	<p>means the Authority's decision, published on its website, on the final project assessment for the licensee's interconnector.</p>
Third Window	<p>means the third round of the cap and floor regime, with the application period between 1<sup>st</sup> September 2022 and 10<sup>th</sup> January 2023.</p>



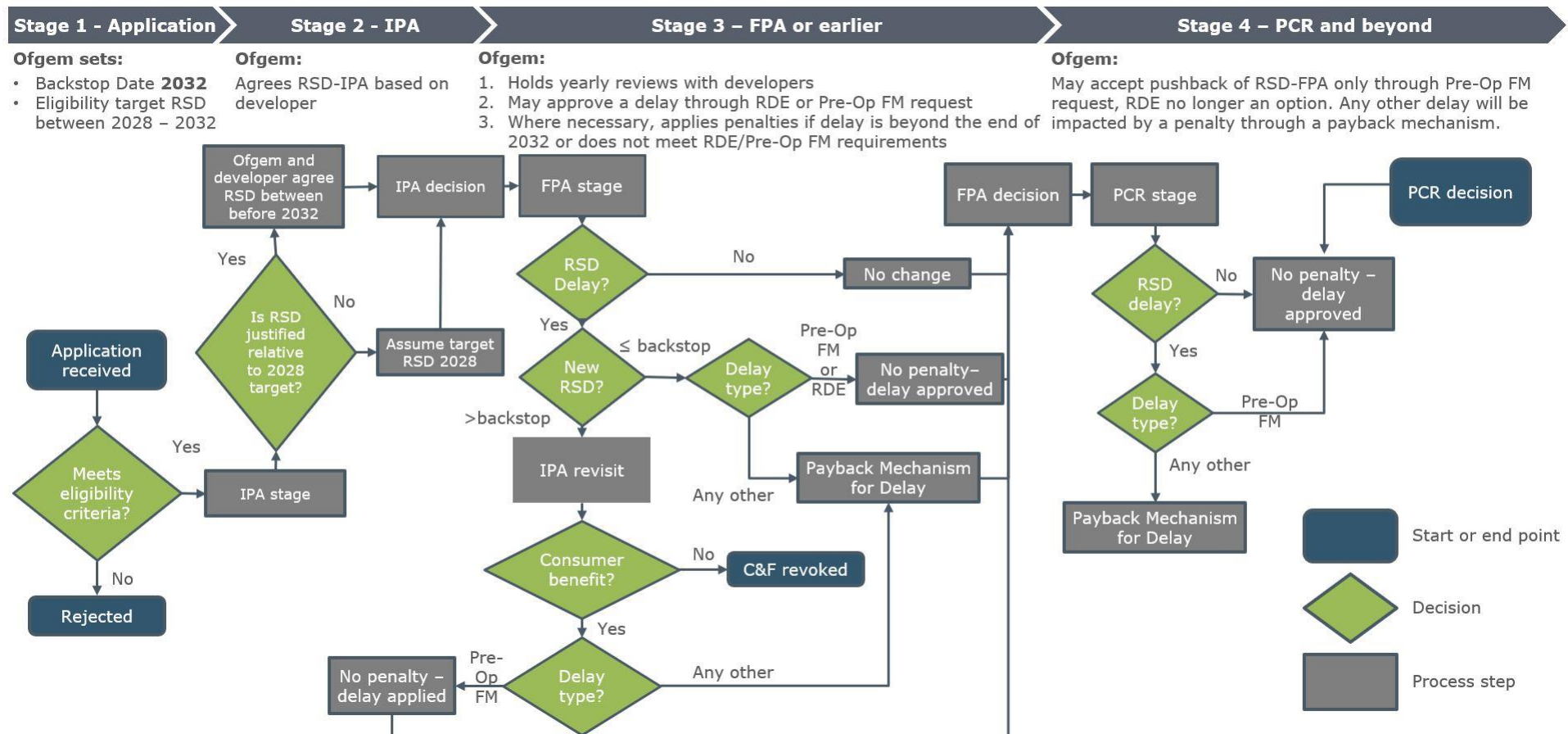
## Appendices

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# Consultation

## Appendix 1– Flowchart demonstrating delay scenarios

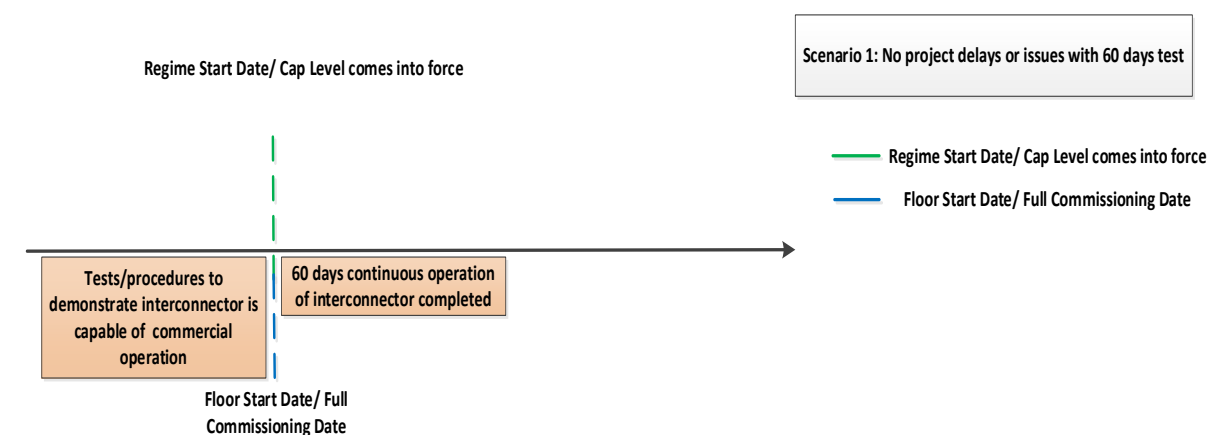


# Consultation

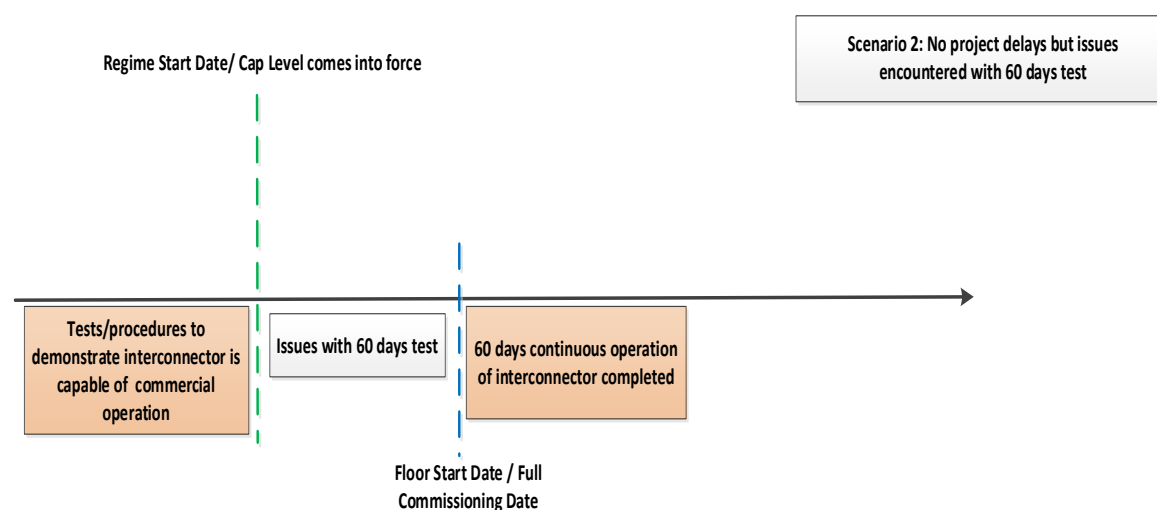
## Appendix 2 - Flowchart demonstrating W3 timings in the post-construction phase

The below sets out four scenarios. These scenarios show how interconnector project delivery could develop once construction has been completed. The below depictions and explanations aim to aid your understanding of the interaction between the Regime Start Date and the Full Commissioning Date with the Payback Mechanism for Delays, next to the information contained in the main consultation document.

**Scenario 1:** There are delays to project delivery and no issues with 60 days test (everything goes to plan). So, everything falls on the same date (and the Cap and the Floor come into force on the same date).

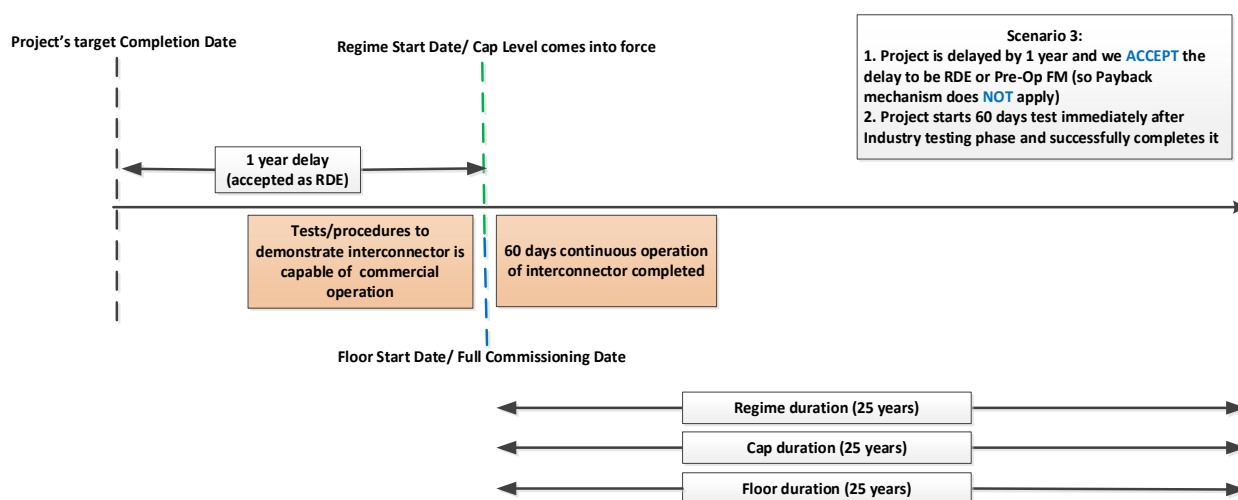


**Scenario 2:** The project starts commercial operations on time without any delays, but then encounters issues with successful completion of the 60 days test.



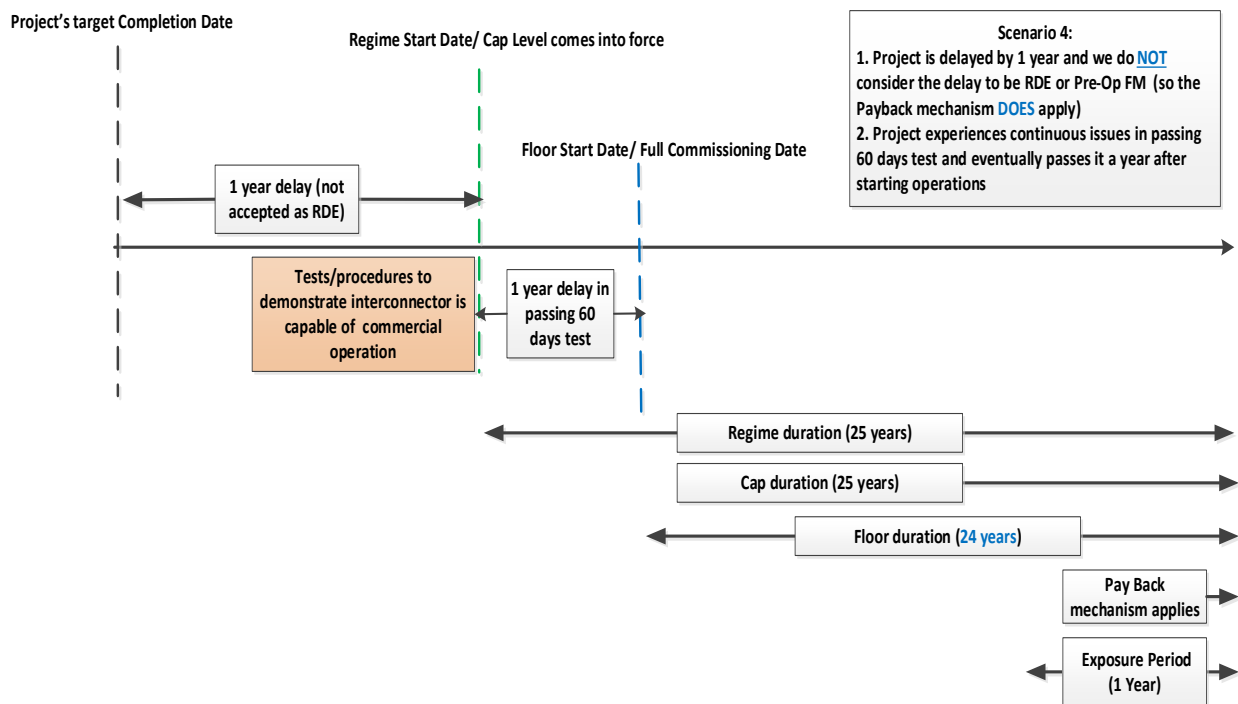
Note: Essentially the same as Scenario 1, however, the Floor does not start until the Project has passed the 60 days test. Meaning the Floor comes into force later than the Cap and will be shorter than 25 years in duration.

**Scenario 3:** Project delivery is delayed by 1 year. We accept that this delay was due to a Reasonable Delay Event (RDE) or a Pre-Operational Force Majeure event (Pre-Op FM) so the Pay Back mechanism does not apply. The Project goes on to meet the revised delivery date (actual Regime Start Date) and successfully completes the 60 days test immediately after the industry testing phase.



**Note:** Under the above scenario, if the 60 days was not passed first time, all other factors (RSD, Cap Start Date) would remain the same, the Payback Mechanism for Delays would still not apply. It's just that the Floor would come into force later (once the 60 days test has been passed) meaning the Floor duration would be shorter than 25 years.

**Scenario 4:** Project delivery is delayed by 1 year. We do not accept that the delay was due to a Reasonable Delay Event (RDE) or a Pre-Operational Force Majeure event (Pre-Op FM) so the Payback Mechanism for Delays does apply. The Project goes on to meet the revised delivery date (actual Regime Start Date) but encounters issues with completing the 60 days test which carry on for 1 year.



## Appendix 3 – Privacy notice on consultations

### Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

#### 1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, “Ofgem”). The Data Protection Officer can be contacted at [dpo@ofgem.gov.uk](mailto:dpo@ofgem.gov.uk)

#### 2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

#### 3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

#### 4. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for 3-5 years *after the consultation is closed*.

#### 5. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data
- get your data from us and re-use it across other services
- object to certain ways we use your data

- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3<sup>rd</sup> parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**6. Your personal data will not be sent overseas**

**7. Your personal data will not be used for any automated decision making.**

**8. Your personal data will be stored in a secure government IT system.**

**9. More information**

For more information on how Ofgem processes your data, click on the link to our "[Ofgem privacy promise](#)".