

# Decision

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

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We are presenting our decision on the new timelines and incentives framework to be applied throughout the Third Cap and Floor Window for new regulated electricity interconnectors. This includes 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 have also decided to adopt a modified approach to an interconnector project's Regime Start Date and Backstop Date.

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## Background

### What did we consult upon and why

In the Interconnector Policy Review (**ICPR**)<sup>1</sup>, 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 timely delivery of benefits.

In our December 2021 ICPR decision, we committed to building a more flexible regime for interconnector developers and to better manage adverse consequences where delays occur that are outside 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.

We recognise that the approach used in previous investment windows of shortening the regime duration because of project delivery delays may adversely impact a project developer's ability to raise financing or increase project development costs. We also recognise that consumers should be protected from undue delays. Thus, to maintain the risk-reward balance between consumers and developers, we have proposed in the Consultation on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors 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" .
- (2) a modified approach to the **Backstop Date**,
- (3) the **Payback Mechanism for Delays**,
- (4) a **Reasonable Delay Event** (RDE) mechanism, and
- (5) a modified approach to the **Pre-Operational Force Majeure (Pre-Op FM) mechanism**. This is contained in a **proposed new licence condition (SLC) 26B** – for interconnector projects in the post-Final Project Assessment (FPA) decision development phase, and in a **complementary minded-to policy decision** – for interconnector projects in the pre-FPA decision development phase.

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

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## Context and related publications

- (1) [Consultation on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors | Ofgem](#)
- (2) [Application Guidance for the Third Cap and Floor Window for Electricity Interconnectors | Ofgem](#)
- (3) [Interconnector Policy Review - Decision | Ofgem](#)
- (4) [Interconnector policy review: Working paper for Workstream 1 – review of the cap and floor regime | Ofgem](#)

## Our decision-making process

Following the ICPR decision, we worked out policy revisions to the timelines and incentives framework that would apply to the Third Cap and Floor Window. To inform our decision-making process, we have publicly consulted on our proposals and received three non-confidential official responses, made available in this document's appendix. We aim to discuss this stakeholder feedback in this publication and communicate our policy decisions. We express our gratitude to all of the respondents of our consultation.

## Decision-making stages

Date	Stage description
24/02/2023	Stage 1: Consultation open
31/03/2023	Stage 2: Consultation closed
14/11/2023	Stage 3: Consultation decision, responses reviewed and published

## General feedback

We believe that consultation is at the heart of good policy development. We are keen to receive your comments about this report. We'd also like to get your answers to these questions:

1. Do you have any comments about the overall quality of this document?
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. Are its conclusions balanced?
5. Did it make reasoned recommendations?
6. Any further comments

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

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## 1. Decision on our Timelines and Incentives

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

At the application stage of the Third Window for Initial Project Assessment (IPA), applicant projects are assumed to meet the Indicative Regime Start Date,<sup>2</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.

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>3</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 would be 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, for which a request was submitted and a determination made prior to the FPA decision, may be subject to a needs case revisit and/or the Payback Mechanism for Delays.

If the delay is within the Backstop Date, the delay could be assessed by us either 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. The key dates that 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.

### Consultation responses

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?

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<sup>2</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>3</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.

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1.1 Respondents broadly welcomed the proposals. However, one respondent suggested that the default response to an undue delay should be a reduced regime length, whereas the proposed flexible RSD, which allows a licensee to maintain a 25-year regime should be an option. Another respondent raised concern about the understanding that Ofgem may subject a commissioned interconnector to a needs case review, should the Regime Start Date occur after 2032.

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?

1.2 The modified approach to the Regime Start Date was welcomed by stakeholders, as it provides more certainty over the regime length and hence raising debt financing. Further clarity on whether a 'modified Backstop Date' means that the Backstop Date could be modified/extended was requested. Another developer requested for the Backstop Date to be amended to 2037, as they believed the applicable commercial operations date for a typical project should be 2030 and not 2028.

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?

1.3 Two out of three respondents agreed that the Payback Mechanism is an appropriate incentive to deliver projects in a timely way and protect consumers from delay impacts. However, one respondent believed that the risk reward balance could be improved to be more proportionate. It was argued that our proposal that any received floor top-up payments, incurred during the Exposure Period, are required to be paid back could result in consumers disproportionately benefitting from potential additional cap payments in an extended regime period. Another respondent believed that factors which directly reduce project internal rate of return and equity internal rate of return would be more incentivising to deliver a project on time and within budget and should form part of the Payback Mechanism for Delays.

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

1.4 One respondent suggested two opportunities for improvement: (1) A developer should only repay a portion of the incurred floor top-up payments. So first a certain percentage of the received floor top-up payments in the first 12 months

within the Exposure Period would be required to repay in the Payback Period. This percentage would increase in the subsequent years of the Exposure Period. This alone would not achieve a 100% repayment of received floor top-up payments. Instead, the remaining requirement to repay any received floor top-up payments would be offset against any cap payments during the period immediately preceding the Exposure Period. (2) Alternatively, the requirement to repay should be assessed on a net basis during the entire Exposure Period, rather than being assessed annually, in order to avoid an inequitable scenario in which consumers benefit from cap payments and floor top-up repayments, whilst the interconnector had an overall net positive impact during the Exposure Period.

- 1.5 Another respondent suggested the implementation of a 'lock up mechanism' which in effect would prevent distributions to equity until specific conditions are met. This approach should decrease our need to regulate interconnector revenues against the interconnector's floor level. They also proposed the inclusion of opportunities to reduce the Exposure Period length, where additional or accelerated benefits are provided to consumers. Such opportunities would decrease the potential impact of unapproved delays, which developers would otherwise be exposed to for the duration of the regime. This respondent also expressed the need for further clarity on the Post Regime Duration arrangements, which is addressed in the subsequent paragraphs.

## **Ofgem response to stakeholder feedback**

- 1.6 Staying consistent with our decision on the Interconnector Policy Review to deliver a more flexible regime that preserves the 25-year regime duration and to retain the benefits of having a streamlined investment window, we deem it sensible not to offer optionality as to which timelines and incentives framework is adopted.
- 1.7 To aid understanding on how we will manage delays to the RSD, placing it beyond the Backstop Date, we said in our consultation that: "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



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interconnector would become subject to the Payback Mechanism for Delays.”<sup>4</sup>. Hence, no needs case revisit would apply to commissioned interconnectors.

### **Backstop Date**

- 1.8 The Backstop Date concept has largely remained unchanged from previous cap and floor windows; it is a set date that serves to protect consumers from any change in the fundamental needs case of a project by incentivising projects to achieve commercial operations by that date. Different to Window 1 and Window 2, the Backstop Date was modified to apply differently because of the interaction with the Payback Mechanism for Delays. We believe that choosing 31<sup>st</sup> December 2032 as the Backstop Date for the Third Window applicants was and remains a sensible choice based on the Government interconnection capacity target of 18 GW by 2030<sup>5</sup> and the analysis on average delay of Window 1 and Window 2 projects that we performed. We sought to have sufficiently mature projects to come forward in this investment window and believe that such projects can be operational by this date.

### **Payback Mechanism for Delays**

- 1.9 The Payback Mechanism for Delays aims to protect consumers from the material impacts of undue delays to project delivery and thus connection delays. In our consultation, we proposed to require the repayment of any received floor top-up payments, incurred during the Exposure Period. Thus, the continued intent is to afford consumers protection against project delivery delays. Consumers separately benefit from being paid back in cap payments, as they underwrite revenue risk of interconnectors at the floor level.

### **Post Regime Duration**

- 1.10 Our intention with the Post Regime Duration was to ensure that a means of repayment of any received floor top-up payments exists. We do not foresee extending the applicability of the floor level set for any individual interconnector. The cap and floor levels are intrinsic elements to the cap and floor regime and, at the end of the regime, cease to exist, unless an extension of the regime is sought and agreed.

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<sup>4</sup> Per the Mind-to Decision on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors, para 2.17, p. 15 [Consultation on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors | Ofgem](#)

<sup>5</sup> BEIS Energy White Paper from December 2020 [Energy white paper: Powering our net zero future - GOV.UK \(www.gov.uk\)](#)

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- 1.11 As stated in the consultation document, to this publication: “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.”<sup>6</sup> This approach to the Payback Mechanism for Delays is in alignment with the retained electricity regulation on congestion income management.<sup>7</sup>

## **Our decision**

- 1.12 After carefully considering the feedback of stakeholders we have decided to take on the new timelines and incentives framework as reiterated and clarified below:

### **Regime Start Date**

- 1.13 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.
- 1.14 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 will constitute a defined term under the special licence conditions granted to a developer at our FPA decision. In addition, we included the definition of the Regime Start Date in standard condition SLC 26B (on which we consulted in parallel).

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<sup>6</sup> Per the Minded-to Decision on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors, footnote 12, p. 20 [Consultation on Timelines and Incentives changes for the Third Cap and Floor Window for Interconnectors | Ofgem](#)

<sup>7</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council, particularly paragraph 3 [Regulation \(EU\) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity \(recast\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

- 1.15 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>8</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*

- 1.16 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 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.
- 1.17 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.

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<sup>8</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.

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- 1.18 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 decision documentation).
- 1.19 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**

- 1.20 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 in the Third Window can contribute to wider Government interconnection ambitions by achieving commercial operations at the latest by 31 December 2032.

*Scope*

- 1.21 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**

- 1.22 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.
- 1.23 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>9</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*

- 1.24 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;

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<sup>9</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.

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- The project’s delay occurs after our FPA Decision and does not satisfy the Pre-Operational Force Majeure mechanism criteria.
- 1.25 Any repayment<sup>10</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. Therefore, there could be an overlap between the Payback Period and the Exposure Period; and the Payback Period can extend into the Post Regime Period.
- 1.26 By way of an example: The regime period for a project connecting by 31 December 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 any revenues during the Post Regime Duration will be used to repay any received floor top-up payments for year 2058 before Equity Distribution.<sup>11</sup> Similarly, revenues over the floor level in 2060 and any revenues 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.

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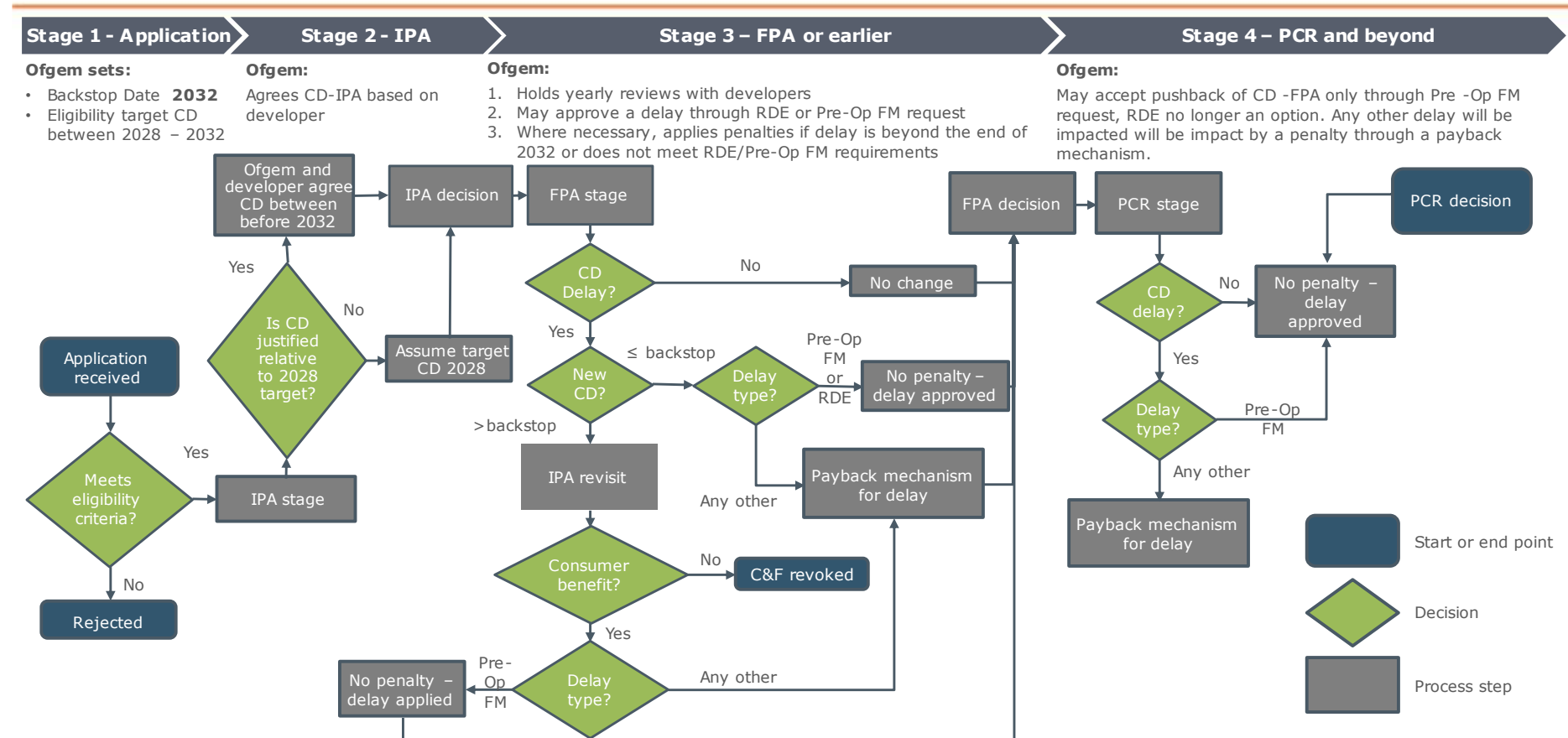
<sup>10</sup> We expect that any relevant floor top-up repayments will be made by the “equity side” investor(s) / stakeholder(s). This “equity side” floor top-up repayment arrangement may be particularly relevant to the interconnector projects delivered under the project finance route or any other route that involves considerable amounts of external debt finance that are repaid over the cap and floor regime duration.

<sup>11</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).

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**Figure 1: Flowchart demonstrating delay scenarios**



## **2. Policy Decision on our Reasonable Delay Event Mechanism**

### **Consultation responses**

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?

2.1 The proposal to implement a Reasonable Delay Event mechanism was broadly welcomed. However, one stakeholder would only agree with our proposals if the Reasonable Delay Event Mechanism would include action or inaction of other electricity transmission licensees, as this is an event explicitly excluded from the definition of the Pre-Operational Force Majeure but would be outside of a licensee's control. Another stakeholder suggested the incorporation of optionality in relation to the Payback Mechanism for Delays, as mentioned above. Finally, one respondent disagreed with the proposal, as it added complexity. Instead, the Reasonable Delay Events should be addressed through a wider Pre-Operational Force Majeure definition.

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

2.2 One respondent proposed that there should be no different outcome, essentially no possible needs case re-assessment, for the same sets of delay events simply due to the timing in which requests are made/choice of regulatory process chosen for managing a delay. Regardless of which mechanism was used to manage a delay, the Payback Mechanism for Delays should be avoided, whether the delay is within or beyond the Backstop Date.

2.3 Another stakeholder proposed widening the definition of the Pre-Operational Force Majeure to include reasonable delay events.

### **Our response to stakeholder feedback**

2.4 Delays are caused by different events - which events are within scope for either the Pre-Op FM or the RDE are defined in the different qualifying criteria of these mechanisms.

2.5 We believe it is best to manage delay requests about delays that occurred due to different events separately, the key distinguishing factors being whether the event resulted in such a delay to the Regime Start Date that it falls before or on



the Backstop Date and whether the event was outside of a licensee’s reasonable control. We do not consider it appropriate to widen the definition of the Pre-Op FM to include reasonable delay events. This is because we consider it important to retain the legal meaning of the force majeure concept and to maintain the appropriate and stricter threshold that applies to genuine force majeure events and circumstances. We are implementing a separate mechanism that deals with reasonable delay events. However, we intend to remove *performance or non-performance by an electricity transmission licensee or equivalent entity* wording from the Pre-Op FM definition. The rationale and final version of change will be reflected in a policy decision and statutory licence modification publication.

- 2.6 The Backstop Date is an important concept, aiming to protect consumers from any change in the fundamental needs case of a project and to ensure that projects of an investment window can contribute to wider Government interconnection ambitions and in the case of the Third Window can achieve commercial operation by latest 31 December 2032. Having scrutinised Third Window application submissions and analysis of the average delay period across Window 1 and Window 2 projects, we deem this Backstop Date sensible.

## **Our decision**

- 2.7 After careful consideration of the feedback received, we have decided to maintain the Reasonable Delay Event mechanism, as consulted upon and reiterated below:

## **Policy Decision on our Reasonable Delay Event**

### **Purpose**

- 2.8 This Policy Decision sets out the provisions that 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.
- 2.9 This 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

2.10 This Policy 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>12</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.

## Process for submitting requests

2.11 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>13</sup> of that event or circumstance occurring, during the period specified in the paragraph above on scope, submit a written request to us for the RSD-IPA to be adjusted to reflect the delay caused by a Reasonable Delay Event.

2.12 Any request submitted to us by the licensee under paragraph 2.11 of this 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.

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<sup>12</sup> The words "Authority", "we", "our" and "us" are used interchangeably in this decision.

<sup>13</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.

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2.13 For the purposes of paragraph 2.12, 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.

2.14 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 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

2.15 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 Policy Decision.

Rejection

2.16 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 Policy Decision:

- a) that the licensee's Regime Start Date shall be revised to fall on a new Regime Start Date; and

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- b) that the licensee will be subject to the Payback Mechanism for Delays and shall repay<sup>14</sup>, during the Payback Period,<sup>15</sup> any received floor top-up payments, incurred during the Exposure Period; and
- c) the start and end dates of the Exposure Period.

2.17 Before we issue a decision under paragraph 2.15 or 2.16 of this 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; and.
- 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.

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<sup>14</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>15</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.

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- 2.18 Before issuing a decision pursuant to paragraph 2.15 or 2.16, we shall consider any representations or objections raised by the licensee.
- 2.19 The decision we issue under paragraph 2.15 or 2.16 of this Decision shall state the reasons for the decision.
- 2.20 We shall issue a decision under paragraph 2.15 or 2.16 of this Policy Decision, as soon as reasonably practicable after receipt of all necessary information that we may reasonably require.

Table with defined terms below:

Reasonable Delay Event	<p>means an event or a circumstance that:</p> <ul style="list-style-type: none"><li>a. may not qualify as Pre-Operational Force Majeure event and which results in or causes a delay to the licensee's interconnector Regime Start Date, despite:<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; and</li></ul></li><li>b. has occurred or commenced between:<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></li><li>c. does not result in the new Regime Start Date falling after the Backstop Date.</li></ul>
Backstop Date	<p>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.</p>
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></ul>

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	b) exposes the licensee to the repayment obligation of any incurred floor top-up payments during this period.
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>

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Post Regime Duration	<p>for the purposes of this 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 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 14/11/2023.</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; and</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>