

Consultation

Supplemental Ofgem Guidance on the determination of disputes: Gate 2 to Whole Queue

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Response deadline:	14 November 2025
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Team:	Electricity Connections Regulation
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We¹ are consulting on a supplemental to Ofgem’s current guidance on determining disputes dated April 2017. This supplemental will outline the Authority’s approach to managing determinations for the Gate 2 to Whole Queue exercise.

This document provides the draft guidance for consultation and how you can get involved.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.

¹ References to the “Authority”, “Ofgem”, “we”, “our” and “ourselves” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day-to-day work.

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1. Introduction

The TMO4+ reform package, approved by Ofgem in April 2025, enabled a new connections process that reforms the existing queue to prioritise those projects in a Gate 2 connections queue with confirmed connection details that are 1) ‘ready’ and 2) ‘needed’ (i.e. meeting ‘Strategic Alignment Criteria’) under the CP2030 Action Plan. The reforms also deprioritise existing projects that do not meet these criteria to an indicative Gate 1 queue. Any deprioritised projects can then reapply once they consider they have met the criteria. New projects applying will also need to meet ‘Readiness Criteria’ and ‘Strategic Alignment Criteria’ to be eligible to join the Gate 2 connections queue.

These reforms will lead to the creation of a rationalised connections queue, aligned with the CP2030 Action Plan.

‘Gate 2 to Whole Queue’ (G2tWQ) is the name given to the one-off exercise that will streamline the existing connections queue so that it is focused on ‘ready’ and ‘needed’ projects. The National Energy System Operator (NESO) and Distribution Network Operators (DNOs) are assessing projects in the current connections queue against the Gate 2 Criteria (as noted above), together with making the necessary contractual changes to the existing contracted background.

NESO, as the independent electricity system operator, with the support of DNOs and Transmission Owners (TOs), are operationally responsible for the processing of connection applications and related decisions. This includes assessing connection applications against the new criteria, queue formation and the issuing of connection offers (i.e. Gate 1 or Gate 2 connections offers).

The Authority continues to work with NESO, DNOs, and relevant industry decision makers to ensure there are strong processes and assurance measures within the new strategic connections process, across both decision and dispute areas. This seeks to underpin the integrity of NESO’s operational decisions, and subsequent outcomes, during the G2tWQ exercise. We are satisfied with the work that has occurred so far; however, we will continuously assess these areas and may update the published version of this guidance should the need arise.

Notwithstanding, the G2tWQ exercise creates the potential for disputes to arise between customers and licensees. We have therefore worked with, and will continue to work with NESO and DNOs, to ensure there are strong, comprehensive, and timely complaint resolution procedures in place. We expect that all NESO or DNO related formal dispute processes that do exist will be followed first, together with any other appropriate form of alternative dispute resolution, before the Authority is approached.

However, we recognise that the Authority has a role in determining disputes. The Authority’s determinations functions are set out in the Electricity Act 1989, and in the standard conditions of the Electricity System Operator and Electricity Distribution

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Licences. The supplemental guidance (Appendix 1) explains when and how the Authority expects to exercise those functions in relation to G2tWQ.

2. Overview

Guidance

The need to communicate clear expectations of complaint and dispute mechanisms for the G2tWQ exercise, for all organisations involved in the process, is recognised by the Authority.

Therefore, Ofgem is issuing bespoke determinations guidance ('the G2tWQ Determinations Guidance') for disputes related to the G2tWQ exercise. This sets out Ofgem's approach and procedures to the management of disputes arising specifically from this process.

The G2tWQ Determinations Guidance is a supplemental to the current published determination guidance (the '2017 Guidance')² and does not replace that guidance. This G2tWQ Determinations Guidance only applies to disputes arising from outcomes related to the G2tWQ exercise.

The G2tWQ Determinations Guidance focuses on disputes with electricity distribution companies and with NESO, concerning operational decisions taken as part of this one-off G2tWQ exercise.³ It provides information on the process parties requesting a determination must follow, together with the procedure that Ofgem will generally follow when accepting a dispute; although we may, at our discretion, depart from this procedure in certain circumstances. Updates to the 2017 Guidance will be reviewed in due course as part of the connections end-to-end review of the grid regulatory framework.⁴

Determinations Approach: G2tWQ

Firstly, we recognise the need for reasonable amendments to existing connection agreements as part of the successful implementation of the TMO4+ reform package.

In its role as regulator, the Authority continues to work with NESO, DNOs, and relevant industry decision makers to ensure that operational decisions made during G2tWQ are backed by strong assurance procedures, across both decision and dispute areas. We are satisfied with the work that has occurred so far; however, we will continuously assess these areas and may update the published version of this guidance should the need arise.

² [Ofgem guidance on the determination of disputes for use of system or connection to energy networks | Ofgem](#).

³ This document, amongst others and insofar as it relates to determinations arising under s23 Electricity Act 1989, is a description of the 'practice and procedure to be followed in connection with any such determination' as provided for in s23(1B).

⁴ See Theme 7 [Connections end-to-end review of the regulatory framework | Ofgem](#)

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We expect these processes will allow customers to raise complaints at any stage of the process and provide a means for issues to be quickly identified and, if appropriate, rectified. This informs the approach that the Authority will take when considering a request for determination: we expect parties to use available means of alternative dispute resolution before considering a request for determination by Ofgem.

Alternative Dispute Resolution

Parties must have exhausted available means of Alternative Dispute Resolution (ADR) before escalation to the Authority. In practice, this means that for disputes relating to variations of agreements with DNOs, parties must:

- Undertake informal engagement with the respective DNO;
- Use the internal complaints process of the DNO;
- Where the disputed decision is made by NESO, raise the dispute via the “Other disputes” framework set out in the CUSC, where available.⁵
- Utilise other ADR routes available

For disputes relating to variations of agreements with NESO, parties must:

- Undertake informal engagement with NESO;
- Raise the dispute via NESO’s complaints processes;
- Engage with NESO using the “Other Disputes” framework set out in the CUSC, where available.
- Utilise other ADR routes available.

Disputes for Determination

If resolution has not been possible through ADR, parties may then choose to proceed to raise a dispute for determination with the Authority. Following receipt, we will make an assessment on whether we will consider the request.

Where formal ADR routes, such as arbitration, are exhausted and reach an outcome, this will likely limit Ofgem's ability to reach a different decision under a determination.

Gate 2 connection offers will be offered to projects that meet the readiness and strategic alignment criteria set out in the Gate 2 Criteria Methodology. It is appropriate that NESO, as the independent electricity system operator, has discretion in this area: it is empowered to decide which projects should receive Gate 2 Offers, in accordance with the rules approved by the Authority. In general, therefore, Ofgem’s position is that parties will not be able to request a determination if they disagree with NESO’s decision about the status of their project when that results from proper implementation of the TMO4+ decision. We do not consider ourselves able to make individual determinations

⁵ See sections 8.9, 8.11, 8.14 and 8.15 <https://www.ofgem.gov.uk/sites/default/files/2025-04/Appendix-to-Decision-Gate-2-Criteria-Methodology.pdf>

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that are inconsistent with the TM04+ reform package related decisions that were issued by the Authority earlier this year.

Consequently, we will only accept a request for determination if a party can produce evidence that NESO and/or the DNO has not correctly followed the TMO4+ process as set out in the CUSC, licence conditions and associated methodologies or has reached an incorrect decision. The Authority's presumption will be that if the connections process has been correctly followed and is free of error, then the terms (including Gate 1 Terms) offered to the applicant are reasonable.

Outcomes

Under the Electricity Act and Licences, the Authority has relatively broad powers to settle a dispute in any way that it thinks reasonable in the circumstances. In general, any order we make will require the DNO or NESO to comply with its regulatory duties and obligations, either provided for in statute or licence.

While the Authority's discretion is broad, the one-off nature and timing of the G2tWQ exercise means that there may be real practical constraints that will limit the beneficial outcomes that the Authority can direct when we find in favour of the applicant. This could be due to operational timing of key mechanisms contained within the new reform regime, e.g. when future application windows open.

However, although there may be practical constraints to the available beneficial outcomes, the Authority will, in the limited circumstances that it does determine disputes about the variation of existing connection contracts, remain open to looking at different options for reaching an outcome that is fair to affected parties. Whilst these would depend on the particular facts of the case, we do not consider financial redress to be within the scope of our existing determination functions.

Determination Procedures: G2tWQ

Request for a Determination

To raise a determination request, the requesting party will have to complete the determination request pro forma [to be provided in the published G2tWQ Determinations Guidance] which will include providing the following information:

- Full name of the disputing party (Companies House checks will be undertaken).
- Name of party that is subject to the dispute i.e. NESO or DNO.
- A copy of the gated connection offer (as a request for determination can only be raised with the Authority where a connection offer is proposed to be varied).
- Details of the complaint.
- Supporting evidence of the alleged error or other failing.

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- Evidence that ADR routes have been exhausted e.g a deadlock letter has been issued by NESO or the relevant DNO.

Any disputing party submitting information to raise a determination should familiarise themselves with the G2tWQ Determinations Guidance, including both the procedures and approach, to ensure that any request for a determination can be assessed promptly. Determination requests will not be accepted unless they include a fully completed pro-forma and provide the above information.

Determinations Gateway

We have created a centralised gateway for all determination requests to be submitted to the Authority. This will require parties to submit requests to a specified email address [to be provided in the published G2tWQ Determinations Guidance].

Oral hearings

Oral hearings for determinations will not be held unless an extenuating circumstance can be shown.

Cost

The Authority is currently considering whether to recover the costs it incurs for any determinations it reaches in relation to the G2tWQ exercise.

Purpose of this consultation

This consultation is being undertaken to test with stakeholders that the published G2tWQ Determinations Guidance is clear on Ofgem's approach to those determinations and the procedures for raising a determination ahead of that publication.

Please find the consultation questions below:

Consultation Questions:

1. Does the G2tWQ Determinations Guidance in Appendix 1 clearly set out the Authority's determination processes for disputes arising from the Gate 2 to Whole Queue exercise and its expectations of disputing parties?
2. Is there any additional clarity that you think is needed on the determinations procedures in the G2tWQ Determinations Guidance?

Associated Documents

Ofgem's procedure for determining disputes (13 April 2017) [Ofgem guidance on the determination of disputes for use of system or connection to energy networks | Ofgem](#)

Connections Reform Package (TM04+) decision documentation (15 April 2025) [Decision on Connections Reform Package \(TM04+\) | Ofgem](#)

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Connections end-to-end review of the regulatory framework (13 February 2025)

[Connections end-to-end review of the regulatory framework | Ofgem](#)

Appendix to Decision Gate 2 Criteria Methodology (21 March 2025)

<https://www.ofgem.gov.uk/sites/default/files/2025-04/Appendix-to-Decision-Gate-2-Criteria-Methodology.pdf>

Consultation stages

Stage 1 Consultation open: **31 October 2025**

Stage 2 Consultation closes. **Deadline for responses: 5pm 14 November 2025**

Stage 3 Guidance Published: **November 2025**

How to respond

We want to hear from anyone interested in this consultation. Please send your response to connections@ofgem.gov.uk as shown on the front page of this document.

We have asked for your feedback in the 'Purpose of this consultation section' above. Please respond to each question as fully as you can.

We will publish non-confidential responses on our website.

Your response, data, and confidentiality

You can ask us to keep your response, or parts of your response, confidential. We will 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.

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 will contact 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.

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 United Kingdom'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.

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If you wish to respond confidentially, we will keep your response confidential, but we will publish the number, but not the names, of confidential responses we receive. We will not 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.

How to track the progress of a consultation

1. Find the web page for the call for input you would like to receive updates on.
2. Click 'Get emails about this page', enter your email address and click 'Submit'.
3. You will receive an email to notify you when it has changed status.

A consultation has three stages: 'Open', 'Closed (awaiting decision)', and 'Closed (with decision)'.

Conclusions and next steps

We intend to publish the G2tWQ Determinations Guidance in late November 2025.

All feedback will be considered ahead of publication of the G2tWQ Determinations Guidance.

Send us your feedback

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

- Do you have any comments about the quality of this document?
- Do you have any comments about its tone and content?
- Was it easy to read and understand? Or could it have been better written?
- Are its conclusions balanced?
- Did it make reasoned recommendations?
- Do you have any further comments?

Please send your feedback to stakeholders@ofgem.gov.uk.

Appendix 1. Supplemental Guidance on the determination of disputes: Gate 2 to Whole Queue

Introduction

Context

The TMO4+ reform package, approved by Ofgem in April 2025, enabled a new connections process that reforms the existing queue to prioritise those projects in a firm Gate 2 connections queue that are 1) ‘ready’ and 2) ‘needed’ (i.e. meeting ‘Strategic Alignment Criteria’) under the CP2030 Action Plan. The reforms also deprioritise projects that do not meet these criteria to an indicative Gate 1 queue. Any deprioritised projects can then reapply once they consider they have met the criteria. New projects applying will also need to meet ‘Readiness Criteria’ and ‘Strategic Alignment Criteria’ to be eligible to join the Gate 2 connections queue.

These reforms will lead to the creation of a rationalised connections queue, aligned with the CP2030 Action Plan.

Amendments to Existing Connection Agreements

The National Energy System Operator (NESO) as the independent electricity system operator, with the support of the Distribution Network Operators (DNOs) and Transmission Owners (TOs), is operationally responsible for the processing of connection applications and related decisions. This includes assessing connection applications against the new criteria (as outlined in the Gate 2 Criteria Methodology), queue formation and the issuing of new connection offers (i.e. Gate 1 or Gate 2 connections offers).

The Gate 2 to Whole Queue (G2tWQ) exercise will result in existing contracts being varied.

Projects that meet the criteria will receive a Gate 2 Modification Offer, which will result in changes or revisions to the existing connection agreements, including potentially terms such as timelines. Those that do not meet the Gate 2 Criteria will be issued with a Gate 1 Agreement to Vary or ‘ATV’.

Purpose

This document sets out, for all parties involved in the G2tWQ process, the approach and procedures that the Authority will undertake to determinations in relation to the G2tWQ exercise.

Section 1 provides an overview of the Authority's determination function in relation to the G2tWQ exercise.

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Section 2 outlines our position with regards to the disputes the Authority will consider following new contract terms being offered, the actions that disputing parties must take before approaching the Authority with a request for a determination, and the limit on potential outcomes from a successful determination.

Section 3 outlines the procedure for parties to follow if they wish to raise a determination and the information that must be provided for the Authority to assess the request for a determination.

Any disputing party submitting information to raise a determination should familiarise themselves with this guidance, including both the procedures and approach, to ensure that eligible requests for determination can be assessed promptly.

Any determination requests that do not include a fully completed pro-forma [to be provided in the published guidance], together with providing the above information, will not be processed until such time as all relevant information has been provided.

1. Ofgem's Determination Functions and G2tWQ

- 1.1 Disputes can be referred to the Authority through a number of different routes under the Electricity Act and Licences. It is important that parties understand the nature – and limits – of our various functions in this area. This section provides information on *when* Ofgem can determine disputes and outlines the Authority's ability to resolve G2tWQ disputes through the determinations process.
- 1.2 The functions set out below relate to the adjudication of disputes about the terms of connection agreements. This means that even if the dispute does fall within the narrow range of matters that the Authority can determine, parties will not be able to seek a determination until after the new disputed agreement has been issued.

System Operator Licence

- 1.3 Under the conditions of the Electricity System Operator Licence, Ofgem may, at its discretion, settle disputes between NESO and parties who have, or are seeking, a connection to the transmission system. This extends to settling disputes about the variation of existing Bilateral Agreements and Construction Agreements. Under E13.5, where either party proposes to vary an existing agreement in any manner provided for under that agreement, the Authority may “at the request of the licensee or other party to such agreement, settle any dispute relating to such variation in such manner as appears to the Authority to be reasonable”.
- 1.4 This route is available to parties who have an agreement with NESO. These parties will also be signatories to the CUSC, and will therefore, in certain circumstances, be able to use the specific dispute resolution mechanism that the CUSC provides for disputes arising from the G2tWQ exercise. Given the availability of a robust dispute resolution mechanism in the CUSC, the Authority does not expect to exercise its discretion under E13.5 to resolve disputes unless there are exceptional circumstances that warrant our intervention.

Distribution

- 1.5 DNOs have a “duty to connect” under s16 of the Electricity Act. Under s21, the connection offer made by a DNO to a person wanting to connect can contain “any terms which is reasonable in all the circumstances for that person to be required to accept.” The Authority can resolve disputes about variations to these contracts under:
 - s23 Electricity Act 1989, which provides that any dispute arising under ss16-21 (a dispute about whether the terms offered were “reasonable”, for example) can be referred to the Authority, and upon such a reference “shall be determined by order”; and

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- SLC 7.10 of the Distribution Licence, which provides that if either party propose to vary the terms of an agreement entered into under SLC7.1 (i.e. an agreement for connection under ss16-21 of the Electricity Act), the Authority may, at the request of either party, “settle any dispute relating to the variation in such a manner as appears to the Authority to be reasonable in all the circumstances of the case.”

Section 23: Does not apply to decisions made by NESO

- 1.6 Final decisions about whether a project has met the Gate 2 Criteria are made by NESO, applying the methodologies approved by Ofgem in the TMO4+ Decision. Therefore, as described in Section 2, the role of DNOs is limited.
- 1.7 Ofgem recognises that, unlike its dispute resolution function under the licence, the determinations function under s23 is mandatory. However, in the context of G2TWQ, the scope of matters that can be decided under s23 is very limited. While disputes “shall” be determined by the Authority, those disputes must relate to matters arising under s16-21. As noted, this means that s23 relates only to disputes between DNO and their customers, and should not include disputes about decisions that have been made by NESO and correctly implemented by DNOs. We therefore expect parties seeking a determination under s23 to provide clear evidence that the DNO (not NESO) has made a clear error, or has otherwise failed to follow the Gated Application Process as set out in the CUSC and the Distribution Licence.

2. Determination Approach: Gate 2 to Whole Queue

Step 1: Alternative Dispute Resolution

- 2.1 Our current guidance on the determination of disputes is clear that the Authority’s expectation is that parties must explore other means of resolving the dispute before it will exercise its determinations’ function. This will remain the case for disputes arising from the G2tWQ exercise.
- 2.2 DNOs and NESO have procedures in place to deal with complaints and to remedy errors were they to arise. If parties wish to dispute the decisions made by NESO or the DNOs, the fastest and most efficient way to reach a resolution will be to deal with these bodies directly. Where this fails, and the dispute relates to whether the Gate 2 Criteria have been met, Section 18 and Section 7.4 of the CUSC requires CUSC parties to follow a formal dispute resolution mechanism. This process requires senior-level meetings between the parties’ representatives. If unresolved, either party may also refer the dispute to the London Court of International Arbitration.
- 2.3 Therefore, before an approach to the Authority is made to resolve a dispute or for a determination, ADR routes must be exhausted.

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2.4 For disputes relating to variations of agreements with DNOs, parties must:

- Undertake informal engagement with the DNO;
- Use the internal complaints process of the DNO;
- Where the disputed decision is made by NESO, raise the dispute via the “Other disputes” framework set out in the CUSC, where available;⁶
- Utilise other ADR routes available.

2.5 For disputes relating to variations of agreements with NESO, parties must:

- Undertake informal engagement with NESO;
- Raise the dispute via NESO’s complaints processes;
- Engage with NESO using the “Other Disputes” framework set out in the CUSC, where available;
- Utilise other ADR routes available.

2.6 As per the mandatory pre-requisite information listed in Section 3, the disputing party must produce evidence that the ADR routes have been utilised and exhausted, for example, a deadlock or final position letter.

Step 2: Disputes for Determination

2.7 The Authority expects to only consider exceptional cases, such as those where the NESO or DNO has breached its regulatory obligations or has failed to resolve an error.

2.8 It is appropriate, and in the best interests of consumers that NESO, as the independent electricity system operator, has discretion to determine which projects meet the readiness and strategic alignment criteria: it is empowered to decide which projects should receive Gate 2 Offers, in accordance with the rules approved by the Authority. DNOs should then correctly implement those decisions in the agreements they have with their customers.

2.9 In general, therefore, Ofgem’s position is that parties will not be able to request a determination simply on the basis that they disagree with NESO’s decision about the status of their project and/or a DNO’s implementation of that decision in a Connection Agreement. Instead, the Authority will only intervene in cases where a party can produce objective evidence that the process has not been correctly followed or some other error has been made. For example, to dispute a Gate 1 or 2 Agreement, parties will have to provide evidence that the offer is the result of a

⁶ See sections 8.9, 8.11, 8.14 and 8.15 <https://www.ofgem.gov.uk/sites/default/files/2025-04/Appendix-to-Decision-Gate-2-Criteria-Methodology.pdf>

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material error or other unauthorised departure from the approved process by the relevant decision-maker.

2.10 The Authority will also not consider the following complaints through determination:

- The TMO4+ decision, which includes the proper implementation of the policy aspects of the decision or the design aspects of the decision that NESO are implementing.
- The reversal of a position where the Authority has already given direction or comfort to a licensee since the TMO4+ decision.
- Advancement is not achieved, i.e. where a project does not receive the accelerated connection date originally sought.

2.11 The Authority's presumption will be that the new varied terms offered, as a result of the G2tWQ exercise, are reasonable. Terms will be presumed as reasonable unless they amount to a breach of NESO and/or DNOs' regulatory obligations, i.e. where the DNO or NESO has erred in some way, or has failed to correctly follow the rules of the approved process as laid out in the CUSC and the Electricity Licence conditions. As noted in Step 1, ADR routes must also be exhausted first before disputing parties may approach the Authority with a request for a determination.

2.12 Any requests that the Authority receives that are assessed as not being a determination will be handled as correspondence.

Electricity Act 1989, s23

2.13 The role of DNOs in the G2tWQ exercise is limited. Their role is to ensure that evidence has been assessed to a sufficient standard and that the queue realignment determined by NESO is accurately reflected in the connection agreements they have with the customers on their networks. It is important for parties to note that disputes about decisions made by NESO (e.g. decisions about whether a project meets the Gate 2 Criteria) cannot be raised under s23. Ofgem can only make orders under s23 that require DNOs comply with the duties of distributors under ss16-21. This means that:

- Section 23 disputes can only be raised by projects that have agreements with a DNO (ie are not directly connecting to the transmission system);
- Section 23 cannot be used by distribution-connected parties to challenge NESO's decision-making about the status of their project or other alleged acts or omissions by NESO;
- A DNO connected party will only be able to raise a determination under this section if it can show that there has been an act or omission by the relevant DNO which represents a breach of the approved process or their regulatory obligations and duties. This could include for example, a failure to progress

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the customer's application to NESO, or a failure to correctly reflect the terms of NESO's offer in the agreement it offers to its customer.

Gate 1 Terms

- 2.14 The Authority has already approved the introduction of indicative terms of connection for projects that do not meet the Gate 2 Criteria. Effective implementation of TMO4+ requires that projects that do not meet the readiness or strategic alignment criteria are issued with "indicative" terms. As previously noted, a party will therefore not be able to argue that the terms it has been required to accept are "unreasonable" under s21 of the Electricity Act just because they are Gate 1 terms: Ofgem's presumption is that the terms of a Gate 1 Agreement are reasonable.
- 2.15 To displace this presumption, a party requesting a determination will have to show that the process that led to the production of the Gate 1 terms was flawed because of an act of error or omission by NESO or a DNO (i.e. a failure by the DNO to implement the reforms in accordance with the rules approved by the Authority).

Step 3: Outcome

- 2.16 Under the Electricity Act and Licences, the Authority has relatively broad powers to settle a dispute in any way that it thinks reasonable in the circumstances. In general, any order we make will require the DNO or NESO to comply with its statutory duties (in the case of a DNO) or the relevant conditions of its licence (in the case of NESO); and while our discretion is broad within those bounds, we cannot order these parties to do anything beyond what the relevant provisions require.
- 2.17 While the Authority's discretion is broad, the exceptional nature and timing of the G2tWQ exercise means that there are practical constraints that will limit the beneficial outcomes that the Authority can direct in this context, even in cases where we find in favour of the applicant. This could be due to operational timing of key mechanisms contained within the new reform regime, e.g. when the next application window opens.
- 2.18 The timescale for reaching a determination can vary significantly depending on the complexity of the case. All parties must be fairly heard, and this means that the Authority is required to carefully consider all evidence and arguments submitted by both parties to the dispute. We are also required to provide reasons for our decisions. This process can take many months to complete, despite our best endeavours to expedite it. As noted above, timeframes are extended in this case by the fact that Ofgem can only open a determination at the final stage of the process, after new contract terms have been issued.
- 2.19 The result is that the time-limited, one-off nature of the G2tWQ exercise, and timescales of the determination process, mean that the range of workable

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beneficial outcomes available at the end of the process is likely to be limited in cases where we find in favour of the applicant. For example, it is unlikely that the Authority will be able to direct re-insertion into the connection queue ahead of the next evidence window due to the timescale for reaching a determination. By the time any determination decisions are made, re-ordering the queue is likely to cause widespread disruption, including to other projects in receipt of a Gate 2 Offer.

- 2.20 It is therefore in the best interests of all parties to recognise the limits of the beneficial outcomes available through determinations, and to act as quickly as possible to resolve any disputes arising from the G2tWQ exercise through ADR.
- 2.21 While there may be practical limits to the available beneficial outcomes, the Authority will, in the event that it does determine disputes about the variation of existing connection contracts, endeavour to reach a decision as quickly as possible, and to arrive at an outcome that is fair to affected parties.
- 2.22 If there is a successful determination decision, the Authority will consider viable outcomes within the limits of our powers. These would depend on the particular facts of the case. It would not, however, include any financial compensation.

3. Determination Procedure: Gate 2 to Whole Queue

Requirements for a determination request relating to G2tWQ

Request for a Determination

- 3.1 To raise a determination request, the requesting party must complete the determination request pro forma [to be provided in the published guidance] which includes providing the following information:
- Full name of the disputing party (Companies House checks will be undertaken).
 - Name of party that is subject to the dispute i.e. NESO or DNO.
 - A copy of the gated connection offer (as a request for determination can only be raised with the Authority where a contract is proposed to be varied).
 - Details of the complaint.
 - Supporting evidence of the alleged error or other failing.
 - Evidence that ADR routes have been exhausted e.g a deadlock letter has been issued by NESO or the relevant DNO.
- 3.2 The request must then be sent to the Determinations Gateway.

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- 3.3 The determinations process can vary, as outlined in Section 2, therefore ADR will be the quickest route for a resolution for parties to raise a dispute. However, if resolution has not been possible, then a request for determination should be raised with the Authority as soon as possible after the ADR process, but no longer than 30 days after this has concluded.
- 3.4 This will support the Authority's ability to undertake timely actions to issue decisions in the G2tWQ environment, including directing viable outcomes within the limits of our powers for successful determinations.

Determinations Gateway

- 3.5 We have created a centralised gateway for all determination requests to be submitted to the Authority. This will require parties to submit requests to a specified email address below:
- [To be provided in the published G2tWQ Determinations Guidance]
- 3.6 Any request will require a prescribed minimum amount of information, as set out above.
- 3.7 If a request for a determination is sent outside this facility, it will not be accepted and processed.

Oral Hearings

- 3.8 The Authority requires that all parties to a determination present their evidence and answer any questions exclusively in writing. Any additional evidence must also be submitted in writing.
- 3.9 Consequently, oral hearings for disputes will not be held unless an extenuating circumstance can be shown. In exceptional circumstances where an oral hearing is held, paragraphs 2.15 – 2.16 of the 2017 Guidance will apply and in particular, no new evidence will be accepted orally.
- 3.10 Parties that request an oral hearing should note that the management of such an approach, if granted, will mean an extensive timeframe and would add to any cost recovery amount, should the Authority decide to claim for costs it has incurred in the administration of determinations.

Cost recovery

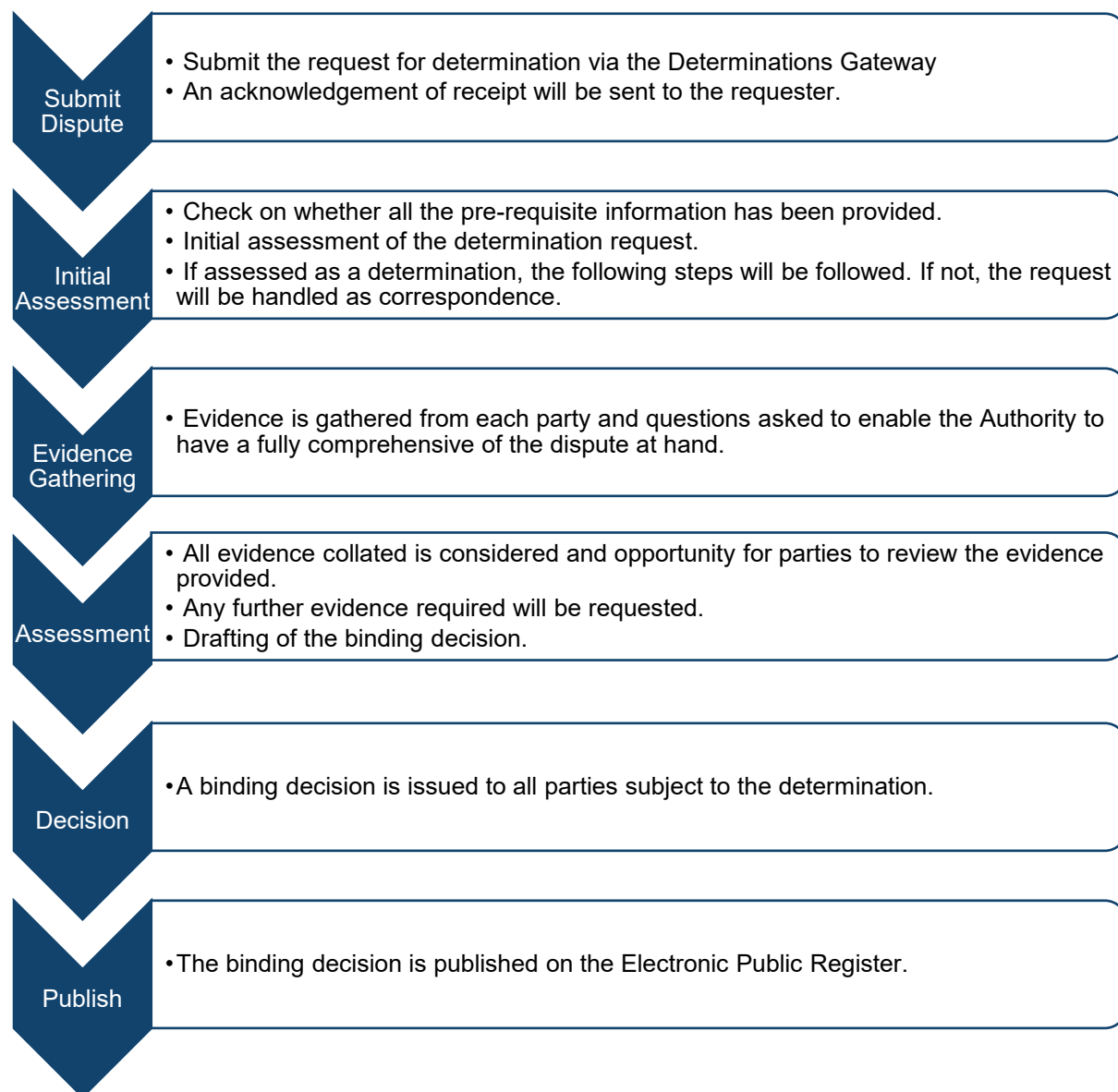
- 3.11 S23(5) of the Electricity Act 1989 allows the Authority to recover the costs of making a determination. Ofgem's 2017 Determinations Guidance is to recover costs only where the actions of the parties have caused us to incur costs beyond what would normally be expected (e.g., by causing unnecessary delay, not attempting ADR, or deliberately withholding information). Ofgem has not previously recovered costs under this provision (though it should be noted that Ofgem does not currently deal with a high volume of disputes under s23).

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- 3.12 The Authority is currently considering whether to change its approach to the recovery of costs for determinations arising from the G2tWQ exercise. If our approach changes, we will appropriately inform stakeholders of our intention to do so and provide details of that change.

Outline of Determination Procedure

Figure 1: Stages of a Determination request.



Accessible format

Submit dispute

Submit the request for determination via the Determinations Gateway. An acknowledgement of receipt will be sent to the requester.

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Initial Assessment

Check on whether all the pre-requisite information has been provided. Initial assessment of the determination request. If assessed as a determination, the following steps will be followed. If not, the request will be handled as correspondence.

Evidence Gathering.

Evidence is gathered from each party and questions asked to enable the Authority to have a fully comprehensive of the dispute at hand.

Assessment

All evidence collated is considered and opportunity for parties to review the evidence provided. Any further evidence required will be requested. Drafting of the binding decision.

Decision

A binding decision is issued to all parties subject to the determination.

Publish

The binding decision is published on the Electronic Public Register.

Appendix 2. Determinations Request Pro-Forma

- A2.1 As part of our procedure for processing determination requests, we will be providing a pro-forma for parties bringing a dispute to Ofgem.
- A2.2 The aim of the pro-forma is to standardise how we capture the information necessary to assess the request for determination.
- A2.3 The pro-forma will be provided in the published G2tWQ Determinations Guidance.

Appendix 3. Privacy policy

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

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. With whom we will be sharing your personal data

We will not be providing any data collected as part of this consultation outside of Ofgem.

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

Your personal data will not be held for longer than is necessary in relation to the policy area that is subject to this consultation.

6. 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

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- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd 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.

7. Your personal data will not be sent overseas (Note that this cannot be claimed if using Survey Monkey for the consultation as their servers are in the US. In that case use “the Data you provide directly will be stored by Survey Monkey on their servers in the United States. We have taken all necessary precautions to ensure that your rights in term of data protection will not be compromised by this”.

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

9. Your personal data will be stored in a secure government IT system. (If using a third-party system such as Survey Monkey to gather the data, you will need to state clearly at which point the data will be moved from there to our internal systems.)

10. More information For more information on how Ofgem processes your data, click on the link to our “[ofgem privacy promise](#)”.