

Guidance

Major Projects ODI-F Governance Document

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This document sets out the governance for the RIIO-ET3 Major Projects financial output delivery incentive (ODI-F).

Major Projects ODI-F is a RIIO-ET3 incentive in place to incentivise the timely delivery of significant new infrastructure projects through aligning TOs' financial interests with consumers' interests. TOs can receive financial rewards for the on-time or early delivery of projects. Financial penalties will apply to TOs if projects are delivered late.

This document is aimed at TOs and other stakeholders interested in the Major Projects ODI-F. It covers matters including the information that we require from the TOs and the process we expect to follow in approaching our assessments.

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1. Introduction

- 1.1 The Major Projects financial output delivery incentive (ODI-F) is intended to incentivise timely delivery of strategically important load-related investments.
- 1.2 Under the Major Projects ODI-F, TOs are eligible for financial rewards if included projects are delivered on or before their Major Projects ODI-F Target Delivery Dates, and are liable for penalties if those projects are delivered late.
- 1.3 This document is to be read in conjunction with the following associated documents:
 - RIIO-3 Final Determinations ET Annex, which sets out our RIIO-ET3 policy in relation to the Major Projects ODI-F: [RIIO-3-Final-Determinations-ET](#).
 - CSNP¹ Re-opener Guidance and Submissions Requirements Document, which sets out how we will designate CSNP Re-opener Outputs as will be included in the Major Projects ODI-F.
 - Load Re-opener Guidance and Submissions Requirements Document, which sets out how we will designate Load Re-opener Outputs as will be considered for inclusion in the Major Projects ODI-F.
 - Special conditions to the Electricity Transmission Licences, including Special Condition 4.8 on the Major Projects ODI-F: [Home Page - Ofgem Public Register](#).
- 1.4 Figure 1 below demonstrates how this Governance Document fits alongside related RIIO-ET3 documents.

¹ Centralised Strategic Network Plan, to be determined by the NESO. The first CSNP is expected to be published during RIIO-ET3.

Figure 1: Summary of key documents

| Licence condition, policy decision and Associated Documents (ADs) | Key TO activities |
|---|---|
| <p>SpC 3.15: Pre-construction funding</p> <ul style="list-style-type: none"> Initial allowance set for load projects. Set on a project-by-project basis. PCD allows 100% of funding if achieve full consents, interim milestones also given. <p>Final Determinations ET Annex Chapter 4 No AD.</p> | <p>Submission of material planning consents</p> |
| <p>SpC 3.18: Load Re-opener and Price Control Deliverable (PCD)</p> <ul style="list-style-type: none"> Multiple tracks for TOs to submit projects for designation of PCD and LO, eligibility for PCF, and later for project allowances. Includes cost assessment for all projects, needs case assessment for some projects not approved at FDs. <p>Final Determinations ET Annex Chapter 4 AD: Load Re-opener Guidance and Submission Requirements Document</p> | <p>Finalise design. Tender contracts. Begin construction.</p> |
| <p>SpC 3.19: CSNP Re-opener and Price Control Deliverable (PCD). NESO's CNSP taken as needs case.</p> <ul style="list-style-type: none"> Designation of PCD and LO, and TO submission for project allowances at Project Assessment stage. <p>Final Determinations ET Annex Chapter 4 AD: CSNP Re-opener Re-opener Guidance and Submission Requirements Document</p> | |
| <p>SpC 4.8: Major Projects ODI-F</p> <ul style="list-style-type: none"> Set for all CSNP Re-opener Outputs at the time of designating under the CSNP Re-opener. Considered for Load Re-opener projects at or after Eligibility Assessment stage. Assessed on portfolio level annually. <p>Final Determinations ET Annex Chapter 3 AD: Major Projects ODI-F Governance Document</p> | <p>Project delivery</p> |

- 1.5 See Special Condition 1.1 (Interpretations and definitions) of the electricity transmission licence for the description of all defined terms included in this document.

2. Designation of Major Projects

- 2.1 The designation of projects as Major Projects and application of the Major Projects ODI-F is Authority-triggered only, and so the TO cannot formally request this.
- 2.2 The scope of the Major Projects ODI-F is:
- all NESO-developed projects recommended for delivery by the TOs that meet the requirements to be designated as a CSNP Re-opener Output under the CSNP Re-opener; and
 - other load-related projects that are considered to be strategically important.

CSNP Re-opener Outputs

- 2.3 All CSNP Re-opener Outputs will be subject to the Major Projects ODI-F.
- 2.4 The process for designating a project as a Major Project subject to the Major Projects ODI-F will be as follows:
- Step 1: NESO designation/publication. The NESO notifies us that it is planning to publish a CSNP or similarly strategic network plan setting out a clear needs case for a tranche of projects.
 - Step 2: Designation as a CSNP Re-opener Output. See the CSNP Re-opener Guidance and Submission Requirements Document for a summary of the process of designating a CSNP Re-opener Output.
 - Step 3: Assessment. Ofgem will assess the available information on each CSNP Re-opener Output to determine the appropriate incentive design and parameters (see Chapter 3).
 - Step 4: Licence modification. Ofgem will publish a statutory consultation on modifications required to Special Condition 4.8 to designate CSNP Re-opener Outputs as Major Projects and the proposed incentive parameters.
 - Step 5: Licence implementation. The required modifications will be made to Special Condition 4.8 Appendix 1 for the relevant TOs.

Other strategically important projects

- 2.5 Projects that are not CSNP Re-opener Outputs may be subject to the Major Projects ODI-F on a case-by-case basis. We will apply the Major Projects ODI-F to projects for which we consider there is justification in incentivising timely delivery and penalising late delivery.
- 2.6 The factors we will take into account are:
- Consumer benefit: Is there a consumer benefit in timely or accelerated delivery of this project, or conversely consumer detriment to late delivery?

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- Strategic importance: Is the project strategically important, for example as part of government or legislated targets?
 - Practicalities: Do we have, or will we be able to obtain, the inputs required for the ODI (eg a P50 Delivery Date)?
- 2.7 These factors will be considered in the round, and so do not have any specific thresholds to be met.
- 2.8 The process for designating a non-CSNP Re-opener Output project as a Major Project subject to the Major Projects ODI-F will be as follows:
- Step 1: Eligibility assessment. Ofgem will assess the available information to determine whether the project should have the incentive applied, ie assessment against paragraph 2.6.
 - Step 2: Assessment. Ofgem will assess the available information to determine the appropriate incentive design and parameters (see Chapter 3).
 - Step 3: Consultation. Ofgem will publish a consultation where we propose to designate a project as a Major Project subject to the ODI-F, including:
 - the application of the ODI-F to this project;
 - the proposed Major Projects ODI-F Target Delivery Date (TDD); and
 - the proposed incentive parameters (with any Confidential Information shared only with relevant parties).
 - Step 4: Decision. Ofgem will consider consultation responses and publish our decision.
 - Step 5: Licence modification. Ofgem will publish a statutory consultation on modifications as required to Special Condition 4.8 to designate CSNP Re-opener Outputs as Major Projects and the proposed incentive parameters.
 - Step 6: Licence implementation. The required modifications will be made to Special Condition 4.8 Appendix 2 for the relevant TOs.
- 2.9 For projects designated as Load Re-opener Outputs under Special Condition 3.18 of TO's ET licence, we intend that whether these projects have the ODI-F applied is considered for each project at the Eligibility Assessment stage of the Load Re-opener. Depending on the maturity of the project at that stage we may decide to re-assess its suitability for the incentive at a later stage.

Cancelled projects (after an ODI is applied)

- 2.10 It is possible that a project might be cancelled after our decision to apply the ODI-F to that project, and before the project is delivered.
- 2.11 Should a project subject to this incentive be cancelled the TOs must notify Ofgem as soon as is practicably possible and cease work on that project. Ofgem will then

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begin our process to determine whether we will remove the project from this ODI-F, removing any eligibility for rewards or liability for penalties under this ODI.

3. Incentive design and parameters

- 3.1 This incentive is designed to reward early or on-time delivery, and to penalise late delivery. This reference date for this incentive is the Major Projects Target Delivery Date (TDD) which will be determined for Major Projects on a project-by-project basis. We discuss our determination of the TDD within our description of incentive parameters in this chapter.
- 3.2 In the sections below we cover the below, in turn:
- The three designs, and the characteristics that will determine which design we apply to any given Major Project.
 - How we will determine the project-specific incentive parameters that will determine the exact reward or penalty a TO receives through the formula in Part A of Special Condition 4.8.
 - A high-level view of the calculation of the incentive.

Design selection

- 3.3 Our RIIO-ET3 Final Determinations² set out three different designs for the incentive. We will decide which design will apply to each Major Project at the time of introducing that project to the ODI-F.
- 3.4 The P50 Delivery Date and ODD are critical inputs to the incentive, including determining which design will apply to a Major Project. These will also determine the TDD, and for Design A projects will inform the setting of the overall maximum reward and overall maximum penalty.
- 3.5 Two factors will help to determine the appropriate design for any given project: the P50 Delivery Date and the Optimal Delivery Date (ODD). We define these below before setting out the three incentive designs.

P50 Delivery Date

- 3.6 A P50 Delivery Date is an estimate of the date by which a given project has a 50% chance of being delivered, determined using statistical methods and project-specific factors.
- 3.7 When setting the incentive for a project we will use the P50 Delivery Date as estimated at that the time the project is entered into the delivery incentive and in accordance with the requirements set out in our RIIO-ET3 Final Determinations. We need a P50 Delivery Date for all projects in the Major Projects ODI-F.
- 3.8 For any projects that are to be included in the ODI-F that do not already have a P50 Delivery Date developed in accordance with a methodology approved by the authority, we will require that the TO proposes one and we will verify this proposed

² [RIIO-3-Final-Determinations-ET.pdf](#)

date alongside the methodology, and will engage with the TO on any revisions that we consider necessary.

- 3.9 We set out in our Final Determinations our requirements for this P50 Delivery Date methodology, and our expectation that the NESO will publish a methodology as developed with input from us and the TOs – and that if it does not, we will engage with the TOs to develop a methodology.
- 3.10 Once that methodology is ready, we will update this Governance Document as necessary to reference it.

Optimal Delivery Date (ODD)

- 3.11 An ODD reflects an assessment of the date on which delivery of the project would bring the most benefit for the consumer, and we would typically expect that delivery of a project on the ODD developed independently by the NESO is best for minimising constraint costs.
- 3.12 An ODD is not a requirement for this incentive, but, where the NESO has developed an ODD for a project, we will make use of that ODD to calibrate the incentive in more detail.
- 3.13 We expect that for all CSNP Re-opener Outputs there will be an ODD developed by the NESO in line with its CSNP methodology.

Designs

- 3.14 Our decision on which ODI-F design applies to a Major Project will depend on whether we have an ODD for that Major Project and if we do, how that relates to the P50 Delivery Date.
- Design A: the ODD falls on or before the P50 Delivery Date.
 - Design B: an independent ODD estimate (eg by the NESO) does not exist at the time of setting the incentive.
 - Design C: the ODD falls after the P50 Delivery Date.

Incentive parameters

- 3.15 We set out below how we will determine each of the incentive parameters required to be entered into the Appendices of Special Condition 4.8 Major Projects output delivery incentive (ODI-F) for use in the formula in Part A of that Special Condition, for each Major Project, ie:
- Major Projects ODI-F Target Delivery Date (TDD);
 - potential daily reward;
 - lump sum reward available;
 - overall maximum reward;
 - potential daily penalty; and

- overall maximum penalty.
- 3.16 The values for each of these parameters will be set at the time it is determined that a project is a Major Project subject to the ODI-F. The values will be entered into Appendix 1 of the licence condition for CSNP Re-opener Outputs and Appendix 2 of the licence condition for non-CSNP Re-opener Output projects through the statutory licence modification.
- 3.17 This section also sets out how we will determine the following values which are inputs to the calculation of the above values but will not themselves be listed in the licence condition:
- forecast project totex;
 - potential annual reward; and
 - potential annual penalty.
- 3.18 This chapter is in line with the decisions as set out in our RIIO-3 Final Determinations ET Annex.

Major Projects ODI-F Target Delivery Date (TDD)

- 3.19 The P50 Delivery Date and, where applicable, the ODD will inform our setting of the TDD. In Table 1 we set out which parameter will be determined as the TDD for each project depending on the applicable design as set out earlier in this section.

Table 1: TDD across the three designs

| Design A: ODD on or before P50 Delivery Date | Design B: No ODD determined | Design C: ODD after P50 Delivery Date |
|---|------------------------------------|--|
| P50 Delivery Date | P50 Delivery Date | ODD |

Forecast project totex

- 3.20 Throughout this chapter we refer to forecast project totex as an input to the calculation of several parameters. For the purpose of this incentive, forecast project totex means the cost for that project as forecast at the time of setting the incentive.
- 3.21 For CSNP Re-opener Outputs, this will be determined by the NESO as part of developing its CSNP recommendations using inputs from the TOs alongside its own expertise. Where the project has a forecast totex that has received input and/or verification from both the NESO and the TO, we will use this as the forecast project totex for the purpose of calculations discussed in this chapter.
- 3.22 For other projects, eg where the forecast totex is proposed by the TO, we may choose to use a value different to that proposed forecast project totex for the purposes of this incentive. This might be considered appropriate if we believe the TO's forecast is too high or too low. If we are proposing a value other than that put forward by the TO or NESO, we would engage with the TO before including any

such proposal, and the reasons, in our consultation on introducing this incentive for that project.

- 3.23 The forecast project totex will not be entered into the licence condition, as it is an input into other incentive parameters rather than an incentive parameter in and of itself.

Incentive parameters for rewards

- 3.24 Table 2 sets out the approach to setting the incentive parameters relating to rewards, with further detail for the calculation of inputs set out below.

Table 2: Reward values and caps

| | Design A: ODD on or before P50 Delivery Date | Design B: No ODD determined | Design C: ODD after P50 Delivery Date |
|--|--|---|---|
| Potential annual penalty (interim value, not in licence) | 30% of constraint costs associated with one year of delay, within 2% and 5% of totex. If constraint costs are unknown: 2% of project totex. | 2% of project totex. | None, lump sum only. |
| Potential daily penalty | The potential annual penalty divided by 365. | The potential annual penalty divided by 365. | The potential annual penalty divided by 365. |
| Lump sum reward | 1% of forecast project totex if delivered on or before P50. | 1% of forecast project totex if delivered on or before P50. | 1% of forecast project totex if delivered on or before ODD. |
| Overall maximum reward | The lower of: <ul style="list-style-type: none"> 20% of forecast project totex, and the reward that the TO would be eligible for if it delivered the project on the ODD. | 10% of forecast project totex. | 1% of forecast project totex. |

Potential daily and annual rewards for Design A

- 3.25 For the purpose of determining the potential daily and annual reward values we require an estimate of the constraint costs that may be incurred as a result of a delay to that project, assuming a delay of one year after the ODD. If the NESO has

provided an estimate of constraint costs for the project, we will use this to calculate the potential annual and daily reward values.

3.26 The potential annual reward will be calculated as 30% of this constraint costs estimate, but subject to a minimum of 2% of forecast project totex and a maximum of 5% of forecast project totex.

3.27 If the NESO has not provided an estimate of constraint costs for the project, we set the annual reward value as 2% of forecast project totex.

3.28 The potential daily reward will then be this potential annual reward divided by 365.

Overall maximum reward

3.29 The lump sum and potential daily reward both count towards the calculation of the overall maximum reward.

3.30 For the purpose of calculating the overall maximum reward under Design A, the reward that the TO would be eligible for if it delivered the project on the ODD is calculated as:

$$(\text{potential daily reward} \times (\text{P50 delivery date minus ODD, in days})) + \text{lump sum}$$

Incentive parameters for penalties

3.31 Table 3 sets out the approach to setting the incentive parameters relating to penalties.

Table 3: Penalty values and caps

| | Design A: ODD on or before P50 Delivery Date | Design B: No ODD determined | Design C: ODD after P50 Delivery Date |
|--|---|--|--|
| Potential annual penalty (interim value, not in licence) | Half the potential annual reward. | Half the potential annual reward. | 0.5% of forecast project totex. |
| Potential daily penalty | The potential annual penalty divided by 365. | The potential annual penalty divided by 365. | The potential annual penalty divided by 365. |
| Overall maximum penalty | Half the maximum reward. | Half the maximum reward. | 1% of forecast project totex. |

Calculation of the incentive

3.32 The TO will be eligible for a reward or penalty according to difference between the Major Projects ODI-F Target Delivery Date (TDD) and the date on which the project is Fully Delivered.

For delivery before the TDD

- 3.33 Under Designs A and B, for delivery (Fully Delivered) before the TDD the TO will be eligible for a reward equal to the following, where all parameters are project-specific:

$$\min((\text{potential daily reward} \times \text{number of days delivered before TDD}) + \text{potential lump sum}, \quad \text{overall maximum reward})$$

- 3.34 For Design C, for delivery (Fully Delivered) before the TDD the TO will be eligible for a reward equal to the potential lump sum for that project.

For delivery on the TDD

- 3.35 Under all designs, for delivery (Fully Delivered) on the same day as the TDD the TO will be eligible for a reward equal to the potential lump sum for that project.

For delivery after the TDD and during any Major Projects ODI-F Penalty Exemption Period (PEP)

- 3.36 A TO may apply for a PEP to apply for any Major Project, the process for which is set out in Section 4. Any PEP which we have approved under Special Condition 4.8, Part D will delay the start of penalties but does not affect the TDD, ie does not affect the date up to and on which the Major Project has reward eligibility.
- 3.37 Under all designs, for delivery within the PEP the TO will neither receive a reward nor incur a penalty under this ODI.

For delivery after the TDD and any Major Projects ODI-F Penalty Exemption Period

- 3.38 Penalties begin accruing after the TDD plus any PEP. If the PEP is 90 days, penalties begin accruing on day 91 after the TDD.
- 3.39 Under all designs, for delivery after the TDD plus any PEP, the TO will be liable for a penalty equal to the following, where all parameters are project-specific:
- $$\min((\text{potential daily penalty} \times \text{number of days delivered after (TDD + PEP)}), \quad \text{overall maximum penalty})$$

4. Modifications to the Major Projects ODI-F

4.1 The Major Projects ODI-F includes a mechanism to allow the TOs to apply for a modification to the:

- Major Projects ODI-F Penalty Exemption Period, ie an exemption from penalties for a limited duration if projects are subject to delays which fall within the definition of a Major Projects ODI-F Delay Event. This chapter provides guidance on the operation of this mechanism.
- Major Projects ODI-F Target Delivery Date, in the case of a change to a project which is a Major Project Fundamental Scope Change.

4.2 We discuss each of these in turn below.

Major Projects ODI-F Penalty Exemption Period

Major Projects ODI-F Delay Events

4.3 A Major Projects ODI-F Delay Event is defined in the Special Condition 1.1 of the TOs' licences. Where the TO can provide sufficient evidence that an event which meets the definition of a Major Projects ODI-F Delay Event set out in Special Condition 1.1 has occurred, we will grant an adjustment to the Major Projects ODI-F Penalty Exemption Period.

4.4 As a result of any adjustment to a Major Projects ODI-F Penalty Exemption Period:

- the date on which penalties for late delivery of the Major Project will begin to accrue under the Major Projects ODI-F will be delayed by the number of days added to the Major Projects ODI-F Penalty Exemption Period; and

4.5 A Major Projects ODI-F Delay Event is an event that:

- is outside the licensee's control;
- the licensee has used its best endeavours to prevent the occurrence of, and to mitigate the impact of;
- causes, or is reasonably expected to cause, one or more Major Projects to be delayed by at least 30 days; and
- Is caused by one or more of the following:
 - is outside the licensee's control;
 - the licensee has used its best endeavours to prevent the occurrence of, and to mitigate the impact of;
 - causes, or is reasonably expected to cause, one or more Major Projects to be delayed by at least 30 days; and
 - is one or more of the following:
 - (a) acquisition of land / necessary land rights via compulsory acquisition;
 - (b) delays in obtaining planning approval and consents;

- (c) delays regarding seabed leasing or agreements for interaction with other third-party infrastructure;
 - (d) extreme weather conditions (lower than 1 in 10 probability);
 - (e) pandemic or livestock epizootic;
 - (f) significant archaeological discoveries;
 - (g) significant change to project scope;
 - (h) significant protestor action;
 - (i) unforeseen and significant ground or seabed conditions;
 - (j) changes in law, regulation, and international treaties, applicable to the UK, which are reasonably unforeseeable and which were not foreseen by the licensee; and/or
 - (k) unforeseen unexploded ordinance mitigation; or war, hostilities, or terrorist events.
- 4.6 We will assess the TO's actions before and after the Major Projects ODI-F Delay Event has occurred by reference to actions that a notional efficient TO could reasonably have been expected to take. We will also consider the assumptions within the TO's delivery plans.
- 4.7 Our determination of whether or not the definition of Major Projects ODI-F Delay Event set out in Special Condition 1.1 is met will depend on the relevant circumstances and the quality of supporting evidence put forward by TOs in their applications.
- 4.8 In their application for a Major Projects ODI-F Delay Event we expect the TO to draw clear links between the event and the delay to the project.
- 4.9 There are many links between projects, with some projects having to be delivered/sufficiently constructed for another to proceed, or where numerous projects are dependent on a particular outage being available. Therefore, there is a risk that should one project be delayed, this could lead to other projects also being delayed. Where Ofgem agrees that a Major Projects ODI-F Delay Event has occurred on a project and the delay caused has a direct impact on the delivery of another Major Project that the TO is not able to prevent the occurrence of, and to mitigate the impact of, we will consider further penalty exemption requests for the related projects that are impacted.
- 4.10 With respect to our requirement for best endeavours, we expect the TOs to do their best, acting in a prudent, determined and reasonable manner, to avoid or mitigate delays, while acknowledging that there will be occasions where there are limitations to what TOs can achieve.
- 4.11 For the avoidance of doubt, we do not consider the best endeavours obligation to require expenditure in a manner that would be harmful to consumers. While it may require TOs to consider and pursue a number of reasonable courses to prevent the occurrence of, and mitigate the impact of, a delay event, it does not

require expenditure to be incurred where there are low prospects of securing the desired result

The process for applications for penalty exemptions

- 4.12 This section provides further information on the process for making applications for penalty exemptions under Part D of Special condition 4.8. It also sets out our expectations of the contents of those applications.
- 4.13 Before making an application for a penalty exemption, the TO must notify Ofgem in writing of its intention to make that application in accordance with the provisions set out in Special Condition 4.8.
- 4.14 Some potential Major Projects ODI-F Delay Events may not have a clear commencement date, and in other cases, the occurrence of the potential Major Projects ODI-F Delay Event may not be immediately apparent to the relevant TO. The deadline for notification reflects this by taking into account the date that the TO has become aware of the event. We expect that a TO acting in line with its statutory and licence obligations would have robust processes in place to ensure that potential Major Projects ODI-F Delay Events are identified and brought to its notice as soon as reasonably practical.

Contents of the application

- 4.15 Special Condition 4.8 sets out the TOs' obligations in relation to the contents of an application for penalty exemptions. This section provides further guidance in relation to those obligations.
- 4.16 Special Condition 4.8.14(a) requires the TO to provide a description of the claimed Major Projects ODI-F Delay Event along with evidence that supports the TO's application that the claimed Major Projects Delay Event meets the criteria for a Major Projects ODI-F Delay Event as defined in Special Condition 1.1.
- 4.17 We expect the application would include:
- The expected delivery date for the project according to the most recent project delivery plan, or the expected delivery date that is consistent with a reasonable set of 'baseline' planning assumptions relating to the occurrence of the potential Major Projects ODI-F Delay Event along with supporting information on how that date was estimated.
 - Whether the potential for a delay event of the type that is the subject of the TO's claimed Major Projects ODI-F Delay Event was anticipated within the TO's original delivery plans submitted to the NESO and/or Ofgem and if so, what underlying assumptions in relation to the relevant impact were reflected in those delivery plans.
 - The expected delivery date taking account of:
 - the effects of the potential Major Projects ODI-F Delay Event(s) that is the subject of the application; and

- the effects of any preventative and mitigating steps that a reasonable and efficient TO might take in relation to that potential Major Projects ODI-F Delay Event.
- A detailed explanation of how the potential Major Projects ODI-F Delay Event(s) and the steps taken by the TO have caused or contributed to the revision in the expected delivery date of the project.
- We would expect the application to include appropriate supporting evidence (as available) to enable Ofgem to assess the reasonableness of the TO's expected delivery dates (both before and after the event).
- We also expect the TO to provide appropriate supporting evidence that the TO used its best endeavours to prevent and/or mitigate the event and/or its effect. In assessing whether the TO has exercised best endeavours, we will consider whether the effects of the potential Major Projects ODI-F Delay Event could have been anticipated, prevented or mitigated by a notional efficient TO acting in a prudent, determined and reasonable manner.

Determination of the penalty exemption period

- 4.18 The Major Projects ODI-F Penalty Exemption Period in Appendix 1 or Appendix 2 of Special Condition 4.8 will be initially set to zero for all projects. Following our assessment of a penalty exemption application submitted by a TO, we may decide to modify the Major Projects ODI-F Penalty Exemption Period term for the relevant Major Project. We will do so where the TO has evidenced that an event meeting the definition of a Major Projects ODI-F Delay Event at Special Condition 1.1 has occurred.
- 4.19 In line with paragraph 5.4 of this document, the purpose of this modification is to exempt the TOs from being subject to Major Projects ODI-F penalties for that Major Project for the duration of any Major Projects ODI-F Delay Event that can reasonably be attributed to factors outside their control, adjusted for the impact of mitigating measures that a notional efficient TO acting reasonably would have undertaken.
- 4.20 In determining the value of the modified Major Projects ODI-F Penalty Exemption Period, Ofgem will have regard to:
- the duration of any actual or expected delay that can be reasonably attributed to the Major Projects ODI-F Delay Event; and
 - the effect on the duration of any actual or expected delay of preventative and mitigating actions that a notional efficient TO could be reasonably expected to take in connection with the Major Projects ODI-F Delay Event.
- 4.21 Ofgem will determine the duration of the actual or expected delay, taking account of:
- estimates of the delay period provided by the TO as part of its application;

- its assessment of the expected delivery dates (both with and without the Major Projects ODI-F Delay Event); and
 - its assessment of the proportion of the delay that could reasonably be attributed to the Major Projects ODI-F Delay Event.
- 4.22 Our RIIO-3 Final Determinations ET Annex set out that penalty exemptions will only be granted where delivery times have been materially impacted. For the purposes of the Major Projects ODI-F, we consider that a delay of 30 days is an appropriate minimum duration at which a delay to a Major Project would be considered material. We would therefore not make modifications to licences to grant penalty exemptions of fewer than 30 days.
- 4.23 Where Ofgem agrees that a Major Projects ODI-F Delay Event has occurred and a Major Projects ODI-F Penalty Exemption Period has been determined, the delivery date in Appendix 1 of Special Condition 3.19 (CSNP Re-opener and Price Control Deliverable) will also be adjusted by a period equal to the Major Projects ODI-F Penalty Exemption Period. This will be done under Section 11A of the Electricity Act.

Modification to the TDD

- 4.24 In some cases there may need to be fundamental changes to the scope of a Major Project. A Major Project Fundamental Scope Change is defined as one which means that the new design solution required to meet the identified system need has changed the Major Project to the extent that it essentially constitutes a different project.
- 4.25 For example, a fundamental scope change may occur as a result of redesign by the NESO to address modified system needs, or by changes to the design required for the purposes of achieving planning permission or meeting legal requirements.
- 4.26 A Major Project Fundamental Scope Change might mean that the original Major Projects ODI-F Delivery Date is no longer considered achievable. In these circumstances we will consider whether there is sufficient evidence to suggest that it is appropriate to change the Major Projects ODI-F Target Delivery Date through a Section 11A licence modification.
- 4.27 In these circumstances, we will consider whether the project remains suitable for funding under the relevant mechanism (ie the CSNP Re-opener for Major Projects in Appendix 1 of Special Condition 4.8, and other mechanisms including the Load Re-opener for Major Projects in Appendix 2 of Special Condition 4.8).
- 4.28 If we agree that the Major Project remains suitable for funding under the relevant mechanism (eg the CSNP Re-opener, Load Re-opener), we will consider whether it is more appropriate to:
- update the existing output; or

- remove the original output and set the updated output as a new output under the relevant funding mechanism before designating it as a new Major Project and setting a new Major Projects ODI-F Target Delivery Date.

4.29 In the case of projects that remain subject to a high level of uncertainty in their design at the point a Major Project Fundamental Scope Change is requested, or where incentivisation through the Major Projects ODI-F is unlikely to deliver benefits to consumers, we will consider whether the project in question should be removed from the Major Projects ODI-F.

4.30 Any decision to modify the Major Projects ODI-F Target Delivery Date would be based on a range of project-specific factors and circumstances including, but not limited to, the level of confidence we have in the revised P50 Delivery Date and the extent to which consumer benefit can be demonstrated from delivering the project later than the original Major Projects ODI-F Target Delivery Date. We expect there to be limited occasions and circumstances in which a project scope change will meet the threshold to be considered a Major Project Fundamental Scope Change.

Worked examples of the penalty exemption mechanism

4.31 Table 4 below sets out some examples of how the Major Projects ODI-F penalty exemption mechanism could work in practice.

Table 4: Theoretical examples of the Major Projects ODI-F penalty exemption mechanism

| Illustrative scenario | Possible outcome of the penalty exemption mechanism |
|---|---|
| Example 1 Major Projects ODI-F Target Delivery Date: 31/12/2031 Expected delivery date without taking account of the potential Major Projects ODI-F Delay Event: 30/06/2031 Expected delivery date taking account of the impact of the potential Major Projects ODI-F Delay Event and TO's actions: 30/09/2031 Requested Major Projects ODI-F Penalty Exemption Period: 31 days | Ofgem accepts the expected delivery dates. Licence modification to increase the value of the Major Projects ODI-F Penalty Exemption Period for the project by 31 days. |

| Illustrative scenario | Possible outcome of the penalty exemption mechanism |
|--|---|
| <p>Example 2</p> <p>Major Projects ODI-F Target Delivery Date: 31/12/2031</p> <p>Expected delivery date without taking account of the potential Delay Event: 30/06/2031</p> <p>Expected delivery date taking account of the impact of the potential Major Projects ODI-F Delay Event and TO's actions: 31/03/2032</p> <p>Requested Major Projects ODI-F Penalty Exemption Period: 276 days</p> | <p>Ofgem rejects the TO's expected delivery dates based on the available evidence that the delay period that can reasonably be attributable to the Major Projects ODI-F Delay Event is 150 days and not 276 days.</p> <p>Licence modification to increase the value of the Major Projects ODI-F Penalty Exemption Period for the project by 150 days.</p> |

No financial benefits to the TO in the event of a delay

4.32 TOs should not benefit financially from a delay to a Major Project.

4.33 If a project is delivered after the Major Projects ODI-F Target Delivery Date, or if a penalty exemption is granted under Special Condition 4.8, we may modify the totex allowance profile associated with the project to match the profile of actual expenditure. Such modifications would be made under Section 11A of the Act.

4.34 We expect that any payments or credits received by the TO and provided by a supplier or contractor as a consequence of a delay to a project (for example, delay charges, penalties) that leaves the TO in a net positive position relative to the actual Major Projects ODI-F penalty applied in respect of that project will be passed onto consumers. Before passing the full amount recovered onto consumers we will consider whether there are any specific TO-incurred costs related to the delay that it is reasonable to compensate from any recovered funds.

Application of rewards and penalties

4.35 Aggregate rewards and penalties determined under the Major Projects ODI-F in any year would be applied as an adjustment to the TO's Allowed Revenue.

4.36 The PCFM has been modified for inclusion of the Major Projects ODI-F to allow for the application of any rewards and penalties incurred within the RIIO-3 period.

4.37 For projects that are being delivered as a joint venture between two or more TOs but where the actual split of the joint venture is not yet known, once the final split is known following PA we will consult on modifying the potential daily reward and penalty values so that they are set between the TOs on a pro rata basis.