

# Governance

## 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.

The Major Projects output delivery incentive 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 output delivery incentive. 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 is intended to incentivise timely delivery of strategically important load-related investments.
- 1.2 Under the Major Projects output delivery incentive, 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 documents:
  - RIIO-3 Final Determinations ET Annex, which sets out our RIIO-ET3 policy in relation to the Major Projects output delivery incentive: [RIIO-3-Final-Determinations-ET](#).
  - CSNP<sup>1</sup> 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 output delivery incentive.
  - 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 output delivery incentive.
  - Special conditions to the Electricity Transmission Licences, including Special Condition 4.8 on the Major Projects output delivery incentive: [Home Page - Ofgem Public Register](#).
- 1.4 Figure 1 below demonstrates how this Governance Document fits alongside related RIIO-ET3 documents, including other Associated Documents (ADs).

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<sup>1</sup> 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"> <li>Initial allowance set for load projects.</li> <li>Set on a project-by-project basis.</li> <li>PCD allows 100% of funding if achieve full consents, interim milestones also given.</li> </ul> <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"> <li>Multiple tracks for TOs to submit projects for designation of PCD and LO, eligibility for PCF, and later for project allowances.</li> <li>Includes cost assessment for all projects, needs case assessment for some projects not approved at FDs.</li> </ul> <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 CSNP taken as needs case.</p> <ul style="list-style-type: none"> <li>Designation of PCD and LO, and TO submission for project allowances at Project Assessment stage.</li> </ul> <p>Final Determinations ET Annex Chapter 4 AD: CSNP Re-opener Guidance and Submissions Requirements Document</p>	
<p>SpC 4.8: Major Projects ODI-F</p> <ul style="list-style-type: none"> <li>Set for all CSNP Re-opener Outputs at the time of designating under the CSNP Re-opener.</li> <li>Considered for Load Re-opener projects at or after Eligibility Assessment stage.</li> <li>Each projects will be assessed against its incentive annually.</li> </ul> <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 output delivery incentive is Authority-triggered only, and so the TO cannot formally request this.
- 2.2 The scope of the Major Projects output delivery incentive is:
- all National Energy System Operator (NESO)-recommended projects that are 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 as defined under Special Condition 3.19 (CSNP Re-opener and Price Control Deliverable (CSNPR<sub>t</sub>)) will be subject to the Major Projects output delivery incentive under Special Condition 4.8 (Major Projects output delivery incentive (MPI<sub>t</sub>)).
- 2.4 The process for designating a project as a Major Project subject to the Major Projects output delivery incentive 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. As set out in Special Condition 4.8 Part B, Ofgem will publish a statutory consultation on modifications required 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.
- 2.5 The statutory consultation under Step 4 will include our proposed modifications to the licence, ie:
- our proposal to apply the output delivery incentive to this project;
  - the proposed Major Projects ODI-F Target Delivery Date (TDD);

- which incentive design (as set out in Section 3 of this document) will apply to the project; and
- the proposed incentive parameters (with any Confidential Information shared only with relevant parties).

## **Other strategically important projects**

- 2.6 Projects that are not CSNP Re-opener Outputs may be subject to the Major Projects output delivery incentive on a case-by-case basis. We will apply the Major Projects output delivery incentive as under Part C of Special Condition 4.8 (Major Projects output delivery incentive (MPI<sub>i</sub>)) to projects for which we consider there is justification in incentivising timely delivery and penalising late delivery.
- 2.7 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?
  - 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)?
- 2.8 These factors will be considered in the round, and so do not have any specific thresholds to be met.
- 2.9 In assessing a project for suitability for the Major Projects output delivery incentive, we will use the information available to us and information provided by the TO as part of its inputs to the NESO and/or in its application to Ofgem (eg under the Load Re-opener). If additional information is required on a case-by-case basis we will discuss with the TO.
- 2.10 The process for designating a non-CSNP Re-opener Output project as a Major Project subject to the Major Projects output delivery incentive 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 2.7.
  - 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 output delivery incentive.
  - 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 under Part C of Special Condition 4.8 (Major

Projects output delivery incentive (MPI<sub>t</sub>) to designate strategically important projects (that are not 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.

2.11 The consultation under Step 3 will include our proposals, including:

- our proposal to apply the output delivery incentive to this project, and our reasoning against the factors in paragraph 2.7;
- the proposed Major Projects ODI-F Target Delivery Date (TDD);
- which incentive design (as set out in Section 3 of this document) will apply to the project; and
- the proposed incentive parameters (with any Confidential Information shared only with relevant parties).

2.12 For projects designated as Load Re-opener Outputs under Special Condition 3.18 (Load Re-opener and Price Control Deliverable (LRt)), we intend that Step 1 of paragraph 2.10 would take place at the Eligibility Assessment stage of the Load Re-opener. Depending on the maturity of the project at the Eligibility Assessment stage we may decide to defer assessment of its suitability for the Major Projects output delivery incentive to a later stage of the Load Re-opener process.

## **Cancellation of a Major Project**

2.13 It is possible that a project might be cancelled after our decision to apply the output delivery incentive to that project, and before the project is delivered.

2.14 Should a project subject to this incentive be cancelled the TOs must notify Ofgem as soon as is practicably possible and cease work and demobilise from that project. Ofgem will then begin our process to remove the project from this output delivery incentive, removing any eligibility for rewards or liability for penalties under this output delivery incentive.

### 3. Incentive design and parameters

- 3.1 This incentive is designed to reward early or on-time delivery, and to penalise late delivery. The reference date for this incentive is the Major Projects ODI-F 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 Determinations<sup>2</sup> 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 output delivery incentive.
- 3.4 The P50 Delivery Date and Optimal Delivery Date (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 some projects will inform the setting of the overall maximum reward and overall maximum penalty (see Design A as defined in paragraph 3.13).
- 3.5 Two factors will help to determine the appropriate design for any given project: the P50 Delivery Date and the 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 the time that 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 output delivery incentive.
- 3.8 For any projects that are to be included in the output delivery incentive that do not already have a P50 Delivery Date developed in accordance with the methodology

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<sup>2</sup> [RIIO-3-Final-Determinations-ET.pdf](#)

approved by the authority, we will require that the TO proposes one and we will verify this proposed date alongside the methodology, and will engage with the TO on any revisions that we consider necessary.

- 3.9 We set out in our RIIO-3 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. If this methodology is not developed in time for the first network plan expected in the RIIO-3 period (tCSNP2 Refresh), we may look to develop an alternative, interim methodology with the TOs, while the enduring methodology is developed for the first CSNP. Once that methodology is ready, we will update this Governance Document as necessary to include it.

### Optimal Delivery Date (ODD)

- 3.10 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 maximising consumer value in terms of NPV – including considering system needs, constraint costs, and construction costs over different timelines.
- 3.11 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. We will only use ODDs that have been developed or verified by the NESO on an independent basis, we will not accept submissions directly from the TOs.
- 3.12 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

- 3.13 Our decision on which output delivery incentive 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

- 3.14 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 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.

3.15 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 output delivery incentive. 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.

3.16 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.

3.17 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)

3.18 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**

<b>Design A: ODD on or before P50 Delivery Date</b>	<b>Design B: No ODD determined</b>	<b>Design C: ODD after P50 Delivery Date</b>
P50 Delivery Date	P50 Delivery Date	ODD

### Forecast project totex

3.19 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 forecasted at the time of setting the incentive.

3.20 For CSNP Re-opener Outputs, this will be provided by the relevant TO and validated 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.

- 3.21 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 policy consultation and (subsequent policy decision) on introducing this incentive for that project. Commercial Information will be shared only with the relevant TO, but the public consultation can include our reasoning and the direction of change (ie an increase or decrease, and approximate magnitude) such that other stakeholders can meaningfully engage with the proposal.
- 3.22 We recognise that different delivery dates may result in different project costs, eg an earlier delivery date may bear additional costs. We understand that the TOs may submit a range of dates and associated costs to the NESO for consideration for the CSNP. For the purposes of the incentive, we would need to understand the approach - including on risk - taken for the P50 Delivery Date approach submitted to the NESO, and any ODD (especially when the ODD falls later than the P50 Delivery Date).
- 3.23 The forecast project totex will not be entered into Special Condition 4.8 (Major Projects output delivery incentive (MPI)), 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**

	<b>Design A: ODD on or before P50 Delivery Date</b>	<b>Design B: No ODD determined</b>	<b>Design C: ODD after P50 Delivery Date</b>
Potential annual reward (interim value, not in licence)	30% of constraint costs associated with one year of delay, within 2% and 5% of forecast project totex. If constraint costs are unknown: 2% of forecast project totex.	2% of forecast project totex.	None, lump sum only.
Potential daily reward	The potential annual reward divided by 365.	The potential annual reward divided by 365.	The potential annual reward divided by 365.

	<b>Design A: ODD on or before P50 Delivery Date</b>	<b>Design B: No ODD determined</b>	<b>Design C: ODD after P50 Delivery Date</b>
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"> <li>• 20% of forecast project totex, and</li> <li>• the reward that the TO would be eligible for if it delivered the project on the ODD.</li> </ul>	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:

$$\min(20\% \text{ of project totex}, ( \text{potential daily reward} \times (\text{P50 delivery date minus ODD, in days})) + \text{lump sum})$$

## 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**

	<b>Design A: ODD on or before P50 Delivery Date</b>	<b>Design B: No ODD determined</b>	<b>Design C: ODD after P50 Delivery Date</b>
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 delivered to the full specification.

### 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.

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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( (potential daily penalty × number of days delivered after (TDD + PEP)), overall maximum penalty)*

## **4. Modifications to the Major Projects output delivery incentive**

4.1 Special Condition 4.8 (Major Projects output delivery incentive (MPI)) Part D includes mechanisms 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**

4.3 We will grant an adjustment to the Major Projects ODI-F Penalty Exemption Period for a given Major Project if we conclude, through assessing an application by a TO, that a Major Projects ODI-F Delay Event (as defined under Special Condition 1.1) has occurred.

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 output delivery incentive will be delayed by the number of days added to the Major Projects ODI-F Penalty Exemption Period.

4.5 As defined in Special Condition 1.1, 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:
  - a) one or more activity by a different Transmission Licensee working on the same project that directly impacts the licensee's delivery of the project;
  - b) acquisition of land / necessary land rights via compulsory acquisition;
  - c) delays in obtaining planning approval and consents;
  - d) delays regarding seabed leasing or agreements for interaction with other third-party infrastructure;
  - e) Extreme Weather Events;
  - f) pandemic or livestock epizootic;

- g) significant archaeological discoveries;
  - h) significant change to project scope;
  - i) significant protestor action;
  - j) unforeseen and significant ground or seabed conditions;
  - k) changes in law, regulation, and international treaties, applicable to the UK, which are reasonably unforeseeable and which were not foreseen by the licensee;
  - l) unforeseen unexploded ordinance mitigation; and/or
  - m) 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 project 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 Where there are multiple factors, TOs must set out clearly whether the factors are impacting critical or non-critical path activities, and how these factors are affecting the date, eg if delays are concurrent or sequential, and how the TO has calculated its proposed Major Projects ODI-F PEP.
- 4.9 In its 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.
- 4.10 We recognise that multiple Major Projects may be affected by a single event. In such a situation we require that the TO submits a separate application for each Major Project for which it wants to request a modification. We require that the licensee sets out the evidence and how this relates to the relevant project and the proposed addition to the Major Projects ODI-F Penalty Exemption Period. The licensee may use the same evidence across these two applications, but it must be explicitly submitted with each application.
- 4.11 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 prevent the occurrence of, or mitigate the impact of, delays, while acknowledging that there will be occasions where there are limitations to what TOs can achieve.
- 4.12 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

4.13 This section provides further information on the process for making applications for penalty exemptions under Part D of Special Condition 4.8 (Major Projects output delivery incentive (MPI<sub>t</sub>)). It also sets out our expectations of the contents of those applications.

### **Notice of intention to apply**

4.14 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.

4.15 The timing for notifying the Authority of the intention to submit an application is set in Special Condition 4.8.13 as no more than 45 days after the later of: when the potential Major Projects ODI-F Delay Event commenced, or the TO became aware it had commenced.

4.16 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.

4.17 In exceptional circumstances Ofgem may agree to allow TOs to make applications after this date has passed. It is expected that such an agreement would only occur in circumstances where the relevant TO has provided compelling evidence that the 45-day application window could not be complied with.

### **Timing of the application**

4.18 Special Condition 4.8.14 requires that any application for a modification to the Major Projects ODI-F Penalty Exemption Period is done within 45 days of the cessation of the potential Major Projects ODI-F Delay Event, unless we specify a later date.

4.19 It is expected that an alternative date would only occur in circumstances where the relevant TO has provided compelling evidence that the 45-day application window could not be complied with.

### **Contents of the application**

4.20 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.

4.21 Special Condition 4.8.15(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.

4.22 We expect the application would include:

- The expected P50 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 related 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, and whether those revisions are in relation to critical path activities.
- 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).
- Appropriate supporting evidence that the TO used its best endeavours to prevent and/or mitigate the event and/or its effect. Such evidence could include comparisons with best practice in infrastructure projects of a comparable nature both within and outside the UK. 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. With respect to the requirement for best endeavours please see paragraphs 4.11 and 4.12.

### Determination of the penalty exemption period

4.23 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 under Part D of Special Condition 4.8 (Major Projects output delivery incentive (MPI<sub>i</sub>)), 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.

- 4.24 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.
- 4.25 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.
- 4.26 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;
  - our assessment of the expected delivery dates (both with and without the Major Projects ODI-F Delay Event); and
  - our assessment of the proportion of the delay period that can reasonably be attributed to the Major Projects ODI-F Delay Event.
- 4.27 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.
- 4.28 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 Major Projects ODI-F Target Delivery Date**

- 4.29 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.

- 4.30 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.
- 4.31 A fundamental scope change would typically be a more severe change than under the Major Projects ODI-F Delay Events definition, which includes “significant change to project scope”. A Major Project Fundamental Scope Change is specifically to do with scope changes that would otherwise be dealt with by cancelling the project and introducing a new one with changed scope. 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.
- 4.32 A Major Project Fundamental Scope Change might mean that the original Major Projects ODI-F Delivery Date is no longer considered achievable or is no longer appropriate. 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. This would consider changes to the existing Major Projects ODI-F Target Delivery Date to deliver the new scope of works as a result of this change.
- 4.33 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).
- 4.34 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.
- 4.35 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 output delivery incentive is unlikely to deliver benefits to consumers, we will consider whether the project in question should be removed from the Major Projects output delivery incentive.
- 4.36 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 by the revised date compared with the original Major Projects ODI-F Target Delivery Date.

## Worked examples of penalty exemptions

4.37 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 Major Projects ODI-F Penalty Exemption Period**

Illustrative scenario	Possible outcome of the penalty exemption mechanism
<p>Example 1</p> <p>Major Projects ODI-F Target Delivery Date: 31/12/2031</p> <p>Expected delivery date without taking account of the potential Major Projects ODI-F 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: 30/09/2031</p> <p>TO requested Major Projects ODI-F Penalty Exemption Period: 31 days</p>	<p>Ofgem accepts the expected delivery dates and the TO's requested Penalty Exemption Period of 31 days.</p> <p>Licence modification to increase the value of the Major Projects ODI-F Penalty Exemption Period for the project by 31 days.</p>
<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>TO requested Major Projects ODI-F Penalty Exemption Period: 276 days</p>	<p>Ofgem rejects the TO's expected delivery dates as, based on the available evidence, it does not consider that the delay period that can be reasonably attributed to the Major Projects ODI-F Delay Event is 276 days. Ofgem considers the delay period to be 150 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

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

4.39 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.

- 4.40 We expect that any payments or credits received by a TO from a supplier or contractor, as a consequence of a delay to a project, that are in excess of actual costs incurred by that TO (such costs including, but not limited to, internal or third party prolongation costs such as staff, cost of capital, insurance, standing time, or plant rental) will be passed onto consumers through a modification to the totex allowances of that project. Before making a modification, we will require proof of actual costs from the TO. Such modifications would be made under Section 11A of the Act.

### **Application of rewards and penalties**

- 4.41 Aggregate rewards and penalties determined under the Major Projects output delivery incentive in any year would be applied as an adjustment to the TO's Allowed Revenue.
- 4.42 The PCFM has been modified for inclusion of the Major Projects output delivery incentive to allow for the application of any rewards and penalties incurred within the RIIO-3 period.
- 4.43 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.

### **CSNP change control processes**

- 4.44 Change control as set out for the Major Projects output delivery incentive and other relevant price control mechanisms (such as the CSNP Re-opener and Load Re-opener) should be considered as separate to the NESO's change control process for its centralised planning role and future CSNP publications.
- 4.45 The NESO's change control may include similar processes but with different thresholds. In some circumstances, the scale of change may justify the Authority notifying the NESO and/or requesting a view from the NESO on whether the changes are in line with system requirements. Should this arise, we would work with the relevant licensee to discuss appropriate sharing of information with the NESO. Further detail on the NESO's change control processes will be confirmed in due course as the CSNP Methodology is finalised.
- 4.46 We will discuss with TOs and update this and other Associated Documents in future if required to reflect changing requirements.