



Making a positive difference
for energy consumers

To all cap and floor
interconnector projects and other
interested parties

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Dear stakeholders,

Consultation on our proposed approach in circumstances where an interconnector projects' cap and floor regime start date has been delayed due to force majeure events in the pre-operational period

We are consulting on our proposed approach to providing a means for cap and floor interconnector projects that have encountered delays, caused by force majeure events, during the pre-operational period to request a later regime start date (RSD) for the Authority's consideration.

Our proposed approach aims to provide both:

- (a) **a formal mechanism, set out in a proposed new standard condition** - for interconnector projects that have had their specific cap and floor regime implemented in their respective interconnector licences; and
- (b) **a complementary process, set in a policy decision document** (attached at Annex 1), that largely mirrors the above formal mechanism - for interconnector projects that have not yet had their cap and floor regime implemented in their respective interconnector licences.

We are conducting a statutory consultation on the proposed licence modifications required in order to:

- **Insert a new standard condition 26A (Delay to Regime Start Date caused by Pre-Operational Force) into Section G of the electricity interconnector licence, as part of our approach to implementing a**

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pre-operation force majeure mechanism – This condition will allow the Authority to specify a later RSD where it agrees that project delivery has been delayed due to an event or circumstance of force majeure during the pre-operational period;

We are also conducting a statutory consultation on proposed licence modifications to the special conditions of the electricity interconnector licences held by Nemo Link Limited (Nemo Link), National Grid IFA 2 Limited (IFA2) and National Grid North Sea Link Limited (NSL) in order to:

- (a) **amend the definition of 'Force Majeure' as contained in special condition 1 of the electricity interconnector licences held by Nemo Link, NSL and IFA2** - to implement relevant provisions of our decision of May 2020¹;
- (b) **make consequential changes to the definition of 'Regime Start Date' in special condition 1 of the electricity interconnector licences held by IFA2 and NSL** - to reflect the proposed introduction of new standard condition 26A;
- (c) **further amend the electricity interconnector licence held by NSL as follows:**
 - (i) Special condition 2: Cap Level and Floor Level - correct a typographical error in paragraph 19 by inserting a missing formula for calculating the value of the RPI_t term; and
 - (ii) Special condition 8: Process for determining the value of the Post Construction Adjustment terms - amend provisions with respect to the timeframe within which the licensee is required to submit its proposed values for the Post Construction Adjustment (PCA) terms to align it with corresponding provisions in the electricity interconnector licence held by National Grid IFA 2 Limited.

In the context of force majeure events in the pre-operational period, we are also seeking views on our proposal to put in place a complementary process, as set out in a draft policy decision document (published as part of this consultation in attached Annex 1). This process is intended to apply to requests for an adjustment to the RSD that are raised before licence conditions implementing the cap and floor regime take effect in the licence granted to an affected licensee. This process largely mirrors the mechanism contained in proposed new standard condition 26A.

¹ Decision on proposed changes to our electricity interconnector cap and floor regime to enable project finance solutions: <https://www.ofgem.gov.uk/publications-and-updates/decision-proposed-changes-our-electricity-interconnector-cap-and-floor-regime-enable-project-finance-solutions>

Pre-operational force majeure – delays to regime start date

Background

The start date of the 25-year cap and floor regime for a particular interconnector project reflects an element of the minimum eligibility criteria² for the relevant cap and floor application window:

- For Window 1 projects - this was the earlier of the actual connection date or 1 January 2021; and
- For Window 2 projects – this was the earlier of the actual connection date or a date up to 12 months after the target connection date of the end of 2022 (by 1 January 2024).³

The above RSD provisions were put in place to incentivise timely delivery of projects and to ensure that consumers start to realise some of the anticipated benefits that informed our decision on the needs case for the interconnector project at the Initial Project Assessment (IPA) stage.

We have previously noted⁴ that if projects are delivered later than these dates¹, the 25-year duration of the relevant projects' cap and floor regime will be reduced by the length of the delay.

However, as noted in our 2017 update letter⁵, we also recognise that sometimes delays during the pre-operational period may be caused by specific external factors that are beyond the reasonable control of project developers. We further indicated in that letter that, where we considered such delays to have been caused by a force majeure event we would exclude the duration of such delays from our calculation of any reduction to the 25-year regime duration.

² Decision on project eligibility for cap and floor Window 1 and Window 2 projects: https://www.ofgem.gov.uk/sites/default/files/docs/2014/10/cf_eligibility_decision_final_0.pdf and: https://www.ofgem.gov.uk/sites/default/files/docs/decision_to_open_a_second_cap_and_floor_application_window_for_electricity_interconnectors_in_2016.pdf

³ This effectively gives the Window 1 and Window 2 cap and floor regimes an end-date of 31 December 2045 and 31 December 2048 respectively, regardless of the operational date

⁴ Decision to roll out a cap and floor regime to near-term electricity interconnectors: https://www.ofgem.gov.uk/sites/default/files/docs/2014/08/decision_cap_and_floor_near_term_electricity_interconnectors.pdf

⁵ Cap and floor regime: An update on 'Window 1' interconnector projects: https://www.ofgem.gov.uk/system/files/docs/2017/06/w1_update_letter_-_19jun2017_-_final.pdf

For example, where project delivery has been delayed by a total of 3 years and the project submits a request for the RSD to be adjusted to exclude delays caused by force majeure events, during the pre-operational period, then we will apply the following reasoning.

Where we consider:

- 1 of those 3 years to have been due to delays caused by force majeure, the projects' cap and floor regime would be reduced by 2 years to 23 years, rather than by 3 years to 22 years; or
- all 3 years to have been due to delays caused by force majeure, the full 25-year duration of the projects cap and floor regime would be preserved

Our proposed approach to introducing pre-operational force majeure provisions and considering requests for an adjustment to the RSD

We note that cap and floor projects across window 1 and window 2 are at various stages of development. Whilst some projects are approaching, or have successfully completed, the Final Project Assessment (FPA) stage and will be approaching the Post Construction Review (PCR) stage in due course, other projects are yet to reach/complete the FPA stage.

A cap and floor regime is granted to a project, in principle, at the IPA stage. The regime is confirmed following the successful completion of the FPA stage. An interconnector project's specific cap and floor regime is then formally implemented through new special conditions⁶ that are inserted into the relevant project's interconnector licence.

We propose to introduce:

- (a) a formal mechanism, set out in a proposed new standard condition 26A; and
- (b) a complementary process, set out in the draft policy decision document (attached at Annex 1)

for considering and deciding on requests from projects for an adjustment to their RSD due to delays caused by Pre-Operation Force Majeure.

Why we are proposing a dual route approach

We consider it necessary to put in place two routes for submitting and considering requests for an adjustment to a projects RSD depending on whether or not the project's specific cap and floor regime has been implemented in its licence. This is because we do not consider it appropriate for an interconnector projects licence to contain active cap and floor related

⁶ In accordance with our May 2020 decision on enabling project finance solutions, we have published the draft special conditions for the Greenlink and NeuConnect interconnector projects ahead of the FPA stage with the aim of developing the relevant licences in advance of Financial Close for the respective projects.

licence conditions, such as the proposed new standard condition 26A, until such time that the project's specific cap and floor regime has been implemented in its licence.

What determines which route we will use?

The determining factor for deciding whether a request for an adjustment to a project's RSD is considered and decided upon under proposed new standard condition 26A or the proposed policy decision document, is whether or not the project making the request has had its specific cap and floor regime implemented in its licence at the time the request is made.

This means a request for an adjustment to the RSD submitted by;

- a project that has had its specific cap and floor regime implemented in its licence (and proposed new standard condition 26A has also been given effect in its licence) at the time of the request – will be considered and decided upon in accordance with proposed new standard condition 26A; and
- a project that has not had its specific cap and floor regime implemented in its licence at the time of the request – will be considered and decided upon in accordance with the draft policy decision document.

How will we implement our decision?

Our decision on requests for an adjustment to a project's RSD will be implemented as follows:

- via a licence direction issued under proposed new standard condition 26A; or
- via a policy decision letter under the proposed policy decision document.

Any decision on requests for an adjustment to a project's RSD that we take before that project's regime has been implemented into the project's licence (under the provision set out in the draft policy decision document) will be reflected in the relevant project's interconnector licence⁷ once, following successful completion of the FPA stage, the project's specific cap and floor regime has been implemented in its licence.

⁷ The definition of RSD in the special conditions of the project's interconnector licence will reflect any policy decision taken under the proposed complementary process outlined above.

Timing of requests

Project developers are required to submit any request for an adjustment to the RSD within a reasonable timeframe of an event or circumstance Pre-Operational Force Majeure occurring. What constitutes a reasonable timeframe may differ from case to case, depending on the underlying circumstances. We encourage project developers to consider submitting any requests for an adjustment to the RSD due to Pre-Operational Force Majeure alongside their FPA or their PCR submissions – if at all possible.

If a Pre-Operational Force Majeure request is submitted alongside the FPA or PCR submissions, then we would aim to align our assessment and decision on that request with our assessment and decision on the projects' FPA or PCR submission.

However, we equally expect project developers to exercise good judgment in deciding whether it is appropriate to submit their Pre-Operational Force Majeure request alongside their FPA or the PCR submissions. In particular, developers are required to ensure the robustness of the evidence supporting any Pre-Operational Force Majeure request.

Proposed modifications to the special conditions of the electricity interconnector licence held by Nemo Link, NSL and IFA2

We are also proposing to make the following modifications to the special conditions of the electricity interconnector licences held by Nemo Link, NSL and IFA2:

Licenses	Proposed modifications
Nemo Link	<u>Special condition 1: Definitions and Interpretation</u> <ul style="list-style-type: none">in line with our May 2020 decision⁸, modify the definition of "Force Majeure" to include three additional events (strike, lockout, and other industrial disturbance)
IFA2 and NSL	<u>Special condition 1 (Definitions and Interpretation</u> <ul style="list-style-type: none">modify the definition of "Force Majeure" to include three additional events (strike, lockout, and other industrial disturbance); andmake a consequential modification to the current definition of "Regime Start Date" to include a reference to proposed new standard condition 26A: Delay to Regime Start Date caused by Pre-Operational Force Majeure

⁸ Decision on proposed changes to our electricity interconnector cap and floor regime to enable project finance solutions: https://www.ofgem.gov.uk/system/files/docs/2020/05/regime_variations_decision.pdf

We also propose to make the following additional minor modifications to special condition 2 and special condition 8 of the NSL licence:

Licensee	Proposed modifications
NSL	<u>Special condition 2: Cap Level and Floor Level</u> <ul style="list-style-type: none"> Correct a typographical error in paragraph 19 by inserting a missing formula for calculating the value of the RPI_t term.
	<u>Special condition 8: Process for determining the value of the Post Construction Adjustment terms</u> <ul style="list-style-type: none"> Amend paragraphs 4 and 5 to allow the licensee to request that the Authority agree to an earlier or later submission of the Post Construction Adjustment (PCA) terms.

Statutory consultation

We are seeking views on:

- (1) the proposed new standard condition 26A to be inserted into existing Section G: Cap and Floor Conditions, of the interconnector licence; and
- (2) the proposed modifications to the special conditions of the electricity interconnector licences held by Nemo Link, NSL and IFA2.

Statutory consultation notices together with relevant schedules have been published alongside this letter as follows:

Appendix 1 – Notice of proposed insertion of new standard condition 26A: Delay to Regime Start Date caused by Pre-Operational Force Majeure, into Section G: Cap and Floor Conditions, of the electricity interconnector licence	<ul style="list-style-type: none"> Schedule 1 - Proposed modifications to the electricity interconnector licence standard conditions; Schedule 5, Part A – Reasons and effects of proposed insertion of new standard condition 26A into Section G
Appendix 2 – Notice of proposed modifications to the special conditions of the electricity interconnector licence held by Nemo Link	<ul style="list-style-type: none"> Schedule 2- Proposed modifications to special condition 1 of the electricity interconnector licence held by Nemo Link; Schedule 5, Part B – Reasons and effects of proposed modifications to special condition 1 of Nemo Link’s licence
Appendix 3 - Notice of proposed modifications to the special conditions of the electricity interconnector licence held by IFA2	<ul style="list-style-type: none"> Schedule 3 - Proposed modifications to special condition 1 of the electricity interconnector licence held by IFA2; Schedule 5, Part C – Reasons and effects of proposed modifications to special condition 1 of IFA2’s licence

Appendix 4 - Notice of proposed modifications to the special conditions of the electricity interconnector licence held by NSL	<ul style="list-style-type: none"> • Schedule 4- Proposed modifications to the special conditions of the electricity interconnector licence held by NSL; • Schedule 5, Part D – Reasons and effects of proposed modifications to the special conditions of NSL’s licence
Appendix 5 – Licence consultation response template	

For ease of reference, please use the response template (in Microsoft Word format, published as a subsidiary document alongside this consultation in Appendix 5) to provide your specific comments on the proposed licence text and/or to suggest any alternative wording.

We are also seeking views on our proposed minded-to position regarding the process we intend to follow (as set out in the policy decision document attached at Annex 1) to allow for submission and consideration of requests for a later RSD from projects that have not yet had their specific cap and floor regime implemented in their licence.

Please send responses by 26 April 2021 to: Cap.Floor@ofgem.gov.uk

Unless marked confidential, all responses will be put in Ofgem’s library and on our website, www.ofgem.gov.uk. You can ask for your response to be kept confidential and we will respect this, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. If you would like your responses to be kept confidential, clearly mark the document/s to that effect and include the reasons for confidentiality.

If you have any questions in relation to this letter, please contact Ikbal Hussain by email (Ikbal.Hussain@ofgem.gov.uk).

Yours sincerely,



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