

Workgroup Consultation Response Proforma

CMP435: Application of Gate 2 Criteria to existing contracted background

Industry parties are invited to respond to this consultation expressing their views and supplying the rationale for those views, particularly in respect of any specific questions detailed below.

Please send your responses to cusc.team@nationalgrideso.com by **5pm on 06 August 2024**. Please note that any responses received after the deadline or sent to a different email address may not receive due consideration.

If you have any queries on the content of this consultation, please contact cusc.team@nationalgrideso.com

Respondent details	Please enter your details	
Respondent name:	Barney Cowin	
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Phone number:	07436 132880	
Which best describes your organisation?	<input type="checkbox"/> Consumer body <input type="checkbox"/> Demand <input type="checkbox"/> Distribution Network Operator <input checked="" type="checkbox"/> Generator <input type="checkbox"/> Industry body <input type="checkbox"/> Interconnector	<input type="checkbox"/> Storage <input type="checkbox"/> Supplier <input type="checkbox"/> System Operator <input type="checkbox"/> Transmission Owner <input type="checkbox"/> Virtual Lead Party <input type="checkbox"/> Other

I wish my response to be:
 (Please mark the relevant box)

- Non-Confidential** (*this will be shared with industry and the Panel for further consideration*)

- Confidential** (*this will be disclosed to the Authority in full but, unless specified, will not be shared with the Workgroup, Panel or the industry for further consideration*)

For reference the Applicable CUSC (non-charging) Objectives are:

- a) *The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;*
- b) *Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;*
- c) *Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and*

d) *Promoting efficiency in the implementation and administration of the CUSC arrangements.*

*The Electricity Regulation referred to in objective (c) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.

Standard Workgroup Consultation questions		
1	Do you believe that the Original Proposal better facilitates the Applicable Objectives?	Mark the Objectives which you believe the Original solution better facilitates:
		Original <input checked="" type="checkbox"/> A <input checked="" type="checkbox"/> B <input type="checkbox"/> C <input checked="" type="checkbox"/> D
Agree with the proposer that the solution better facilitates all objectives except for (c), for which it has no impact, positive or negative.		
2	Do you support the proposed implementation approach? (See page- 57-58)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Support in the main but careful consideration of the implementation timescales is critical to keep the best projects from the existing contracted queue. The exercise was to cleanse the queue of zombie / slow moving projects not to derail genuine and valuable (to net zero targets) projects. Land Options do take a long time to conclude (often up to 3 years) and a red line can vary significantly through the survey, EIA and development process. It will be impossible for some projects with offers in 2024 to meet gate 2 and this wasn't a known requirement when applications were made so a time allowance to meet the new criteria must be provided. It was mentioned several times during work groups that CMP376 milestones have not been given time to take effect. The recent RFI will not have picked up those as many will not have had offers received or accepted. There is a risk of throwing the baby out with the bath water and damaging investor confidence if the implementation is focused on statistics rather than quality of projects.		
3	Do you have any other comments?	
We do not believe that it has been clarified or outlined how the methodology will apply to projects with multiple stages and multiple stages. We note the approach taken under Queue Management (QM) where each separate stage and separate technologies are provided their own QM dates, and expect that this approach will be followed as regards both CMP434 and CMP434, such that an entire project isn't detrimentally impacted by one of its stages not meeting the required criteria.		
4	Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?	<input type="checkbox"/> Yes (the request form can be found in the Workgroup Consultation Section) <input checked="" type="checkbox"/> No

	n/a
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Specific Workgroup Consultation questions

5	<p>Do you agree with the elements of the proposed solution for CMP435? <i>Please note that the application of these elements may be different to CMP434, therefore please answer the questions in respect to CMP435.</i></p> <p>Elements 2,4,6,7,12,15,17 and 18 are not part of the CMP435 Proposal and is only part of the CMP434 Proposal. Element 10 is proposed to be codified within the STC through modification CM095.</p> <p>Please provide rationale for your answer and any suggestions for improvement to each element?</p>
<p>Element 1: Proposed Authority approved methodologies and ESO guidance (see Page 8-10,29)</p>	
<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>We broadly support the approach and the adaptability/flexibility that non-codification would allow, as this will be necessary given imminent additional changes in the industry, in particular holistic network design.</p> <p>We also believe the requirement for a formal consultation process and Authority approval gives the safeguards needed against the ESO making material changes without scrutiny.</p> <p>Although the ESO has made proposals about how the basic Gate 2 requirement for a minimum option period could be applied to CMP435, no indications have been given about whether any of the Gate 2 Criteria Methodology would be applied retrospectively. Anything which introduces a requirement to change an existing option agreement creates significant risk because the developer cannot make changes without landowner consent and the landowner may well seek significant additional payments in exchange for the variation. We would strongly suggest that the Methodology cannot create a requirement to vary existing option agreements to make them compliant as this is likely to have the effect of turning viable projects into unviable projects and will erode investor confidence.</p> <p>The same point applies to the Project Designation Methodology and Connection Network Design Methodology.</p> <p>Despite our approval we have reservations being required to approve some key elements of the methodology without having had sight of the following guidance:</p> <ul style="list-style-type: none"> - Significant Modification Allocation Guidance - Material Technology Change Guidance - LoA and QM Guidance 	

<p>Element 3: Clarifying which projects go through the Primary Process (See pages 10-11,29-31)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Further discussion is needed to confirm if Directly Connected Demand should be included in the same process when it may not follow the same development process and be of greater value in project designation</p>	
<p>Element 5: Clarifying any Primary Process differences for customer groups (See pages 11-12,32)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>It is suggested that an appropriate Letter of Authority equivalent for offshore projects might be demonstration of pre-qualification for a seabed lease.</p> <p>It is noted that the suggested process differs noticeably from processes that have been followed with recent offshore wind leasing rounds. We do not suggest that this should prevent the clarifications from being progressed, only that it might be prudent to ensure that there is sufficient process flexibility to allow for future changes to process.</p> <p>We note that the Proposer is no longer proposing to more formally integrate both the Crown Estate and Crown Estate Scotland into the connection application process. Given recent developments with Great British Energy and Crown Estate, we suggest that it might be appropriate to review this issue to understand whether the changing circumstance mean that this scope decision should be revisited.</p>	
<p>Element 8: Longstop Date for Gate 1 Agreements (See pages 12-13, 32-33)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Given the same high application fee for Gate 1 and the time it can take to get an option in place and undertake early surveys and design then it is suggested that the longstop should be longer – 4 years. There could be a mechanism to check in to validate for network planning knowledge but then they won't have visibility of those projects which will apply for both together.</p>	
<p>Element 9: Project Designation (See pages 14-15, 33-34)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>We broadly support the concept of Project Designation. However we have concerns that non-codification of the rules and the fact that the Project Designation Methodology sits outside of CUSC might allow the rules to be applied inconsistently, possibly resulting in unfair discrimination against particular projects or developers. Given the public ownership of NESO, we are unsure of how independent scrutiny will be applied and how routes of appeal will operate.</p> <p>It remains unclear exactly what the scope of Project Designation will include, and we require that more detail and/or case studies are provided to illustrate, and that there are clear limitations imposed..</p>	
<p>Element 11: Setting out the criteria for demonstrating Gate 2 has been achieved and setting out the obligations imposed once Gate 2 has been achieved (See pages 16-21, 34-39)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>

We require that NGENSO clarify whether the requirement for a 3 year option period is a minimum of 3 years from the date on which the option agreement is entered into, or a minimum of 3 years from the date on which the Gate 2 application is submitted. We suggest it should be the former.

We continue to have reservations about the use of option agreements as representing a robust mechanism for achieving the objectives. Without a clear definition of what constitutes an option agreement it will be impossible for the NGENSO to objectively assess compliance equitably. The lack of clear definition also doesn't sufficiently exclude the possibility of developers 'gaming' the system by providing apparent 'option agreements' that are in fact not fully negotiated or agreed, but which might have been concocted solely for the purpose of achieving Gate 2.

Could further clarity be provided on what NGENSO mean by an option. Can missives meet this milestone?

Completing an option is a timely and expensive task which is rarely undertaken without the confidence of a viable grid connection (offer) The standard length of options has previously been raised and its inefficient to have an option starting too early in the design and planning stages.

The position that the ESO does not propose any exemption for a developer using powers of compulsory acquisition appears illogical. A developer is most likely to acquire powers of compulsory acquisition via the planning process (as part of a DCO). That would presumably mean that the developer would have to run the entire DCO process – an enormous expense – before submitting a Gate 2 application and knowing for sure that a connection is available for the proposed project. This would make use of compulsory powers for land assembly impossible and goes contrary to existing policy which allows NSIPs for large scale generation to have powers of compulsory acquisition where a case has been made out for them.

Land rights relating to 100% energy density by technology is being presented as an accepted criteria at initial application but this and the redline boundary must have some flexibility to develop as the scheme layout develops post gate 2 and prior to planning. There are multiple influences which might change requirements. Whilst we appreciate the overarching objective which is to prevent developers from using an existing grid connection to develop a completely new project, the restrictions are unnecessarily restrictive and would act to prevent the development of large projects with multiple packages of land.

We disagree with the proposal for developers to submit application for planning at the earliest of the options (i) and (ii). We suggest that the option (ii) should be the methodology for all circumstances.

Notwithstanding our disagreement with the process, if the proposed methodology is nonetheless adopted, the timescales that are presented for the different planning regimes are not reasonable.

Most applications require a minimum of two years bird surveys in addition to the land assembly and negotiations required to enable the surveys, which typically

would only be possible progress post grid offer once a degree of practical design and financial investment is confirmed.

It is noted that in many cases planning permission expires after three years, which would act to prevent early development of projects.

In terms of specific planning regimes:

- T&C: See above in relation to an absolute minimum of two years
- Section 36: See above in relation to an absolute minimum of two years
- DNS: See above in relation to an absolute minimum of two years
- NSIP/DCO:

A timescale of two years for submission of planning consent from acceptance of a Gate 2 offer is unrealistic, and even the three years as outlined by the Workgroup is ambitious. If these timescales are fixed, there needs to be flexibility on either evidentiary requirements or timings as timescales are driven by statutory process with the Secretary of State, over which the Developer has no influence. It is possible to demonstrate progress through the DCO process even if a Developer is prevented from achieving the deadline as a result of external parties. Equally the activities of scoping and public consultation are public evidence of progress.

Such short deadlines simply don't allow for any delay or variation to the planning design which can be affected post Gate 2 due to ecology, transport, aviation, telecoms, L&V etc. QM has been put in place to monitor and drive connections forward in a sustainable way towards connection dates.

Early planning application and consent leading to expiry is not the way to proceed and such rules with implications could be damaging to investor confidence.

Offshore wind:

Industry expectations are for the submission of a scoping report within 2 years, and submission of a full consent application for the wind farm and export cable route within 6 years, of a seabed lease award. There may be extenuating circumstances which would lengthen these periods.

Note no response to element 12 has been requested but the point about reasonable time period post authority decision to enable industry to become compliant is critical.

Element 13: Gate 2 Criteria Evidence Assessment
 (See pages 22-23, 39-40)

Yes
 No

We support the proposals, however there's no clear explanation as to how duplication checks will be managed for co-located projects. It is possible that a single project might have two technologies at the same location, and that they have different grid connections. The allocation of land between the technologies might not have been defined aside from ensuring that there is sufficient land under the energy density requirements. There might be a single option agreement or

	<p>have two overlapping option agreements. In either case there is a risk that this would fail a duplication check, despite the fact that there is sufficient land for both projects.</p> <p>There is also a need for templates and adequate timing for submission to be confirmed in guidance. Pre app service required to consider acceleration opportunities. The redistribution of capacity needs to be clarified throughout the CMP434/435 process.</p>	
	<p>Element 14: Gate 2 Offer and Project Site Location Change (See pages 23-24, 40-41)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
	<p>Whilst potentially less relevant to existing contract with POC there will be more recent offers without a confirmed POC and so this should be retained. 12 months is not enough time to meet Gate 2 criteria on an entirely new plot of land and so may be of limited value.</p> <p>We do not see this mechanism as helpful. If a different connection point is offered then 12 months is unlikely to be long enough to identify suitable replacement land for the project or prepare and resubmit application for planning, negotiate HoTs/ exclusivity and then fully negotiate a suitable option and lease with the new landowner(s). However, including the mechanism could lead to 12 month pauses on projects while developers assess their options, which doesn't help with queue reduction. The proposed guards against this (loss of original site etc.) would appear to have limited effect – if the original site is unusable due to lack of grid connection then it is no great issue to lose it.</p>	
	<p>Element 16: Introducing the proposed Connections Network Design Methodology (CNDM) (See pages 24-25, 41-42)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>The development of CNDM is critical to understand the reallocation of capacity and the guidance must be developed alongside industry workgroup and published for reference in advance of implementation date. Whether this may also link to ESO powers of project designation needs clarifying.</p>	
	<p>Element 19: Contractual changes (See pages 26-28, 43-46)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
	<p>Timing / process for contractual changes needs detailed methodology and advance notification to be able to deliver in Q1 2025. A revised contract must be issued alongside update of the security position then required.</p>	
	<p>Element 20: Cut Over arrangements (See page 28, 47)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>6</p>	<p>Are there any elements of the proposed CMP435 solution - as per Q5 - which you believe are not appropriate to include when you consider how to most effectively implement TMO4+ to projects in the existing contracted background (as opposed to the process for new applicants via CMP434)? If yes, please provide supporting justification.</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>See above in relation to planning deadlines and calculation methodology.</p>	

7	<p>In relation to Q6, are there any features which you believe are missing in the proposed CMP435 solution that would more effectively facilitate implementation of TMO4+ to the existing contracted background.</p> <p>If yes, please provide details and justification.</p> <p>The overarching objective of this exercise is to remove ‘zombie projects’ with no reasonable expectation of delivery, rather than to discriminate against legitimate complex projects which do take time work secure and prepare, and so may be disadvantaged because of inflexible and in inappropriate regulations. The argument that a later Gate 2 application might provide an equal or improved grid connection date is unproven.</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8	<p>Do you believe any groups of projects should be exempt from the scope of CMP435 or from some elements of the proposed solution? If so, please advise on which groups and elements and provide rationale to why.</p> <p>Projects only contracted in 2024 should be allowed longer to meet Gate 2 criteria. Similarly, a rush to implement may ave an adverse impact on Projects that might be supported under future Project Designation Methodology arrangements. Such requirement should be in place in advance.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
9	<p>Do you believe that the proposed solution could duly or unduly discriminate against any particular types of projects? If so, do you believe this is justified?</p> <p>Projects with multiple landowners/land packages are discriminated against through the red line boundary change process (see above). Recently accepted (2024) offers might not have had time to conclude land options or undertake early planning work. Any projects with late 2030’s connection dates or unconfirmed POC. We do not believe this is justified.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No