

Workgroup Consultation Response Proforma

CMP434: Implementing Connections Reform

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:	Garth Graham	
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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 checked="" type="checkbox"/> Storage <input checked="" 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:

- The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;
- 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;
- Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and
- 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.

Please express your views in the right-hand side of the table below, including your rationale.

Standard Workgroup Consultation questions		
1	Do you believe that the Original Proposal better facilitates the Applicable Objectives?	<p>Mark the Objectives which you believe the Original solution better facilitates:</p> <p>Original <input type="checkbox"/>A <input type="checkbox"/>B <input type="checkbox"/>C <input type="checkbox"/>D</p> <p>We are supportive of the need for connections reform and we believe this proposal has the potential to better facilitate Applicable CUSC Objectives a) b) and d).</p> <p>However, we are mindful that this is a rapidly changing environment and, since being raised, it is no longer clear that prioritising readier projects will deliver the outcomes required nor align with emerging (and consequential for connection reform) UK Government policy developments, including the Clean Power Plan for 2030 and longer-term net zero targets.</p> <p>We are neutral in respect of Applicable Objective c). This is based on the expectation that the proposed changes to the Terms & Conditions for connection continue to conform with the requirements to comply with the retained EU Law.</p>
2	Do you support the proposed implementation approach? (see pages 59-61)	<p><input type="checkbox"/>Yes <input checked="" type="checkbox"/>No</p> <p>We recognise that implementation of this proposal, being contractual in nature, will need to be legally robust. Recognising the Connection Action Plan produced by DESNZ and Ofgem in the Autumn of 2023 and the ESO's TMO4 and TMO4+ documents published in December 2023 and April 2024 respectively, we had - up until very recently - the view to support the introduction of this change in a timely manner.</p> <p>However, as we noted in our answer to Q1 above, the connection reform landscape is rapidly developing.</p> <p>In light of this changing situation, it is important that we are clear from the start what we are trying to achieve through a reformed connections process and that the</p>

	<p>'end point', and any steps towards it, are clearly signposted to all stakeholders. Changes brought in through TMO4+, including in particular CMP434, followed by subsequent iterative changes over the coming weeks, months and years will result in wasted development expenditure and have an adverse impact on investor confidence.</p> <p>Notwithstanding the above, if implementation of CMP434 (as currently proposed) proceeds, then in our view a transition period may be warranted, given the proximity between the Authority decision date, the festive period and the implementation date. This transitional period should be greater than two to four weeks, but no longer than twelve weeks.</p>	
3	<p>Do you have any other comments?</p> <p>Yes.</p> <p>As we noted in our answer to Q1 above, given the rapidly developing changes in the connection reform landscape, we are no longer clear that prioritising readier projects will deliver the outcomes required or align with emerging policy developments and our net zero targets.</p> <p>We are also mindful of the recommendation in the Royal Academy of Engineering Report, which was issued Tuesday 23rd July, that identified the need for "a more radical process" for connection reform.</p> <p>Regardless of how the policy unfolds, it is important that any reformed connections process puts GB on the glidepath to delivering net zero and does not send signals (even if only for a short period of time) that are counter to that aim as this will increase costs and damage investor confidence.</p> <p>We also wish to note that stakeholders have not seen the critical detail pertaining to either 'Derogation 1' or 'Derogation 2' (as referred to by the ESO), with regards to the transitional arrangements. Therefore, in the absence of seeing a) that detail or b) the Authority's decision; we refrain from commenting further at this time on the purported transitional arrangements, until a) and b) are available.</p> <p>In this regard, the current scope of what ModApps will be allowed (and not allowed) between August 2024 and January 2025 needs to be understood.</p>	
4	<p>Do you wish to raise a Workgroup Consultation Alternative Request for the Workgroup to consider?</p>	<p><input type="checkbox"/> Yes (the request form can be found in the Workgroup Consultation Section)</p> <p><input checked="" type="checkbox"/> No</p>
	<p>Not at this time.</p>	

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Specific Workgroup Consultation questions

5	<p>Do you agree with the elements of the proposed solution? Element 7 has been de-scoped and Element 10 is proposed to be codified within the STC through modification CM095. Please provide rationale for your answer and any suggestions for improvement to each element?</p>		
	<table border="1" style="width: 100%;"> <tr> <td style="width: 70%;"> Element 1: Proposed Authority approved methodologies and ESO guidance (see pages 9-10, 55) </td> <td style="width: 30%;"> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </td> </tr> </table>	Element 1: Proposed Authority approved methodologies and ESO guidance (see pages 9-10, 55)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Element 1: Proposed Authority approved methodologies and ESO guidance (see pages 9-10, 55)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
	<p>We can support the use of controlled methodologies, with Authority oversight through an imposed licence obligation, as this maintains both the checks and balances that investors require, as well as ensure conformance with Article 37 Para. 6(a) of Directive 2009/72, which requires that:</p> <p><i>“The regulatory authorities shall be responsible for fixing or approving sufficiently in advance of their entry into force at least the methodologies used to calculate or establish the terms and conditions for:</i></p> <p><i>(a) connection and access to national networks, including transmission and distribution tariffs or their methodologies. Those tariffs or methodologies shall allow the necessary investments in the networks to be carried out in a manner allowing those investments to ensure the viability of the networks.”</i></p> <p>However, we do not support the proposed widespread use of guidance documents by the ESO (and, by implication, reduced change control) that risks imposing unilateral and disproportionate new and additional obligations/requirements onto connecting Parties. This position is based on experience with fault ride-through where the ESO’s documentation was unilaterally changed shortly after it was sent to stakeholders:</p> <p>a) without prior consultation to that change; or b) even more importantly, without notification that it had changed.</p> <p>We explored this further in our GC0151 proposal (see “What’s the Issue” on Pages 3-9 in the proposal form download (nationalgrideso.com)).</p>		

<p>It is important that documents pertaining to or containing Parties' Terms & Conditions for connection are subject to Authority approval, as per Article 37 Para. 6 (see quote above); as it has been recognised in law, the inherent unfairness that could arise from the monopoly Party to whom all Parties wishing to connect are required to contract with, being able to impose, at will (and without regulatory approval), changes to those Terms & Conditions.</p> <p>Nevertheless, if this element was to remain as currently drafted, then moving forward and recognising the imminent introduction of the NESO, it would be within the gift of a Court to determine if the practical application by the NESO of such guidance could be considered, upon reflection, to be "Wednesbury unreasonable".</p>	
<p>Element 2: Introducing an annual application window and two formal gates, which are known as Gate 1 and Gate 2 (i.e. the Primary Process) (see pages 11, 35-36)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>The introduction of the annual application window, alongside gates, is in our view a sensible step forward to implementing the TMO4+ arrangements.</p> <p>We appreciate the workgroup deliberations as to whether the Gate 1 window should be limited to a single annual window or be linked to the Gate 2 window and occur twice a year (i.e. once every six months). In our view, it would make sense to start 'slowly' and have the first year (2025/2026) as a single Gate 1 window, but that we should then, from 2026/2027 onwards, move to a twice a year Gate 1 window.</p>	
<p>Element 3: Clarifying which projects go through the Primary Process (see pages 11-12, 35-36)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>This element has merit in our view, as it is consistent with the intent of TMO4+ arrangements and, assuming it is applied in the way shown above (to all Parties seeking Transmission capacity going forward), it should be non-discriminatory.</p>	
<p>Element 4: Significant Modification Applications concept, including the proposed criteria and the proposed level of codification (see pages 12-13, 36-39)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Whilst we understand the principle of what is proposed under Element 4, there is too much uncertainty in its application (and possibly subjectivity) for us to support this Element.</p>	

<p>Further, as we set out in our response to Element 1 above (which, for the sake of brevity, we shall not repeat here), we do not support the proposed widespread use of guidance documents by the ESO including here for Element 4, the 'Significant Modification Application Guidance'. We believe this should and must be codified.</p>	
<p>Element 5: Clarifying any Primary Process differences for customer groups (see pages 13-14, 35-36)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>We are concerned that the proposed approach for DFTC, whereby the volume that is modelled by the TOs (based on the DNOs'/Transmission connected iDNOs' best endeavours forecast) at Gate 1 is ignored at the Gate 2 stage; where a greater volume can be accepted than was modelled at Gate 1; as this unduly discriminates against comparable Transmission connecting projects who are held, at Gate 2, to the volume that they submitted at Gate 1. Accordingly, we believe that the proposed solution in this regard is flawed.</p> <p>For offshore, we believe that the case has been made for a different approach when it comes to the application of the primary process when compared to onshore projects, given the seabed leasing arrangements in GB waters.</p>	
<p>Element 6: Setting out the process and criteria in relation to Application Windows and Gate 1, including introducing an offshore Letter of Authority equivalent as a Gate 1 application window entry requirement for offshore projects (see pages 15-16, 39-40)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>This element has merit in providing visibility on the number and type of projects in the pipeline.</p> <p>However, in light of the deliberations in the workgroup (including in particular from colleagues from the Network Operators community), it is unclear that this Element sufficiently supports the modelling that is required to be undertaken by the TOs of anticipatory network investment which was part of the original case for the introduction of TMO4+.</p>	
<p>Element 7: Fast Track Disagreement Resolution Process (de scoped from this modification – see pages 16, 58)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>

<p>Noting the continued statutory appeal rights enjoyed by all connecting parties (as we outlined above in Element 1), we concur with the proposer's intention to not take forward Element 7 (as suggested within the scope of its original proposal prior to workgroup discussion).</p>	
<p>Element 8: Longstop Date for Gate 1 Agreements (see pages 16, 40-41)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Given the change to the solution (from a financial security charge to a longstop date), we believe that this element of the proposed solution now provides the ESO with an appropriate 'housekeeping' tool to manage the number of projects in Gate 1, whilst also providing an appropriate incentive on developers to progress their projects from Gate 1 approval through to Gate 2 in a timely manner.</p> <p>Notwithstanding the above, if CMP434 original is to proceed in its current form, our project development experience suggests that negotiations can be prolonged and subject to disruption by representatives of counterparties.</p> <p>As a result, securing agreements can take significantly longer than the proposed period of two years, as set out in CMP434 original, and may prejudice negotiating positions to the detriment of the developer, who is caught between the needs (as set out in CMP434) of connection to the system and the desires of the counterparties, overlaid with the short time period allowed.</p> <p>Therefore, we suggest that a Gate 2 Criteria Exemption be considered to allow for developers who need to obtain land via compulsory purchase order (CPO) powers. As is well understood, CPO is a legitimate strategy for developers in certain scenarios and is a key part of the NSIP/DCO consenting regime. This exemption will mitigate protracted negotiations and support developers in securing necessary land agreements without undue delay (which conforms with the timely delivery of net zero).</p>	
<p>Element 9: Project Designation (see pages 17-18, 48-49)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Whilst we understand the rationale for bringing this Element into TMO4+ and agree that TMO4+ (as currently proposed, in CMP434) runs the risk of not bringing forward developers' projects that deliver or meet the needs of the energy system; we are concerned about aspects of this Element and the lack of detail at this stage.</p>	

<p>In this regard we are also very mindful of the rapidly changing policy within the UK Government that pertains directly to connection reform, and thus CMP434.</p> <p>Accordingly, we believe that a more markets-based approach with transparency over what the system requires (rather than unilateral designation by the ESO) would be a better way to ensure that the specific criteria set out in Element 9 are met.</p> <p>In addition, consideration of course needs to be given to the planning regime for Transmission asset and project developer asset build out, which we note may be subject to significant change over the coming weeks, months and years to reflect the new aspirations of the UK Government.</p>	
<p>Element 10: Connection Point and Capacity Reservation (proposed to not be codified within the CUSC, but is intended to be codified within the STC through modification CM095 – see pages 18-20 and the CM095 Workgroup Consultation, pages 6-10)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>No comment.</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 20-24, 42-46)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>We appreciate that the introduction of Gate 2 is a core element in delivering the TMO4+ arrangements (as set out in the CMP434 original proposal). It does this by acting to increase the ‘bar’ against which project developers obtain a connection offer from the Network Operator.</p> <p>As set out elsewhere in this response, in terms of the changing landscape brought about by the UK Government, we have concerns.</p> <p>By allocating Transmission capacity on the basis of first-to-secure land, it is not clear that TMO4+ (in the form of CMP434 original) will allocate this scarce resource to the projects necessary to deliver a secure and sustainable energy system that meets net zero.</p>	

We believe it is important to ensure that TMO4+ (in the form of CMP434 original) puts us on the glidepath to delivering net zero and does not send signals (even if only for a short period of time) that are counter to this, as this will increase costs and damage investor confidence.

In addition to the above, we are also mindful of the RFI analysis provided yesterday (5th August) by the ESO. Given the short period of time available to us, we have not been able to fully consider this RFI analysis in detail; however, our initial consideration is that this indicates that the proposed solution may not have the desired effect (especially in respect of the separate modification CMP435).

In respect of planning, we believe that the timescales set out in the proposal are unworkable, as they need to recognise the challenges (in planning terms, as outlined in the recent UK Government announcements regarding the impediments within the current planning regime) that projects face both in terms of obtaining permission in the first place; as well as in the context of where the connection date is many years in the future and the planning permission lapses.

Notwithstanding the above, if CMP434 original is to proceed, then it needs to take account of the Development Consent Order (DCO) process.

The reason for this is that throughout a typical DCO process the red line boundaries will have a high degree of alteration following conversation with the local community, planning authorities and statutory undertakers.

It is important to recognise that the use of Compulsory Purchase Order (CPO) powers is a standard provision granted under DCO decisions. These decisions pertain to Nationally Significant Infrastructure Projects (NSIPs), where the DCO consenting regime is designed to bestow substantial powers upon developers.

In regard to NSIPs, we are mindful that the UK Government has, during the course of this consultation period, issued a consultation entitled '[Proposed reforms to the National Planning Policy Framework and other changes to the planning system - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/proposed-reforms-to-the-national-planning-policy-framework-and-other-changes-to-the-planning-system)'. This timely publication indicates both the importance that the UK Government attaches to changing the planning regime and also that this regime is currently subject to policy development.

For specific land rights, it is entirely legitimate for a developer to adopt a strategy that includes the use of CPO powers. The DCO, when justified, will grant these powers.

Furthermore, the short period of one year for LPA and two years for DCO places a significant burden on developers to complete complicated and detailed land surveys for planning. This incurs significant costs, with huge project uncertainty, all ahead of the conclusion of land acquisition.

Investing such substantial amounts without a confirmed point of connection (POC), which is only provided at Gate 2, is unreasonable and poses an unrealistic financial burden on developers. The expectation to proceed with significant

<p>investments in planning without confirmed infrastructure creates a high-risk scenario for project developers. This approach fails to account for the uncertainties and substantial costs associated with preliminary planning and land acquisition activities (as being proposed within CMP434).</p> <p>We suggest that a more realistic timeframe, and therefore balanced approach, for DCO projects would be three years; and LPA projects would be two years; to take account of the need for a comprehensive public consultation and extensive preparatory work. This is required to ensure successful project development, with a higher likelihood of planning approval.</p>	
<p>Element 12: Setting out the general arrangements in relation to Gate 2 (see pages 25-26, 47)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Recognising that a timescale for Gate 2 is required, the approach set out in this element for the general arrangements, for Gate 2, are in our view appropriate.</p>	
<p>Element 13: Gate 2 Criteria Evidence Assessment (see pages 26-27, 47-48)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>In our view this element is a necessary part of the solution to deliver TMO4+.</p> <p>In respect of the sample checking to be undertaken by the appropriate network operator, in our view the level of sampling should be determined by the Authority to ensure an optimum balance between market risk assurance and developer compliance on the one hand, and a 'reasonable, efficient and proportionate' process on the other hand.</p>	
<p>Element 14: Gate 2 Offer and Project Site Location Change (see pages 28, 46)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>This element is a pragmatic aspect of the proposed solution that will allow a degree of flexibility to developers where circumstances between Gate 1 and Gate 2 applications result in a need to alter, within reasonable limits, site boundaries.</p> <p>In this regard, we believe there would also be merit in allowing for the possibility of a project moving to somewhere that is the same distance from the connection point as the original location.</p> <p>Notwithstanding the above, the current proposed provision, within CMP434, of twelve months for a developer to relocate a significant proportion of the land following a reassignment of their POC location causes significant issues for large-scale projects with significant land requirements.</p> <p>This time period may be suitable for technology types with low land requirements, but it unduly discriminates against large-scale projects who may be forced into</p>	

<p>negotiations for up to 50% of the required land within a 12 month deadline. The very nature of this deadline will have a significant impact on land negotiations, which in some cases could make a legitimate investable project commercially unviable.</p> <p>In light of the above, we believe that the confirmation of a POC should be open to dialogue between NESO and the developer and should not be imposed upon the project.</p>	
<p>Element 15: Changing the offer and acceptance timescales to align with the Primary Process timescales (e.g. a move away from three months for making licenced offers) (see pages 29, 42-46)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>We recognise that in order to improve the quality of the connection offers; and the confidence that project developers can place in those connection offers; this process needs to change.</p>	
<p>Element 16: Introducing the proposed Connections Network Design Methodology (CNDM) (see pages 29, 53-55)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>Whilst in principle we are supportive of the use of the methodology that flows from a licence condition, we have yet to see the details of said licence conditions and the detail of how it is proposed to operate in practice. Therefore, we cannot support this Element within the CMP434 original at this stage.</p>	
<p>Element 17: Introducing the concept of a Distribution Forecasted Transmission Capacity (DFTC) submission process for Distribution Network Operators (DNOs) and transmission connected Independent Distribution Network Operators (iDNOs) to forecast capacity on an anticipatory basis for Relevant Embedded Small Power Stations or Relevant Embedded Medium Power Stations aligned to the Gate 1 Application Window (see pages 30-33, 51-53)</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>As we set out in answer to Question 11, we are supportive of the DFTC approach in principle. However, we have concerns that allowing D-connected applications at Gate 2 to be unlimited (whereas T-connected applications, at Gate 2, are limited to what was applied for at Gate 1), is unreasonable and unduly discriminatory.</p>	
<p>Element 18: Set out the process for how DNOs and transmission connected iDNOs notify the ESO of</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>

	<p>Relevant Embedded Small Power Stations or Relevant Embedded Medium Power Stations which meet Gate 2 criteria (see pages 33-34, 51-53)</p>	
	<p>This element is an enabling feature of the proposal that ensures that D-connecting projects (that are within scope) are able to apply via the DNO/Transmission Connected iDNO, rather than the ESO.</p> <p>This is a sensible step to include within the proposal.</p>	
6	<p>Are there any elements of the proposal which you believe should not be included as part of this proposed solution, which the Proposer believes represents the 'Minimum Viable Product' reforms required to the connections process? If not, why not? (Please note the element number in each of your responses if applicable)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>As we detail in Q5, there are some Elements (listed below) that are now no longer required, in whole or in part in our view (and in those cases amendment to the Element are necessary); taking into account both the changing connection reform landscape arising from the UK Government's ongoing policy development and broader concerns with the solution as proposed.</p> <p>Element 1 – Methodologies and Guidance Element 4 – Significant Change Element 5 – DFTC/Offshore Element 8 – Longstop Date Element 9 – NESO Designation Element 11 – Gate 2 Criteria Element 16 - CNDM Element 17 – DFTC</p>	
7	<p>As per question 6, are there any additional features which you believe should be included as part of Minimum Viable Product reform to the connections process?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>

	<p>As set out elsewhere in this response, we are concerned that TMO4+ (as proposed in CMP434 – as well as CMP435: see our separate response for further details) does not sufficiently signpost or align with the ‘end point’ for connections reform; as is emerging from the UK Government’s rapidly developing policy in this area. We believe it is key that in implementing a reformed connections process we clearly signpost to all stakeholders what projects will be supported as a result of this new process and that the signals it sends are transparent and enduring.</p> <p>In this regard, it will be important that the focus should be on projects which align with overall UK Government policy and ambition to deliver the needs of the whole energy system, including, for example, the needs of both CCS and Hydrogen in the future.</p>	
8	<p>Do you agree that the Gate 1 process should be a mandatory process step, or do you think Gate 1 should be an optional process step with projects being able to apply straight into the Gate 2 process if the project meets both the relevant Gate 2 and Gate 1 criteria?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
	<p>We agree that an optional process which allows projects to apply for both Gate 1 and Gate 2 offers at the same time is a common-sense approach. Furthermore, it streamlines the process for those projects that are ‘ready to go’ which, in turn, conforms with the aspirations of TMO4+.</p>	
9	<p>Do you believe that the proposed Gate 1 and Gate 2 process could duly or unduly discriminate against any types of projects? If so, do you believe this is justified?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
	<p>Based on the deliberations of the workgroup to date (and not having seen any draft legal text), it is our belief that the proposed solution, to introduce the Gate 1 and Gate 2 processes, would not be unduly discriminatory.</p> <p>This concern around discrimination could nevertheless arise with any potential alternatives, or indeed with the proposed solution, when examining the legal text (once provided).</p> <p>Whilst perhaps not unduly discriminatory, we believe TMO4+ (as currently proposed, in the form of CMP434 original) favours technologies or projects that are</p>	

	less complex and/or have a smaller geographical footprint. We note that these technologies or projects are not necessarily aligned with the delivery of an efficient and secure energy system or our net zero goals.	
10	Please provide your views on the proposed options ((a) to (e) on page 45) to mitigate the risk of requiring a developer to submit their application for planning consent earlier than they would in their development cycle (with the risk this consent could expire and any extension from the Planning Authority is not automatic).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	In our view, of the five solutions listed, solution d) is both the most workable and also the simplest. The other solutions could, in our view, be complicated in comparison to d).	
11	Do you agree that DFTC should be included as part of CMP434? If not, do you believe that the reformed connections process can function without DFTC? Please justify your answer. (see pages 30-34, 51-53)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<p>Subject to DFTC capacity being limited to what the DNO/Transmission connected iDNO has forecast, then, if that was to occur, we would be supportive of the DFTC approach.</p> <p>However, if this was not to occur, then we would have concerns that, as the capacity that would be available via the DFTC route would be uncapped/unlimited, this would both cause a perverse outcome as well as introduce undue discrimination (relative to Transmission connected projects).</p> <p>Furthermore, it undermines the root cause of the need for DFTC if capacity can be allocated at Gate 2, which bears no resemblance to the figure provided at Gate 1 for the TO to model (notwithstanding the fact that we understand the extent to which system studies will be carried out is now limited despite this being a core element of TMO4 initially).</p> <p>In addition, it is important to recognise that the DFTC approach, as outlined in CMP434, relates to both DNOs and Transmission connected iDNOs. However, it</p>	

	is not clear how this is to be implemented in the context of those iDNOs (as the deliberations on DFTC, to date, appear to be DNO-centric) and further thought may be required from Ofgem on this matter.	
12	<p>The Proposer intends to set out supporting arrangements for TMO4+ via a combination of guidance and methodologies (e.g. DFTC, CNDM, Project Designation, Gate 2 Criteria). Do you anticipate any issues with having these outside of Code Governance? (see Pages 9-10, 55)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>It is a long-established legal position that guidance is to assist the understanding of what is set out in the Code, rather than to set out new or additional obligations and/or rights (that do not sit within the Code itself). We would respectfully refer the ESO to papers that were provided to the BSC Panel previously on this topic, including external legal advice obtained, which reinforced this understanding (and is applied in practice through BSC 'Code Subsidiary Documents Architecture Principles' Code Subsidiary Documents Architectural Principles - Elexon Digital BSC).</p> <p>Given this and given the lack of legal certainty for stakeholders that guidance creates (and history has shown), we believe that guidance must be limited to aiding the understanding of what is written in the Code, and not place any additional obligations and/or rights on Parties (that do not sit within the Code itself).</p> <p>To turn this on its head, we do not believe the ESO would be comfortable with stakeholders (who are equal Parties to the CUSC) producing their own guidance (on matters that were codified), which the ESO would need to conform with.</p> <p>The reason this is important is to ensure both legal certainty (and enforceability) for all Parties, in respect of their Terms & Conditions for connections which must be subject to (as set out in law) the express approval of the Authority. Whilst we can appreciate the attraction of non-codified documentation, that is subject to drafting and application by a single Party, it does not meet the legitimate expectations of Parties seeking to connect to the GB Transmission System that their Terms & Conditions will, in all cases, be subject to Authority approval.</p> <p>Furthermore, we welcomed the Authority's support for this legal principle when they approved SSE Generation's GC0151: Grid Code Compliance with Fault Ride Through Requirements, which we believe set a precedent to codify (rather than leave to an ESO document) obligations and rights which in turn provides greater legal certainty and change control for all Code Parties.</p>		

By ensuring that these matters are codified (and subject to express regulatory approval), it ensures that investors have confidence that they will not be subject to an unmanageable risk of unjustified changes in requirements/obligations (unilaterally imposed by the counterparty to their contract); and that a robust independent oversight of the suitability of those proposed changes will be applied.