

When Does Section 16 Apply and therefore require Appendix Q Milestones to be Recalculated?

Clause 16.6 of the CUSC states that [Section 16 \(Queue Management Process\)](#) will only apply for new Connection Offers and a modification to an Existing Agreement that does not have Queue Management Milestones (i.e. Appendix Q).

Therefore, a Gate 2 offer would not trigger a recalculation of Appendix Q milestones, unless the Existing Agreement does not have any Appendix Q Milestones. It has been 2 years since CMP376 was implemented, so there should be very few offers that do not already have Appendix Q Milestones.

Most Gate 2 Offers will not trigger the recalculation of Appendix Q milestones.

16.6 Implementation

16.6.1 The **Queue Management Process** will be:

- (i) included in any **Construction Agreements** (other than those which fall within Paragraph 16.2 above) offered as part of any new **Connection Offers**; and
- (ii) introduced into any **Construction Agreements** (other than those which fall within Paragraph 16.2 above) which do not have the **Queue Management Process** already included within it) when a **Modification Offer** is made; and
- (iii) introduced into any **Existing CMP376 Construction Agreement** which does not have the **Queue Management Process** already included within it through an Agreement to Vary that **Existing CMP376 Construction Agreement** in accordance with the process set out in Paragraph 16.6.3

in each case from the **CMP376 Implementation Date**.

Figure 1: Application of Section 16, Queue Management Process

If there is a recalculation of Appendix Q Milestones, as per Section 16 of the CUSC, then the new milestones would be based on the Gate 2 Modification offer Issue date and the connection date in the Gate 2 Modification offer.

There are a few notable exceptions to the above that were agreed as part of CMP435.

CMP435 One-Off Exceptions to the Rule

M1 Recalculated for All Gate 2 Offers

Milestone M1 will be recalculated for all projects based on the Gate 2 offer date as per clause 18.14.2 in the CUSC and the table in Section 16, shown below.

18.14.2.2. update Appendix Q (Queue Management Process - User Progression Milestones) to reflect the change in approach to the calculation of the **User Progression Milestone** date for M1 and add a new Appendix for User Data/Developer Data or update (if it exists) to include the **Installed Capacity** data;

Figure 2: CMP435 Requirement to Update Milestone M1

Conditional Progression Milestones					
Retained Distribution Milestone Names for consistency	From 0 up to 2 years (0 – 729 days) from contracted Completion date	2 up to 3 years (730 – 1094 days) from contracted Completion date	3 up to 4 years (1095 to 1459 days) from contracted Completion date	4 up to 5 years (1460 – 1824 days) from contracted Completion date	5 years (1825 days) and above from contracted Completion date
Milestones:	All durations for milestones other than M1 are calculated back from the contracted Completion Date Durations for M1 (unless M1 has already been met at the time of the Gate 2 Application) will be the earlier of (a) the date calculated forwards from the Gate 2 Offer date (based on an agreed standard time period for each planning type as referred to below) to move from M3 to M1) and (b) the date calculated back from the contracted Completion Date				
M1 - Initiate Planning Consent	Bilaterally negotiated	18 months	24 months	36 months	48 months
M2 - Secure Consent		12 months	18 months	24 months	30 months
M3 - Land Rights		21 months	27 months	39 months	51 months

Figure 3: Conditional Milestones (M1-M3) Calculation

<u>Planning / Technology Type</u>	<u>Timescale from Gate 2 Offer date to M1</u>
Town and Country Planning (England, Scotland and Wales)	2 years
Section 36 (England/Scotland)	3 years
Development of National Significance (Wales)	3 years
NSIP / DCO (England and Wales)	3 years
Offshore (including Offshore Wind, Interconnectors and OHAs)	5 years
Nuclear	Case by Case
Novel technologies	Case by Case

Figure 4: Backwards Looking Milestone Technology Specific Periods

M1 Adjustment Exception Process:

Unless M1 has already been met at the time of the Gate 2 Modification Offer date (CMP435) or Gate 2 Offer date (CMP434), the durations will be the earlier of:

- (a) the date calculated forwards from the Gate 2 Modification Offer date (CMP435) or Gate 2 Offer date (CMP434) to M1 as set out in Table 3; or
- (b) the date calculated back from the contract Completion Date.

If the forward calculated date is the earlier of the two, the User has (under CUSC Section 16) the possibility of an adjustment exception process. This process allows the User to demonstrate with evidence that a forward calculated M1 would have a detrimental impact on the project. If the evidence is accepted by NESO, the customer will be able to propose a new M1 date no later than the backwards calculated M1. Further detail is provided below at 4.1.2. For an example of how the calculation will work in practice, please see Appendix 1.

Figure 5: M1 Exception, Section 2.3 of the Queue Management Guidance

Projects whose Connection Date is Advanced via a Gate 2 Modification (i.e. Advancement)

NESO has an obligation to bring Appendix Q milestones forward for projects where the connection date is advanced, as per clause 18.14.2.1.

The clause is vague, and it could be interpreted as NESO's discretion on what each new Milestone date should be. I do not believe NESO have to use the calculation within Section 16 and instead can vary it based on what they think is appropriate

18.14.2.1. provide for any changes to the **Existing Agreements** for a **Project** to reflect **Advancement** (including and notwithstanding **CUSC** Section 16 which does not provide for **User Progression Milestone** dates to be brought forward, any changes to advance the **User Progression Milestone** dates to reflect the **Advancement**);

Figure 6: Obligation to Update Appendix Q for Connection Date Advancements

Projects whose Connection Date is Delayed via a Gate 2 Modification

NESO can use the Exceptional Issues process, as per clause 16.5 of the CUSC, to delay Users Appendix Q Milestones when they issue Gate 2 Modifications. Industry is concerned that this exception is at the discretion of NESO, and there should be a clear understanding of what delay can be applied to Appendix Q milestones.

There are several exceptions that are listed in the CUSC that would apply to Gate 2 offers, including NESO (The Company) delaying the CMP435 process, and there will be many instances where NGET are delaying connection dates as they are unable to

deliver work or because the queue position of a project has changed. I think it would be difficult for NESO to object to these exception requests, but NESO would be able to decide what is a reasonable delay.

The issue is that each project will have to request an exception, which is going to be a huge administrative burden for developers and NESO. CMP465 (SSE modification) is trying to address this by providing a blanket delay to M5-M8 milestones. NESO have stated the customer must request any exceptions to Queue Management Milestones within 28 days of receiving their countersigned Gate 2 offer (row 85 of the [latest FAQs](#)).

16.5 Exceptional Issues on User Progression Milestones

There may be a small number of exceptional issues outwith the **User's** control which may lead to **User** project delay and a **User** not being able to meet a **User Progression Milestone**.

The Exceptional issues which apply in the context of the **Queue Management Process** are as follows:

- Where the **User** is delayed in carrying out the **User's Works** which entitles the **User** to fix a later date or dates under Clause 3.2 of the **Construction Agreement** (Delays and Force Majeure) and that delay is the reason that a **User Progression Milestone** is not met;
- Where the **User** is not able to meet a **User Progression Milestone** due to an event of **Force Majeure**;
- Where delays caused by a party (other than the **User**, **The Company** or a **Relevant Transmission Licensee**) can be demonstrated to have an impact upon the **User** meeting a **User Progression Milestone** and the **User** could not have avoided these delays or their impact by the exercise of **Good Industry Practice**
- Where a **User** is not able to meet a **User Progression Milestone** due to Planning appeals and third-party challenges in relation to the **User's Consents**;
- Any delay in the achievement of a milestone by the **User** which is caused by a **Relevant Transmission Licensee** or **The Company**
- Where a **User** can demonstrate that a forward looking M1 would have a detrimental impact on developing their **User's** project provided that any adjustment cannot be later than the backwards looking M1.

Figure 7: Allowed Exceptions to Delay Queue Management Milestones