

# “Pay to Stay”: Ofgem’s plan to cull the data centre connection queue

On 29 July 2026, Ofgem finally set out its plans to curate the data centre connection queue in the [Curate – Demand Connections Reform Consultation](#) (the [Consultation](#)). Ofgem’s stated goal is to disincentivise non-viable and speculative data centre projects from joining or remaining in the demand connections queue, while at the same time seeking to ensure viable projects are not unduly impacted. With its two main proposals being the introduction of a very substantial upfront commitment fee and stringent new queue management milestones for data centres, it is likely that Ofgem’s curation will succeed – and become an outright cull. It remains to be seen, however, whether viable data centre projects will be able to survive this test.

In this briefing, we outline the key aspects of Ofgem’s proposals in the Consultation. We encourage all data centre developers, operators and investors to respond to the Consultation ahead of its closing date of 16 September 2026, as Ofgem will benefit from a comprehensive set of consultation responses from the market before it finalises its proposals in the Autumn.

## 1. Background

Between November 2024 and June 2025, contracted demand in the connection queue in Great Britain increased from 41 GW to 125 GW, with approximately 315 data centres accounting for 73 GW of this surge. With peak demand in Great Britain in 2025 at 45 GW, it is clear that this increase is unlikely to comprise solely of real viable project, and there is significant speculation in the queue.

As we outlined earlier this year, Ofgem, NESO and DESNZ have been pursuing a three-pillar approach to address this. These pillars are:

- [Curate](#): to remove speculative and non-viable projects from the queue (led by Ofgem).

- [Plan](#): to prioritise connections for strategically important projects (led by DESNZ).
- [Connect](#): to provide more viable pathways to grid connection (led by Ofgem).

The Consultation focuses on Ofgem’s first set of “Curate” measures, applying solely to data centres. Ofgem may in due course propose similar “Curate” measures for non-data centre connection projects.

## 2. Curate policy proposals

### 2.1 Data centre commitment fee

Ofgem’s first proposal is a very substantial upfront commitment fee for data centres, currently anticipated to be set at a level between £237,500–£712,500 per MW of contracted capacity.

All data centre projects with a contracted import capacity of 40 MW or more and connected transmission level (or distribution level and triggering a transmission entry assessment) would have to secure this fee upfront and keep it in place until energisation. If the relevant project is abandoned or falls behind its contracted milestones, it would face termination and the loss of the entire commitment fee.

This commitment fee is separate and additional to the normal securities regime, which will continue to apply (although Code Modification Proposal 417 ([CMP417](#)) is currently being considered by Ofgem and widely expected to be approved, and would have the effect of reducing securities for demand projects).

All demand projects will be required to self-declare whether they fall within the data centre definition, with penalties for non-compliance (including termination). For hybrid projects (mixed-use connections), the commitment

fee would still apply to the data centre element (but not other elements); it is however unclear whether connections held by iDNOs and private network operators are within scope of these reforms (they currently do not

appear to be, which would create a significant structural advantage for those operators as data centre projects connected through them would be exempt from Ofgem's new requirements).

## 2.2 Data centre queue management milestones

In addition to the commitment fee, Ofgem proposes new queue management milestones (which would sit alongside existing milestones) for all data centres with IT load capacity of at least 10 MW, at both transmission and distribution level. This lower threshold is intended to avoid creating a cliff-edge incentive for developers to understate capacity.

Developers will be required to choose between two pathways, reflecting different commercial models, being:

- **Self-operation Pathway:** where the developer intends to develop and operate the data centre itself; or
- **Lease or Sale Pathway:** where the developer plans to sell the development site or engage a third-party operator.

Developers would be permitted to use both pathways for different elements of their development and to switch pathway once, provided that if they switch they would be required to supply within six months any evidence the new pathway would have already required.

Ofgem's proposed new data centre specific milestones are set out in the table below, and are intended to form a comprehensive viability check:

| Milestone                                                               | Evidential requirement                                                                                                                                                                                                                                                                                                                                                                                                               | Time period                                                                                                                   |
|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <b>M0.5.Dc</b><br>Non-binding offtake                                   | A credible offtaker or non-binding offtake strategy (e.g. letter of intent, heads of terms, memorandum of understanding, or other non-binding agreement) or a certificate of intended self-usage (if the Self-operation Pathway applies).                                                                                                                                                                                            | Within six months of connection offer signature.                                                                              |
| <b>M2.Dc</b><br>Long-lead equipment procurement                         | Evidence of a commitment to purchase the necessary long lead equipment (e.g. a purchase invoice, an executed procurement contract, or a binding supplier commitment).                                                                                                                                                                                                                                                                | Between twelve and thirty months prior to anticipated energisation date (depending on how far away the energisation date is). |
| <b>M6.Dc</b><br>Financial and technical capability, and binding offtake | <p><b>Financial and Technical Capability</b></p> <p>Financial capability and technical capability (independently confirmed).</p> <p><b>Binding Offtake</b></p> <p>Projects using the Lease or Sale Pathway are additionally required to provide evidence of binding compute offtake.</p> <p>Notably, Ofgem's preferred option requires a binding commitment covering at least 20% of compute capacity for a minimum of one year.</p> | Between nine and eighteen months prior to anticipated energisation date (depending on how far away the energisation date is). |

Failure to meet the relevant milestones would result in the data centre developer facing termination of its connection agreement. For data centres in scope of the commitment fee, this would also result in the commitment fee being forfeited.

### 3. Key considerations for market participants

#### 3.1 Pay to stay: a commitment fee set to cull the queue

Ofgem's proposed commitment fee would likely result in the UK becoming the country with the highest commitment fee for data centres. Given extended connection timelines (with only 11GW of demand slated to be connected pre-2030), developers would also be required to put huge sums at risks for extended periods of time, with no scope for refunds if circumstances change (or indeed, as currently drafted, if transmission owners push connection dates back or NESO updates the commitment fee to increase it retrospectively even further).

We expect very few developers would have the financial capabilities and desire to provide significant commitment fees on such an open-ended nature, and Ofgem's objective of reducing the connection queue is likely to be achieved. The more difficult question is whether Ofgem will now drive viable projects out of the queue, rather than merely speculative projects, and whether data centre investors and developers will redeploy capital to other more welcoming jurisdictions.

It is also noteworthy that Ofgem's proposals are intended to apply retrospectively to existing projects, save for projects whose energisation date falls within six months of the fee's introduction. This means that projects already in advanced development will now face cost increases not accounted for in their current financing arrangements which they will have to address.

#### 3.2 Can the milestones be met in practice?

Meeting the new data centre specific milestones will be a key concern for developers. It is therefore important that they are realistic, achievable and take account of differences in data centre development and usage.

In this respect, M0.5.Dc as proposed would require developers to evidence they have a non-binding offtake within six months of executing the connection offer, regardless of their forecast energisation date. This proposal would in effect entirely reshape the current industry, as it is wholly unrealistic today to expect developers to have indicative offtake arrangements in place for projects which are many years away from energisation. One fears that this may also give rise to an ecosystem of unscrupulous offtakers willing to make a

number of non-binding commitments merely to enable projects to meet the required milestones, and it is difficult to see how NESO and the DNOs would be able to assess this without significant new resources, at a time where they are already stretched.

A notable gap in the Consultation is the absence of any relief mechanism for circumstances beyond the developer's control. The proposals do not currently contemplate any form of force majeure or change-in-law exception to the milestone deadlines. The Consultation itself acknowledges the possibility that a project might be allowed to remedy a milestone failure rather than face immediate ejection from the queue, and invites stakeholder views on when such circumstances should apply. A robust appeals process will also be important to enable developers to challenge decisions by NESO and DNOs where appropriate. Developers may wish to provide strong feedback in this area, given the significant financial consequences of termination (including forfeiture of the commitment fee).

#### 3.3 Moving the goal posts

A further area of uncertainty concerns the extent of discretion to change key parameters, affecting both existing and future projects. The Consultation proposes that adjustments to the level of the commitment fee and its applicability threshold (currently 40 MW) would be embedded in NESO's licence, with either NESO or Ofgem having discretion to review this in due course. This increases uncertainty for developers facing long connection queues, as they could face sudden increases in financial commitments at a time where they are already bound into their projects. Market participants may wish to request greater visibility of future changes to the commitment fees — for example, a cap on percentage increases to be included in NESO's licence, or the introduction of a reasonable notice period before changes are implemented.

#### 3.4 Financing implications: New costs and risks that will need to be managed

From a financing perspective, the proposals introduce new risks for data centre developments. The potential liability on termination and the requirement to post security for the full commitment fee at the point of offer acceptance front-load a significant financial obligation onto projects that are very likely not to have reached final investment decision (FID). For a 500 MW project, security of between

£118.8 million and £356.3 million would need to be posted before FID. At that stage, the full equity and debt financing arrangements required may not be in place, meaning the commitment fee will need to be funded and secured separately from the project's construction financing. Developers with strong parent company balance sheets or existing letter of credit facilities may be well-placed to meet this requirement, but SPV-based developers without such backing may face significant challenges in sourcing the requisite security instruments. The cost of obtaining a letter of credit or performance bond at that stage, when revenue streams are not yet contracted and planning risk may remain, could be material and will need to be factored into overall project economics.

#### 4. Next steps

The Consultation is clear that measures are needed to address the volume of projects in the current grid demand connection queue and seeks to do so primarily through disincentivising new (and removing existing) non-viable and speculative data centres meeting the relevant thresholds through the use of commitment fees and milestones.

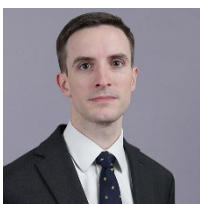
Whilst the rationale for doing so is understandable, the measures will have a significant impact on existing data

centre development at a time when governments internationally are grappling with issues of data sovereignty and where the UK is actively seeking to encourage international companies to locate AI inference and AI training data centres in the UK. It is in this respect unclear whether Ofgem has already undertaken work to assess the implications of its proposals on other government policies (such as [AI Growth Zones](#)).

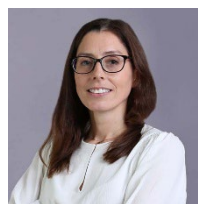
The Consultation remains open until 16 September 2026 with decisions expected to be taken later in 2026. As such, this is a valuable opportunity for market participants to provide feedback on key parts of the proposed reforms which will have significant ongoing financial and operational implications for data centre development sites in the UK.

*If you need advice on the potential impact of the proposed Curate measures, your eligibility to participate in the Consultation, preparing responses and/or developing a strategy to engage with other stakeholders including potential lenders or investors, prospective customers, and other contractors, our team at Slaughter and May is ready to assist.*

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