Electricity and Gas Interconnector Licences

Guidance Document

April 2005
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1. Introduction and background

1.1. These guidelines are issued to help market participants better understand the requirements contained in the electricity and gas interconnector licences. They explain the requirements to hold a licence and the Authority’s role under some of the standard licence conditions, including the procedures the Authority would likely follow in assessing methodology statements and applications for exemption from the requirement to comply with particular licence conditions.

1.2. These guidelines are issued to be read in conjunction with the standard licence conditions in the electricity and gas interconnector licences.

Background

1.3. The new EU Electricity Directive and Regulation, and Gas Directive include provisions that apply directly to the regulation of electricity and gas interconnectors. The EU legislation requires a system of regulated third party access to be applied to interconnectors. It also allows national regulatory authorities to exempt major new interconnectors, and significant increases in capacity in existing interconnectors, from a number of requirements contained in the EU legislation where certain criteria are met. Any decision by the regulatory authority (Ofgem, in the case of Great Britain) to exempt must be notified to the European Commission, who retains a veto over the decision to grant an exemption.

1.4. These requirements for regulated third party access have been implemented in Great Britain via the Energy Act 2004. The Energy Act 2004 introduces a licensing regime for electricity and gas interconnectors, through which the requirements concerning third party access and, where appropriate, exemptions from these requirements, are implemented.

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1 Ofgem is the office of the Authority. The terms ‘Ofgem’ and the ‘Authority’ are used interchangeably in this document.

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1.5. As with other licensed activities in electricity and gas markets, the concept of standard licence conditions has been adopted in interconnector licences. All persons participating in the operation of an electricity or gas interconnector will be required to hold a licence unless the Secretary of State makes an Order granting exemption from the requirement. Whilst it is possible that a licence could relate to more than one interconnector, it is the Authority’s preference that each licence will relate only to one interconnector, with each interconnector operator/owner holding a separate licence applicable to each electricity and gas interconnector. The interconnector covered under a particular licence will be specified in a schedule to that licence. Any upgrade of capacity to an interconnector that is the subject of an existing licence should be captured by that existing licence.

1.6. Persons looking to invest in a new electricity or gas interconnector project, or existing operators seeking to significantly increase the capacity of an existing interconnector, may seek an exemption from some of the requirements of the EU legislation, most notably the requirements relating to third party access and approval of charging methodologies. Where the Authority is satisfied that an interconnector project, or the expansion of an existing interconnector, meets the requirements for exemption the Authority may issue an exemption in respect of that interconnector, or the increase in capacity of that interconnector. If the European Commission does not request that the Authority amend or withdraw its decision to grant an exemption, the licence conditions to which the exemption relates will not be in effect, or will be suspended from operation, in the relevant licence, subject to any conditions placed on the exemption. Those licence conditions in respect of which an exemption can be sought are noted later in these guidance notes.

**Purpose of these guidelines**

1.7. These guidelines are being issued to provide guidance to electricity and gas interconnector licensees and third parties by:

- further describing the meaning of key concepts as detailed within the licence (such as participation in the operation of an interconnector);
♦ outlining the procedure the Authority intends to follow when assessing methodology statements; and

♦ outlining the procedure the Authority will follow when considering whether to give an interconnector operator an exemption from certain requirements of the Electricity Directive and Regulation, and Gas Directive, that are reflected in the gas and electricity interconnector licences.

1.8. Ofgem has indicated its intention to follow a ‘light touch’ regulatory process by minimising, as far as possible, the regulatory burden in relation to the licensing of interconnectors. The publication of these guidance notes, and the potential for working concordats to be developed where considered appropriate and/or necessary with other regulatory bodies or government departments, also represent a commitment by Ofgem to be carrying out its functions in respect of interconnectors in a proportionate and targeted manner.

**Legal status of the guidelines**

1.9. These guidelines constitute guidance notes for the purposes of the gas and electricity interconnector licences and should be read in conjunction with the licences. They do not form part of the licence, nor do they affect the legal operation of the interconnector licences. These guidelines are not legally binding on the Authority.

**Revision of guidelines**

1.10. The guidelines will be kept under review and may be updated by the Authority from time to time.
2. Definitions/Guidance

*Participation in the operation of an interconnector*

2.1. The Energy Act 2004 amends section 4 of the Electricity Act 1989 to insert the following definition of participating in the operation of an electricity interconnector:

“(a) co-ordinating and directing the flow of electricity into or through an electricity interconnector; or

(b) making such an interconnector available for use for the conveyance of electricity;”

2.2. The Energy Act 2004 also amends section 5 of the Gas Act 1986 to insert the following definition of participating in the operation of a gas interconnector:

“(a) co-ordinating and directing the conveyance of gas into or through a gas interconnector; or

(b) making such an interconnector available for use for the conveyance of gas.”

2.3. The intention is that the application of the interconnector licensing regime based upon the above definitions of the activity requiring to be licensed will result in only one licence holder per interconnector.

2.4. However, as the definition of the activity requiring to be licensed captures both the interconnector owner and the interconnector operator, each case will need to be considered on an individual basis.

2.5. It is envisaged that the party that is licensed will be the party responsible for the allocation of capacity on the interconnector and for charging for that capacity. It may be that under certain circumstances this could result in more than one party holding a licence for the same interconnector.

2.6. If a party that would be expected to hold an interconnector licence subcontracted its operational activities to a third party as its ‘service provider’ it is still envisaged that it would be the original party that would be licensed and it
would be its responsibility to ensure any party to whom it subcontracted its
duties complied with the requirements of its licence.

2.7. Ofgem operates an ‘open-door’ policy with market participants and where
parties are interested in discussing their individual situation in order to better
understand whether they require an interconnector licence, Ofgem is happy to
have informal discussions regarding the application of the regulatory
requirements to the individual situations of interconnector owners and operators.

**Electricity and Gas interconnector standard licence conditions**

**Condition 1 Definition and interpretation**

2.8. Condition 1 contains the definitions of terms used throughout the licence –
terms that are only used in specific standard licence conditions are defined
within those conditions. Condition 1 also contains the necessary interpretation
provisions for the licence. The definitions detailed within this condition are
broadly similar to those in licences for other electricity and gas activities.

**Condition 2 Payments by the licensee to the Authority**

2.9. The Energy Act 2004 provides the Competition Commission with the power to
direct Ofgem as to how the costs of licence modification references should be
recovered. Previously, the terms of existing licences were such that costs could
only be recovered from holders of the same type of licence as that which was
the subject of the reference.

2.10. The future intention is that where the Competition Commission does not give
directions as to how the costs should be recovered, they should be apportioned
on the same basis as Ofgem’s normal running costs (i.e. through distribution,
transmission and transportation licences). The Competition Commission may,
however, direct that the costs be recovered in other ways – for example from the
company which is the subject of the reference or across several types of licence
if there are points of general principle that have been clarified.
2.11. In order to enable Ofgem to comply with such a direction, and to treat the costs on the same basis as normal running costs in the absence of a direction, changes are needed to all licences to allow the relevant proportion of the costs of any licence reference to be recovered. Ofgem/DTI issued a joint consultation document on these changes in October 2004.\(^5\)

2.12. The drafting of licence condition 2 of the electricity and gas interconnector licences reflects the underlying intention of the consultation document that in order to enable Ofgem to comply with a direction by the Competition Commission as to the allocation of its costs in a licence modification reference, the licence condition concerning payments by the licensee to the Authority should allow the relevant proportion of the costs of any licence reference to be recovered as the Competition Commission may direct.

2.13. The arrangements for making payments to the Authority, including the recovery of the costs that the Competition Commission incurs in relation to licence modification references to it concerning gas or electricity licensees, are contained within Ofgem’s “licence fee cost recovery principles”.\(^6\)

**Condition 3 Compliance with codes (electricity) and bilateral agreements (gas)**

2.14. Under this condition, electricity interconnector licensees are required to comply with the relevant industry codes, whilst gas interconnector licensees are required to enter into relevant bilateral agreements as required by any relevant gas transporter. Ofgem expects the interconnector licensee to agree, sign and comply with the relevant documents and therefore Ofgem would only expect to be involved in this condition if there was a dispute concerning such agreement, signature or compliance.

2.15. In respect of gas interconnectors, the relevant bilateral agreements, and any amendments to these agreements, must be provided by the licensee to the Authority for its approval. Where, in the case of existing interconnectors, such agreements have already been entered into and have previously been subject to

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\(^5\) Changes to licence fee arrangements for funding code modification appeals and licence modifications references: a joint Ofgem/DTI Consultation; 4 October 2004.

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approval by the Authority (although not specifically under licence condition 3), these agreements do not have to be re-submitted to the Authority for approval – as they have already been approved by the Authority. Any amendments to these agreements however will need to be approved by the Authority in accordance with licence condition 3.

**Condition 4 Provision of information to the Authority**

2.16. Condition 4, which relates to the provision of information by the licensee to the Authority, is similar to conditions found in other gas and electricity licences. It enables the Authority to formally request information from the licensee. Whilst an important mechanism for monitoring and investigating potential licence breaches, this condition is also critical in, so far as is possible, reducing the regulatory burden on licensees in that the Authority can request information as and when it considers it necessary to do so, rather than needing to place ongoing reporting and monitoring requirements in all licence conditions. Information provided under this licence condition can also assist the Authority in better understanding aspects of the licensee’s operation as necessary from time to time.

2.17. In respect of the Authority’s treatment of any information that may be obtained under licence condition 4, regard should be had to section 105 of the Utilities Act 2000 that places general restrictions on the disclosure of information which, broadly speaking, has been obtained under or by virtue of Part I of the Gas Act 1986 or the Electricity Act 1989.\(^7\)

**Condition 5 Provision of information to a relevant transmission licensee or relevant distribution licensee or relevant gas transporter**

2.18. Under licence condition 5, interconnector licensees are required to provide information to the relevant transmission licensee or relevant distribution

\(^{6}\) Available from the Ofgem website www.ofgem.gov.uk

\(^{7}\) Other sections of the Gas Act 1986 and the Electricity Act 1989 in respect of the publication of information, as well as the obligations that the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 place on Ofgem in terms of information disclosure, are also relevant to Ofgem’s treatment of information.

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licensee, or relevant gas transporter. Ofgem would expect the interconnector licensee to agree the required information with the other parties involved, and Ofgem would therefore expect only to be involved in overseeing the provision of information as required in this condition if there was a dispute concerning the information to be provided.

**Condition 6 Separation of accounts**

2.19. As set out in Article 19 of the Electricity Directive and Article 17 of the Gas Directive, electricity and gas undertakings are required to keep separate internal accounts for certain activities from any other activities they may carry out. For electricity, separate internal accounts are required for transmission, distribution, generation and supply, whereas in gas, separate internal accounts must be kept for transmission, distribution, storage, LNG and supply.

2.20. Given that the Energy Act 2004 defines the activity of participation in the operation of an interconnector as a separate and licensable activity, the DTI considers it appropriate to require separate accounts to be kept for this activity as well. The only exception to this would be where an interconnector forms part of an integrated transmission system, in which case the licensee’s transmission accounts will also cover its interconnector operations.\(^8\) That is – in the case of an integrated transmission system, the transmission and interconnector accounts will be combined, but the obligation to keep these combined accounts separate from all other gas/electricity activities remains.

**Conditions 7 and 8 Compulsory acquisition of land etc. and other powers etc. (electricity only)**

2.21. These conditions allow electricity interconnector licensees to use powers under Schedules 3 and 4 of the Electricity Act and reflect what is available to other network operators. These Schedules refer, inter alia, to the compulsory acquisition of land and wayleaves. They are included as the DTI considers such

\(^8\) This is not a situation that would be expected to arise in Great Britain as the same person cannot be the holder of an electricity interconnector licence and the holder of, amongst other licences, a electricity transmission licence: subsection 6(2A) of the Electricity Act 1989. Similarly, a gas interconnector licence may not be granted to a person who is the holder of a gas transporter licence or a gas supplier or shipper licence: subsection 7ZA (2).
powers may be necessary for the construction, expansion or operation of interconnectors. That said, the DTI expects that their use would be limited since the DTI considers that interconnectors are likely to be of a considerably smaller geographical scope than transmission or distribution networks.

2.22. The Gas Act 1986 does not currently permit the DTI to make similar provisions concerning these powers for gas interconnector licensees. However, as the DTI believes that the same considerations relating to these powers apply to gas as for electricity, the DTI will seek to amend the Gas Act 1986 accordingly as soon as a parliamentary opportunity arises. A licence modification may then be required to the gas interconnector licences to give effect to these powers.

**Condition 9 Use of revenues (electricity)**

2.23. Condition 9 applies only in electricity interconnector licences. It requires that the licensee shall allocate interconnector revenues it has received to one or more of the purposes specified in Article 6 of the Electricity Directive. There is not a similar requirement in the Gas Directive or in the proposed Gas Regulation\(^9\) and the Authority does not consider it necessary at this stage to include a similar licence condition in the gas interconnector licences.

2.24. The Authority intends to use the annual use of revenues statement submitted by a licensee to monitor compliance with these requirements. It is likely that revenues will vary from year to year. Therefore, without fettering the discretion of the Authority, it is not the Authority’s intention to consider an annual use of revenues statement in isolation. Except in exceptional cases, it would be the Authority’s intention to consider a revenue statement in conjunction with other annual statements that had been submitted by the licensee.

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\(^9\) The proposed Gas Regulation is available on the European Commission’s website (http://europa.eu.int) and is entitled, *Common position adopted by the Council with a view to the Adoption of a Regulation of the European Parliament and of the Council on conditions for access to the natural gas transmission networks*, 12 November 2004.
Condition 10  Charging methodology to apply to third party access to the licensee’s interconnector

2.25. Article 20 of the Electricity Directive and Article 18 of the Gas Directive set out one of the central tenets of the Directives – the requirement that member states ensure the implementation of a system of third party access based on published tariffs, applicable to all eligible customers and applied objectively and without discrimination between users. Licence condition 10 deals with the approval of the charging methodology to apply to the licensee’s interconnector.

Approval of the charging methodology

2.26. The Authority will assess the charging methodology against the objectives set out in licence condition 10 and against the broader background of the Authority’s statutory objectives and duties. It is the Authority’s intention to adopt an approach based on high-level principles in coming to a decision with respect to licence condition 10.

2.27. Without fettering the discretion of the Authority, it is not intended that the operation of licence condition 10 will preclude the conclusion of long-term contracts as long as they comply with the relevant national and European competition laws and as long as the application of the underlying charging methodology meets the relevant charging methodology objectives set out in licence condition 10.

Initial approval and review of the charging methodology

2.28. Following initial approval, the Authority does not intend to carry out an annual assessment of the licensee’s charging methodology. However, at dates determined by the Authority, the Authority may request the licensee to resubmit its charging methodology for approval. The Authority is likely to make such a request if circumstances change and/or difficulties arise. For example, this could be in relation to, but not limited to, (aspects of) the charging methodology, but could also be in response to wider market developments.
Charging methodologies

2.29. Licence condition 10 sets out the high-level charging methodology objectives. In order for the charging methodology to be approved, the charging methodology should facilitate effective competition for access to interconnector capacity in Great Britain. The application of the charging methodology should not result in discrimination as between persons seeking access to the licensee’s interconnector.

2.30. Subject to the charging methodology objectives in licence condition 10 being met, the underlying charging methodology could be consistent with charges which are set on the basis of one or more of the following:

♦ cost reflectivity; or
♦ an auction process; or
♦ an open season process; or
♦ any other appropriate manner.

2.31. However, the Authority expects that in so far as tariffs set in respect of access to the interconnector are established by auction, either:

(a) no reserve price is applied, or

(b) a reserve price(s) is (are) set at a level

(i) best calculated to promote efficiency and avoid undue discrimination, and

(ii) best calculated to promote effective competition between users of the interconnector and between relevant users of the electricity [gas] transmission [transportation] system and electricity distribution systems in Great Britain.

2.32. The Authority would also expect that in so far as tariffs set in respect of access to the interconnector are established by an open season, the open season process has offered a non-discriminatory opportunity for third parties to express an interest in acquiring interconnector access rights.
Charging methodology statement

2.33. The Authority intends to assess the charging methodology statement against its primary objective and statutory duties and the charging methodology objectives as set out in licence condition 10. In the case of an auction, the Authority expects the charging methodology statement to demonstrate that the relevant charging methodology objectives have been met by setting out the rules of the auction and the procedures for bidding in the auction, setting a clearing price (including ‘pay as bid’) and allocating capacity thereafter.

Modification of the charging methodology

2.34. The Authority places great importance on appropriate consultation between the licensee and its existing, as well as potential, customers. Therefore, it is important that in making any changes to the charging methodology licensees consult appropriately. The importance of this consultation process is reflected in paragraph 8 of licence condition 10 – specifically, that the licensee has taken all reasonable steps to ensure that all persons who may have an interest in the charging methodology are consulted and given an appropriate period in which to respond to such proposed changes.

2.35. The term ‘take all reasonable steps’ in paragraph 8 of licence condition 10 may include (without limitation):

♦ placing a statement in a prominent position on the licensee’s website;
♦ placing advertisements or notices in (inter)national publications; and
♦ providing a copy of the proposed methodology within a reasonable time to any person who requests it.

‘Approval by approval’

2.36. The Authority may consider that in situations where the licensee’s tariffs, and/or a tariff or charging methodology have been approved by a regulatory authority other than the Authority, this approval may meet the requirements under licence condition 10. Where the Authority is of the view that the approval by another regulatory authority is sufficient, the Authority will issue a notice to the licensee that the approval by that other regulatory Authority meets the requirements of
licence condition 10. In such a case, the notice issued by the Authority will constitute approval of a charging methodology for the purposes of licence condition 10.

2.37. It should be noted that where the Authority has issued a notice that the approval by another regulatory authority meets the requirements of licence condition 10, paragraphs 2, and 4 – 11 of licence condition 10 do not apply to the licensee for as long as that notice is valid. The remaining paragraphs (that is, paragraphs 1, 3, and 12 – 21) continue to apply.

2.38. In the event that a notice expires or the Authority gives notice to the licensee that the approval by the other regulatory authority no longer meets the requirements of licence condition 10, the licensee will have to have the charging methodology to apply to its interconnector approved by the Authority.

Contracts in existence prior to 1 July 2004

2.39. The European Commission has indicated that the Electricity and Gas Directives do not necessarily require that contracts entered into prior to 1 July 2004 be approved by a regulatory authority in circumstances where such contracts have already been subject to some form of regulatory approval.

2.40. Therefore, paragraphs 2 and 4 – 11 of licence condition 10 will not apply to contracts entered into before 1 July 2004 that have been subject to regulatory approval, either from the European Commission or the Authority, and where the Authority has given a notice to the licensee that such paragraphs do not apply to such contracts.

2.41. The Authority may withdraw a notice given to a licensee in respect of a contract or contracts in a number of circumstances, which are listed in the licence condition. These circumstances include where there is a material change to the contract terms or the contract is extended beyond its original term. It should be noted that should any of the circumstances in which the Authority can withdraw a notice arise, the Authority has discretion in deciding whether the notice should in fact be withdrawn.
2.42. The licensee is obliged to notify the Authority of any proposed material changes to contracts that are the subject of a notice given by the Authority to the licensee.

**Condition 11 Requirement to offer terms for access to the licensee’s interconnector**

2.43. Condition 11 of the electricity and gas licences sets out the requirement on the licensee to offer terms for access to the licensee’s interconnector and reflects the requirements of Articles 18 and 20 respectively of the Gas and Electricity Directives. The licensee is required to conduct its business in accordance with this licence condition but it should be noted that there is no reporting requirement on the part of the licensee.

2.44. The obligation on the licensee is to ensure that non-price terms and conditions of access are transparent and non-discriminatory.

**Condition 12 Application of licence conditions 9, 10 and 11**

2.45. Condition 12 of the gas and electricity interconnector licences provides a mechanism through which licensees can be exempted from any or all of the requirements in licence conditions 9 (electricity only), 10 and 11. Licence condition 12 essentially reflects Article 7 of the Electricity Regulation and Article 22 of the Gas Directive, which provide that where specified conditions are met, an exemption may be given from various requirements contained in the Directives and the Regulation. Notably, exemption may be given from the requirements relating to third party access and approval of charging methodologies.

2.46. In order that any or all of licence conditions 9, 10 and 11 not be in effect, or be suspended from operation in respect of any particular interconnector, or any proposed expansion to the capacity of an existing interconnector, all of the criteria set out in paragraph 6 of condition 12 must be met. These criteria reflect the requirements of the EU legislation. The criteria are:

(a) the investment in the licensee’s interconnector enhances competition in
electricity or gas supply (as appropriate) and, for gas interconnectors only, enhances security of supply;

(b) the level of risk attached to the investment is such that the investment would not take place unless the exemption is granted;

(c) the interconnector will be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators to whose systems that infrastructure will be connected;

(d) charges are levied on the users of the interconnector;

(e) in the case of electricity, since the partial market opening referred to in Article 19 of Directive 96/92/EC, no part of the capital or operating costs of the interconnector has been recovered from any component of charges made for the use of transmission or distribution systems linked by the interconnector; and

(f) the exemption is not detrimental to competition or the effective functioning of the internal electricity or gas (as appropriate) market, or the efficient functioning of the regulated system to which the interconnector is connected.

Having certain conditions not in effect in a licence

2.47. The requirement for criterion (b) above to be met means that in most circumstances the request for the relevant licence conditions not to be in effect in a particular licence will be made at the time of application for the interconnector licence, i.e. prior to final decisions about investment being made.

2.48. The situation where this may not be the case would be if an application for a licence was made very early in the process and the licensee then subsequently applied for the relevant conditions not to be in effect in its licence, such application being made before any final decisions about investment in the project had been made.

2.49. As noted above, existing interconnectors that may or may not be exempt from any of the relevant licence conditions may apply for an exemption in respect of significant increases of capacity. In this case it is expected that the licence
already applying to the existing interconnector will cover both the existing interconnector and the increase in capacity, however, any exemption order that may be issued under condition 12 in respect of that increase in capacity would only apply to that increase in capacity. That is, licence conditions 9 (where applicable), 10 and 11 would remain in effect in that licence in respect of the existing interconnector, unless that interconnector was already the subject of an exemption, in which case that exemption would continue unaffected in accordance with its terms.

2.50. It should be noted that any application for an interconnector licence must be made in accordance with the Application Regulations,\(^\text{10}\) part of which provides the opportunity for applicants to state that they wish to be exempt from some (or all) of the requirements in the Directives and Regulation for which exemptions are able to be granted, and hence that some or all of the relevant standard licence conditions should be not in effect in their licence.

2.51. Such an application for the relevant conditions not to be in effect in a licence must set out all the relevant information necessary for the Authority to determine whether the project does meet all the criteria. To help expedite the process it is open to a potential applicant who is seeking for some licence conditions to not be in effect to submit a draft application to the Authority prior to submitting the formal application.

2.52. On receiving an application for the relevant conditions not to be in effect in a particular licence it is likely that the Authority will consult interested parties on whether the relevant licence conditions should be switched off. Such a consultation is likely to contain the applicant’s views as to how they meet the exemption criteria and Ofgem’s initial views as to whether or not the applicant meets the exemption criteria.\(^\text{11}\)

\(^{10}\) Statutory Instrument 2004 No. 2952: The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) (No. 2) Regulations 2004 and Statutory Instrument 2004 No. 2983 The Gas (Applications for Licences and Extensions and Restrictions of Licences) (No. 2) Regulations 2004. These can be found on Ofgem’s website [www.ofgem.gov.uk](http://www.ofgem.gov.uk), under the licensing micro site.

\(^{11}\) An example of this can be seen in the following document: ‘Application by BBL Company for an interconnector licence to participate in the operation of the Balgzand Bacton Line; Ofgem initial views’ December 2004.
2.53. Ofgem will take into account the responses it receives from its consultation in making its decision as to whether the applicant meets the criteria for the relevant conditions to be switched off.

2.54. Where the Authority considers that it is appropriate that any or all of licence conditions 9, 10 or 11 not be in effect in a particular licence, the Authority will issue an exemption order to that effect under condition 12 at the same time or following the grant of the interconnector licence. The exemption order, together with the information provided by the licensee in respect of their application to have the licence conditions not in effect, and the Authority’s reasoning for the giving of an exemption, will then be provided to the European Commission. The European Commission then has two months (which can be extended to three where additional information is sought by the Commission) in which it may request that the Authority amend or withdraw the decision to grant an exemption. Where the European Commission has so requested the Authority to amend or withdraw its decision, this will be given effect through the exemption order which will provide routes for amendment or revocation should the European Commission request that the Authority’s decision be amended or withdrawn.

**Bringing licence conditions not in effect, or suspended from operation in a licence, into effect or into operation**

2.55. An exemption order will come to an end, and therefore, the licence conditions to which it relates will come into effect in a licence, in accordance with its terms. Any exemption order issued by the Authority will likely contain an expiry date (or possibly an expiry event – in which case the exemption will expire on the occurrence of that event), as well as listing a number of circumstances under which, should such circumstances arise, the Authority may revoke the exemption order.

2.56. The circumstances under which an exemption order issued by the Authority may be revoked will be listed in the exemption order. For general guidance on the grounds for revocation or amendment that the Authority considers appropriate to include in an exemption order regard should be had to the publication, LNG
Facilities and Interconnectors: EU Legislation and Regulatory Regime, DTI/Ofgem final views, published in November 2003. Potential applicants for exemption may also wish to look at the types of exemption orders that the Authority has already given under the exemption regime in respect of LNG facilities. It should be noted however that each application for exemption will be considered on a case-by-case basis and therefore the form of any exemption order that may be granted will reflect the Authority’s consideration and decision in respect of the individual circumstances of an application.

2.57. Prior to revoking an exemption order it is likely that the Authority will consult with interested parties in order to have their views on whether the exemption should continue to operate.

**Condition 13 Capacity utilisation**

2.58. This condition reflects Article 6(3) of the Electricity Regulation in the requirement to maximise the capacity of interconnectors to be made available to market participants.

2.59. Ofgem regularly monitors all aspects of market performance and behaviour, and the extent that unused capacity is made available to the market will be monitored across all licensees on a regular basis. This condition will be in place in all licences (as it is not one of the requirements in the Regulation in relation to which an exemption may be given) and will therefore likely be a constant and continuing requirement for all interconnector licensees.

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12 This publication is available from the publications section of the Ofgem website, and is publication number 150 of 2003.
13 These exemption decisions and notices are also available from the publications section of the Ofgem website:
   - Application by South Hook LNG Terminal Company Ltd (SHTCL) (owned by Qatar Petroleum and ExxonMobil) under section 19C of the Gas Act 1986 for an exemption from section 19D of the Gas Act 1986: Ofgem Final Views, November 2004 (publication number 267/04);
   - Application by Grain LNG Ltd under section 19C of the Gas Act 1986 for an exemption from section 19D of the Gas Act 1986: Ofgem Final Views, December 2004 (publication number 273/04); and
14 It is likely that such a requirement will be included in the proposed Gas Directive, see note 7 above for reference.
2.60. This condition places a requirement on licensees to make available to the market the maximum capacity at all entry and exit points; for new contracts to reflect the best practice principles of allowing unused capacity to be offered back to the primary market and for users of the licensee’s interconnector who wish to re-sell their unused contracted capacity on the secondary market to be entitled to do so. Even where contractual congestion occurs in respect of existing contracts this condition also places a responsibility on licensees to seek to make this capacity available in line with these best practice principles.

2.61. The condition further details both the information which the licensee should make available to the wider market in regard to their capacity and also the method by which it would be considered appropriate to do so – i.e. publication on a regular and rolling basis on the licensee’s website.

**Condition 14 Dispute resolution**

2.62. The DTI has consulted on and is presently considering with Ofgem the extent to which existing regulatory arrangements for dispute resolution in Great Britain meet the requirements of Article 23 of the 2003 Electricity Directive, and Article 25 of the 2003 Gas Directive. Ofgem intends to issue separate guidelines relating to the handling of disputes arising under these Directives.

2.63. Further, Ofgem has indicated that it is keen to progress the introduction of concordats between the regulatory authorities responsible for the regulation of interconnectors between Great Britain and other countries or territories. It is intended that such concordats will create a framework for cooperation and information exchange between regulatory authorities and will set out how disputes over access to interconnectors will be dealt with.

**Conditions 15, 16, 17 and 18 BETTA (electricity only)**

2.64. These conditions have been included as standard licence conditions in electricity interconnector licences such that equivalent obligations in relation to the implementation of BETTA should be placed upon interconnector licensees as on other licensees. As the requirements and operation of these licence conditions have been fully covered within the BETTA consultation process,
Ofgem does not consider it to be necessary to provide guidance for these conditions within this document.