

# Consultation

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## Statutory consultation on the temporary facilitative licence condition to support the implementation of the Independent System Operator and Planner – Reasons and effect

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We are consulting on a proposed temporary licence condition to be incorporated into all Ofgem-regulated standard licence conditions and the smart meter communication licence, to facilitate the transition to the Independent System Operator and Planner (ISOP).

This is a statutory consultation in accordance with Part 5 of the Energy Act 2023. The consultation highlights the scope and policy intention of the temporary licence condition. We would like views from licensees, industry, wider stakeholders and welcome responses from the public with an interest in the establishment of the ISOP.

Once the consultation is closed, we will consider all responses. We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

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## Section 1: Introduction

This section sets out background and context, as well as a brief overview of what we are consulting on, and which licences will be affected.

### Background

- 1.1. The Gas and Electricity Markets Authority (“Ofgem” or the “Authority”)<sup>1</sup> and government set out a commitment to create a system operator which is independent, capable of taking on a wider remit of responsibilities as the energy system becomes ever more complex and which operates in the interests of consumers.
- 1.2. The Energy Act, which received Royal Assent in October 2023, provides for the designation of the Independent System Operator and Planner (ISOP), and sets out key statutory functions and duties for this new body. The Act also provided for new categories of licences to be added into the Electricity Act 1989 and the Gas Act 1986.
- 1.3. In future, the company designated as the ISOP will be known as National Electricity System Operator (NESO)<sup>2</sup>, and will take on all the main existing roles and responsibilities of National Grid Electricity System Operator Limited (NGESO), and strategic planning, long-term forecasting and market strategy roles in respect of gas.
- 1.4. Additionally, it will take on new and enhanced roles, including providing expert advice, analysis, and information to Ofgem and government, and will play an increasingly significant role in shaping the energy system and driving forward competition. It will also have statutory powers to request information to support its functions.
- 1.5. Parties have been working closely together, including Ofgem, the Department for Energy Security and Net Zero (DESNZ), National Grid plc (NG plc), NGESO and National Gas Transmission plc (NGT) to plan, prepare for and implement the

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<sup>1</sup> The terms “GEMA”, “the Authority”, “Ofgem”, “we”, “our” and “us” are used interchangeably in this document.

<sup>2</sup> In January 2024, NGESO announced the intended company name of the ISOP. The company will be designated as the ISOP with the functions, powers and duties of the ISOP under the legislation, the other legal documents such as its licences and the industry codes will use that (statutory) terminology, but it will be known using the company name, National Electricity System Operator (NESO). For simplicity, this consultation refers to NESO, save for instances where use of the statutory term ISOP is appropriate for clarity.

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changes that are needed. Work with wider industry has been, and continues to be, essential.

- 1.6. As we progress towards and beyond implementation of NESO, such work and co-operation from industry stakeholders will be vital for a smooth and successful transition. This statutory consultation proposes the introduction of a temporary licence condition (the “temporary licence condition”) which seeks to facilitate this implementation work, both up to Day 1 and for a period after.

### **What are we consulting on?**

- 1.7. We are consulting on the introduction of a temporary licence condition which shall be effective for a period of three years or up to such earlier date as may be directed by Ofgem or the Secretary of State.
- 1.8. We are proposing the temporary licence condition with the aim of requiring licence holders of the licences listed below (the “licensees”) to cooperate in and to not frustrate the transition to NESO.
- 1.9. The Authority proposes to modify each of the licences listed below:
- All holders of an electricity distribution licence
  - All holders of an electricity transmission licence
  - All holders of an electricity offshore transmission licence
  - All holders of an electricity interconnector licence
  - All holders of an electricity supply licence
  - All holders of an electricity generation licence
  - All holders of a gas transporter licence
  - All holders of a gas interconnector licence
  - All holders of a gas supplier licence
  - All holders of a gas shipper licence
  - The holder of a smart meter communication licence

### **Context and related publications**

- 1.10. This is a joint Ofgem and DESNZ programme of work. DESNZ fully supports this consultation and the intent to put in place temporary facilitative licence conditions to facilitate the implementation of NESO. Ofgem are the relevant authority for the

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purposes of consulting on and introducing the temporary licence condition by way of modifications powers under section 169(1) of the Energy Act 2023 and the modification procedure set out in section 170 of that Act.

## **Consultation stages**

1.11. This is a statutory consultation. A notice for the purposes of section 170(1) of the Energy Act 2023 is appended to this document at Annex 1. We invite stakeholders to submit representation by 10 May 2024. Following the statutory consultation and assessment of representations received, we shall make a decision using the powers in section 169 of the Energy Act 2023. Consequently, there will be no 56-day stand still period between any potential decision and commencement of any new licence conditions, as is the case with Ofgem’s licence modification powers in the Electricity Act 1989 and Gas Act 1986.<sup>3</sup>

## **How to respond**

1.12. We want to hear from anyone interested in this consultation. Please send your response to the person or team named on this document’s front page.

1.13. We’ve asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.

1.14. We will publish non-confidential responses on our website at [www.ofgem.gov.uk/consultations](http://www.ofgem.gov.uk/consultations).

## **Your response, data and confidentiality**

1.15. You can ask us to keep your response, or parts of your response, confidential. We’ll respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

1.16. If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a

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<sup>3</sup> Please refer to the respective powers under Section 11A of the Electricity Act 1989 and Section 23 of the Gas Act 1986.

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separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

- 1.17. If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000. Please refer to our Privacy Notice on consultations, see Appendix 4.
- 1.18. If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.

## **General feedback**

- 1.19. We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:
1. Do you have any comments about the overall process of this consultation?
  2. Do you have any comments about its tone and content?
  3. Was it easy to read and understand? Or could it have been better written?
  4. Were its conclusions balanced?
  5. Did it make reasoned recommendations for improvement?
  6. Any further comments?

Please send any general feedback comments to [stakeholders@ofgem.gov.uk](mailto:stakeholders@ofgem.gov.uk)

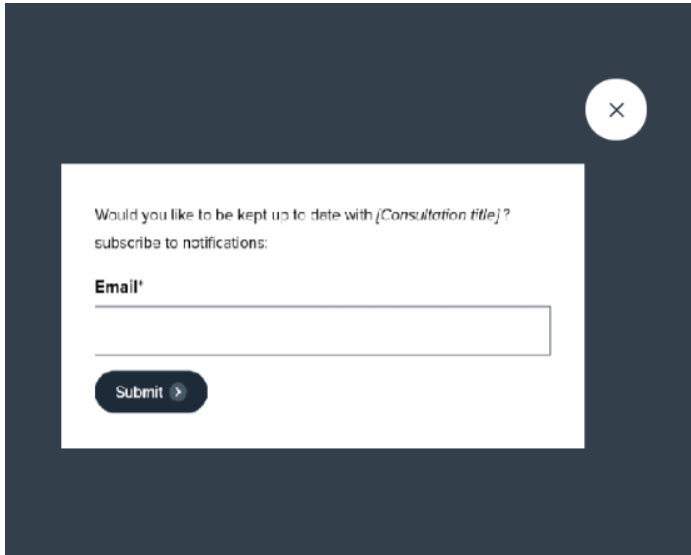
## **How to track the progress of the consultation**

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. [Ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)

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Notify me +



A screenshot of a dark-themed notification subscription form. The form is centered on a dark background and contains the following elements: a close button (an 'X' in a circle) in the top right corner; the text "Would you like to be kept up to date with [Consultation title]?" followed by "subscribe to notifications:"; a label "Email:" above a text input field; and a "Submit" button with a right-pointing arrow at the bottom left.

Once subscribed to the notifications for a particular consultation, you will receive an email to notify you when it has changed status. Our consultation stages are:

**Upcoming** > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)



## Section 2: The Facilitative Licence Condition

### Section summary

This section sets out the operation and the scope for the proposed facilitative licence condition.

### Question

Q1–Are there any foreseeable impacts from the implementation of the temporary licence condition which we should consider?

Q2 – Does the text of the temporary licence condition capture the policy intent as set out in this consultation document?

Q3 – Do you have any other views or comments relating to the temporary licence condition?

### Licence Conditions Overview

- 2.1. In this section we provide an overview of the temporary licence condition, including the policy intention behind the licence condition requirements.
- 2.2. As highlighted above, the condition is a temporary, facilitative measure. We intend for it to be effective for a period of three years following designation of NESO as the ISOP, or up to such earlier date as may be directed by Ofgem or the Secretary of State (SoS). This period shall enable us to successfully implement NESO and monitor future developments that occur post Day 1.
- 2.3. We also intend to add the temporary facilitative condition to all standard licence conditions, as well as the Smart Meter Communication licence, in order to prepare for any potential scenario of cooperation and facilitation that may be required.
- 2.4. The condition seeks to ensure:
  - the achievement of what are termed 'ISOP Implementation Objectives', meaning adequate preparation for designation of NESO as the ISOP, and timely, effective taking of necessary steps in connection with or in consequence of designation; and
  - the timely effect of any document termed 'ISOP Change Programme', being any such named document consulted on and published by Ofgem or the SoS for the purposes of specifying preparation or steps to be made in relation to the above objectives.

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- 2.5. The temporary licence condition seeks to ensure these aims, in part, by a general requirement that when directed (and where reasonable and within their power to do so) licensees must take steps to:
- 1) enable the above ISOP Implementation Objectives to be met; or
  - 2) which are necessary to give timely effect to matters set out in an ISOP Change Programme document. Any such document will be consulted on first by Ofgem or the SoS.
- 2.6. The temporary licence condition also provides that in enabling other licence holders to take any such steps, there is a requirement on licensees to cooperate with each other, as well as with Ofgem, the SoS, and any other persons as directed.<sup>4</sup>
- 2.7. This cooperation requirement also applies in respect of facilitating timely implementation of modifications to licences and relevant documents under the Energy Act 2023.
- 2.8. The condition also provides that licensees are prohibited from taking any action or exercising rights that are intended to hinder or frustrate the achievement of the ISOP Implementation Objectives or the effect of any ISOP Change Programme document. Though, this requirement does not affect any legal rights the licensee may have against public bodies or individuals.
- 2.9. Finally, the temporary licence condition requires licensees to inform Ofgem of any potential conflict with the condition’s provisions and any other licence condition, as soon as reasonably practicable.

### **Impact on Licensees**

- 2.10. For the avoidance of doubt, this current statutory consultation concerns the proposed framework of the temporary licence condition. This is not a consultation on any potential future directions given under this framework, nor on any iteration of any ISOP Change Programme document. We note that the latter would be consulted on by the SoS or Ofgem from time to time prior to publication, in any event.
- 2.11. The introduction of the temporary licence condition does not represent a shift in the status quo. Ofgem and government have been encouraged by ongoing involvement and cooperation by licensees and industry in planning and preparing for NESO’s implementation. Given the importance and complexity of achieving

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<sup>4</sup> By Ofgem or the Secretary of State.

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implementation and steps beyond, and as we move ever closer to these milestones, we see it as important to safeguard cooperation and facilitation by codification in the licences. The temporary licence condition represents this codification. Ofgem has used similar approaches to previous large scale transformation projects. For example, the implementation of the British Electricity Trading and Transmissions Arrangements (BETTA).

## **Section 3: Next steps**

- 3.1 Following the conclusion of this consultation, we will review and fully consider the responses we receive on the introduction of the temporary licence condition. Ofgem will review and share the responses with DESNZ. Unless confidential, we shall initially share the responses to the publication. Once we have received responses, we intend to make a decision ahead of ISOP designation. Timings will be subject to the number and detail of responses we receive.
- 3.2 Please refer to section 1.12 – 1.18 on how to respond to this statutory consultation.

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## Appendices

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## **Appendix 4 – Privacy notice on consultations**

### **Personal data**

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

#### **1. The identity of the controller and contact details of our Data Protection Officer**

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at [dpo@ofgem.gov.uk](mailto:dpo@ofgem.gov.uk)

#### **2. Why we are collecting your personal data**

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

#### **3. Our legal basis for processing your personal data**

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

#### **4. With whom we will be sharing your personal data**

We will share responses with the Department for Energy Security and Net Zero.

#### **5. For how long we will keep your personal data, or criteria used to determine the retention period.**

Responses will be stored for reference until we have established a more stable and enduring regulatory regime for NESO.

#### **6. Your rights**

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data

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- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3<sup>rd</sup> parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

**7. Your personal data will not be sent overseas.**

**8. Your personal data will not be used for any automated decision making.**

**9. Your personal data will be stored in a secure government IT system.**

**10. More information** For more information on how Ofgem processes your data, click on the link to our "[Ofgem privacy promise](#)".