

Guidance

Carbon dioxide transport and storage licensees in financial or operational distress

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This guidance document is intended to provide clarity to carbon dioxide transport and storage licence holders on how the Economic Regulatory Regime and associated frameworks would respond to a company performing the activities under Section 2 of the Energy Act 2023 (the “Licensee”) experiencing financial or operational distress. It is subordinate to the carbon dioxide transport & storage licence (the “Licence”) itself and Ofgem’s statutory duties. Capitalised terms in this guidance are as defined in the Licence unless the context suggests otherwise, and we may replicate any definitions in this guidance for clarity.

Any case of financial or operational distress or financial or operational failure that occurs will turn on their own particular facts. As such, the indicative responses set out in this document are not intended to restrict the scope of our powers or the exercise of our discretion whether under licence, statute or otherwise. Neither is it intended that this document creates any legitimate expectation that specific cases will be dealt with in a particular manner.

This guidance is based on current positions and may need to be amended to reflect changing circumstances or legislation. This guidance does not constitute legal advice, and readers should seek their own legal counsel for any legal interpretations.

Ofgem is the Office of Gas and Electricity Markets. We are the independent energy regulator for England, Scotland and Wales (Great Britain). We are governed by the Gas and Electricity Markets Authority (the “Authority”) which is the body empowered by Part 1 Chapter 1 of the Energy Act 2023 to regulate CO2 Transport and Storage networks in the United Kingdom. The terms “Ofgem”, “the Authority,” “we”, “us” and “our” are used interchangeably in this document.

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Introduction

This guidance sets out at a high level how the regulatory and legal frameworks may respond to a Licensee experiencing deteriorating financial health or issues with fulfilling its obligations under its Licence.

One of Ofgem’s principal objectives is to protect the interest of current and future users of carbon dioxide transport and storage networks (“Users”). In the absence of mitigating measures, the implications of a Licensee experiencing deteriorating financial health or struggling to maintain and develop its network may affect Users through a reduction in service or quality of service.

Under the regulatory regime Ofgem has arrangements in place to monitor the financial and operational health of licensees, and to respond in the event that one or more of those Licensees experience issues. The aim is to promote the resilience of transport and storage networks and ensure continuity of service for Users of those networks.

The regulatory and legal frameworks also provide for the following frameworks to be applied where appropriate in the case of a Licensee experiencing financial or operational distress:

- a Special Administration Regime (SAR) (including a SAR Transfer Scheme),
- a Section 50 Transfer Scheme
- a T&SCo of Last Resort (ToLR) process.

The SAR Transfer Scheme and Section 50 Transfer Scheme are together referred to as the “Transfer Schemes” in this document.

These processes have been developed in alignment with Ofgem’s duty under the Energy Act 2023 to promote the resilience of transport and storage (“T&S”) networks, where appropriate.

Context and related publications

[The Energy Act 2023](#)

[The carbon dioxide transport and storage licenses](#)

[The Carbon Dioxide Transport and Storage \(Licensed Operators\) Administration \(England and Wales\) Rules 2025](#)

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1. Licence obligations and regulatory framework

This chapter summarises the relevant Licence obligations and tools available under the regulatory regime that are designed to promote financial resilience and identify occurrences of financial or operational distress. It covers the potential regulatory response where acquired information indicates that a Licensee is in financial or operational difficulty. The regulatory requirements on a trade sale are also included as this could be a potential response to an occurrence of financial or operational distress of a Licensee.

Regulatory requirements to support financial resilience

- 1.1 We define financial resilience as Licensees having sufficient financial safeguards or headroom so that they can avoid and/or manage the risk of financial distress or failure if there is a downside shock. The extent of this risk and potential impact is dependent on factors including the size of the shock, the level of headroom and any mitigating arrangements, such as ringfencing protections.
- 1.2 Licensees and their shareholders have significant discretion to make decisions about their financing and capital structure within the boundaries of their Licence and company law. We expect Licensees to manage their own financial risks and for shareholders, not Users, to directly gain or lose as a consequence of their choices.
- 1.3 The purpose of financial resilience measures within the economic regime is to protect Users from the adverse consequences of financial distress or failure, which include the higher costs of capital and the potential impact on quality of service associated with Licensees with poor resilience. These Licensees may also potentially be at risk of Licence breaches, default or administration.
- 1.4 The Licence includes a number of requirements that are designed to promote the financial resilience of a Licensee and mitigate the likelihood that a Licensee experiences financial distress, or ultimately Licence breaches, default or administration. These include, but are not limited to:
 - Financial resilience conditions
 - Ring fence conditions
- 1.5 The Financial resilience conditions included in the Licence ensure that the Licensee has the financial resources and standing required to enable it to carry on the Transport and Storage (T&S) Business and its associated obligations. For example, we require Licensees, under Standard Condition B14: Availability of resources, to certify on an annual basis that they have adequate access to financial and other resources available to them to carry on the T&S Business and comply with their obligations under the Licence and the [CCS Network Code](#). In addition, under Standard Condition B18: Financial Resilience and Credit Quality,

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Licensees are required to comply with the Mandated Financing Terms set out in the Licence which are designed to support robust financial metrics.

- 1.6 The Ring fence conditions included in the Licence to support financial resilience ensure a Licensee's assets, cash flows and other financial resources are applied to meet the needs of the regulated business and are not diverted to any other purposes nor exposed to any unrelated risks. Broadly, the objectives of the ring fence conditions are to:
- a. Minimise the likelihood of financial distress by imposing a range of regulatory requirements to back up the corporate governance arrangements put in place by the management and shareholders of Licensees,
 - b. provide warning signals when symptoms of financial distress appear or potential threats are identified,
 - c. mitigate the severity and impact of financial distress factors and reduce any "chain reaction" of adverse financial events; and
 - d. to facilitate the special administration process where warranted.
- 1.7 The primary responsibility for the financial integrity of Licensees lies with their management and shareholders. We expect Licensees to act responsibly and to inform Ofgem at the earliest stage possible of any potential or actual financial distress. The earlier that a case of financial distress can be identified, the more response options we have available that may help to mitigate and/or contain the situation.
- 1.8 The key conditions within the Licence which promote robust financial resilience and support the regulatory ring-fence include:
- a. Standard Condition B6 (Conduct of T&S Business) – designed to protect the regulatory ringfence around the RAV
 - b. Standard Condition B7 (Independence of the T&S Business and restricted use of Confidential Information) – designed to maintain the independence of the T&S Business and protect regulatory ringfence around the RAV
 - c. Standard Condition B8 (Requirement for Sufficiently Independent Directors) – designed to maintain the independence of the T&S Business and protect regulatory ringfence around the RAV
 - d. Standard Condition B9 (Prohibition of cross-subsidy) – designed to protect the regulatory ringfence around the RAV
 - e. Standard Condition B12 (Disposal of assets and restrictions on charges) – designed to protect the regulatory ringfence around the RAV

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- f. Standard Condition B13 (Restriction on activity and financial ring-fencing) – designed to protect the regulatory ringfence around the RAV
 - g. Standard Condition B14 (Availability of resources) – designed to ensure that Shareholders remain obligated that their financial policies and actions do not result in Licence breaches.
 - h. Standard Condition B16 (Indebtedness) – designed to provide an early warning indicator for the regulator of potential financial distress
 - i. Standard Condition B17 (Undertaking from Ultimate Controller) – designed to ensure that Ultimate Controller is committed to resilience of the Licensee
 - j. Standard Condition B18 (Financial Resilience and Credit Quality) – designed to provide an early warning indicator for the regulator of potential financial distress, provide information to the regulator if the Licensee is taking appropriate action to resolve the potential distress, incentivise shareholders and management to maintain financial headroom and reduce cash leakage in a situation where financial resilience is low
- 1.9 There are additional tools within the wider regulatory framework where Ofgem will look at the overall financial resilience of a Licensee. These include, but are not limited to, financeability assessments and an Indicative Credit Rating Process.
- 1.10 We undertake financeability assessments where necessary, such as during each Periodic Review or as a result of a re-opener. This assessment is to determine if an efficient Licensee at a notional capital structure can secure efficient financing in relation to its licensable activities.
- 1.11 An Indicative Credit Rating Process is a process which may be triggered after the First Regulatory Period to assist in informing our assessment of whether it would be appropriate to introduce an obligation for a Licensee to obtain and maintain an Investment Grade Issuer Credit Rating. Maintaining an Investment Grade Issuer Credit Rating is a requirement across many regulated utilities and provides independent analysis that a Licensee is of sound financial footing, which contributes towards our assessment of a Licensee’s financial resilience. Such process will be implemented in accordance with Standard Condition B18 (Financial Resilience and Credit Quality) and Special Condition H23 (Credit Rating).
- 1.12 As the regulator we should always be vigilant and look at best practice across the regulatory landscape for measures that improve existing financial resilience requirements to protect against the downsides that Users could bear, but which do not introduce disproportionate incremental costs.

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Early warning signs

- 1.13 The policy tools we have aim to provide early warning of financial distress, thereby allowing Ofgem and a Licensee to consider potential mitigations and restrict certain activities in the event of financial deterioration. The intention is to make failure less likely and/or increase the chance and quantum of recovery for the benefit of Users.
- 1.14 We expect licensees, who will be or ought to be aware of their financial and operational position to act responsibly, and where required, promptly fulfil the appropriate reporting obligations relating to financial or operational issues. This is to better enable us to consider, in light of any representations made, what action, if any, to take to prevent further financial or operational distress or ultimately financial failure and/or Licence revocation.
- 1.15 The information Licensees are required to provide under their Licence obligations along with general market information can provide early warning signs that a Licensee is experiencing issues. We describe four such early warning systems below.
- 1) **Monitoring financial health and regulatory reporting:** The Licence includes conditions which require the Licensee to report specific information to Ofgem. This is to help us monitor each Licensee's financial resilience and to ensure Licensees can demonstrate that they have adequate resources, and that they are on a sound financial footing with robust and transparent financing arrangements. As part of this monitoring, we will use information provided as part of a Licensee's reporting requirements as set out in the Licence under Standard Conditions B11 (Provision of information to the Regulator) and B19 (Regulatory Instructions and Guidance). In addition, Licensees are required to report financial resources information in accordance with Standard Condition B14 (Availability of resources). Where there are potential concerns on a Licensees' availability of financial resources Ofgem would require further detail and assessment to be set out in a Financial Resilience Report. Where there are concerns that a Licensee is or could be in breach of its Mandated Financing Terms the Licensee is required to report this to us, as set out in Standard Condition B18 (Financial Resilience and Credit Quality).
 - 2) **Performance and operational reporting:** Licensees are required to report on any performance incentives within the Licence. A Licensee shall provide evidence for each incentive within a specified period which should include any information that Ofgem has notified a Licensee that we require. In addition, Licensees are required to provide us with Storage Capacity forecasts as part of store performance reporting in accordance with Special Condition H22 (Storage Site performance). Licensees are also required to maintain an Asset Management Plan which sets out its strategy,

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expectations, and resources allocated to the maintenance and upkeep of its T&S Network to enable it to meet its performance obligations. As such, we will be aware where there is a decline in performance.

3) Enforcement action: Ofgem monitors Licensees to ensure they abide by their Licence conditions. Licence breaches that require enforcement action may be symptomatic of wider issues and act as a signpost to financial or operational distress of a Licensee. If a Licensee is found to be in breach of its Licence conditions, the options available to Ofgem include:

- issuing an enforcement order to ensure it complies with its Licence conditions
- imposing financial penalties of such an amount as is reasonable in all of the circumstances of the case, that may not exceed 10 percent of the Licensee's turnover

Our enforcement options and discretion therein are broad, and set out in greater detail in our [Enforcement Guidelines](#).

4) Market intelligence: We monitor general market indicators with a view to establishing a broader picture of the financial performance and health of a Licensee. Such indicators could include, where relevant, the price of public debt and equity instruments, other publicly available information and information provided to Ofgem by Users of the T&S Network.

Regulatory response

- 1.16 We would act proactively to resolve identified issues within the regulatory framework where possible. Due consideration would be given to relevant risk allocation when deciding on the appropriate regulatory response. There are a number of measures that could be taken to manage financial or operational distress within the regulatory framework, including proactive engagement and considering the options available under the regulatory regime.
- 1.17 Where the information gathered indicates that distress has arisen or may arise in the operation of a Licensee's business, we would expect to have an active dialogue with affected stakeholders (including funders where appropriate) to seek to resolve the issues. If, for example, a Licensee was having difficulties meeting its Licence obligations, we would expect to engage with all interested parties to target full Licence compliance. We would look to understand key issues and obstacles to deliverability whilst exploring appropriate solutions within the remit of the regulatory regime.
- 1.18 Where appropriate we may look, in collaboration with the Licensee, for options to resolve the issues using the various regulatory levers in the Licence. For example, in certain circumstances the Licensee may seek funding for remediation under the Licence.

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- 1.19 By taking these proactive steps where appropriate, we anticipate that many issues would be resolved without further escalation. The risk of financial failure or ultimately Licence revocation would be reduced, thereby avoiding the requirement for further action, such as those covered in Chapter 2 of this Guidance.
- 1.20 However, our action will depend on a range of factors including the amount of time we have to prepare. Where a Licensee notifies us promptly of any forecast issues or financial deterioration, we are more likely to be in a position to engage with the Licensee and its funders, and to consider steps to address any issues. Where there is a rapid deterioration in a Licensee's operational or financial position, we would have little time to act and therefore the measures described in Chapter 2 may be required.
- 1.21 Failure to resolve Licence breaches or financial distress may ultimately lead to Ofgem having the right to revoke the Licence under Schedule 2 of the Licence.

Trade sale

- 1.22 A Licensee may be unable to resolve certain financial or operational issues. In this situation, a viable resolution may, in appropriate circumstances, and subject to the Licence, be a sale of all or part of the T&S Business to a company that is able to resolve the issues and continue to operate the network for the purpose of the licensed activity. A sale would need to comply with the relevant Licence requirements, for example Standard Condition B12 (Disposal of assets and restrictions on charges) and B22 (Qualifying Acquisition), as well as Section 18 of the Energy Act 2023 which requires Ofgem to consent to the transfer of a Licence.

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2. Further action

This chapter introduces the frameworks available for Ofgem and Secretary of State (SoS) to consider using should the measures addressed in Chapter 1 not solve the financial or operational issues that a Licensee is experiencing.

Special Administration

- 2.1 If the measures summarised in Chapter 1 do not lead to a resolution of financial distress of the Licensee, and the Licensee is unable to pay its debts or is likely to be unable to pay its debts, then the Licensee could be placed into special administration under Chapter 4 of the Energy Act 2023 (T&S administration).
- 2.2 We consider T&S administration to be the primary mechanism for dealing with a Licensee that is unable to or is likely to be unable to pay its debts. Where we have a right to revoke the Licence, we would first give due consideration to an application for a T&S administration order.
- 2.3 More information on the T&S administration process is included in Chapter 3.

T&SCo of Last Resort

- 2.4 If the measures summarised in Chapter 1 do not lead to a resolution of any financial or operational distress of a Licensee, then we may have the right to revoke the Licence under Schedule 2 of the Licence. In such circumstances we may commence a process to assess whether it is reasonable to make a T&SCo of Last Resort Direction as set out in Standard Condition B23 (T&SCo of Last Resort) of the Licence. A T&SCo of Last Resort Direction is a direction to a Licensee (the “T&SCo of Last Resort” or “ToLR”) to provide carbon dioxide transport and storage services previously provided by another Licensee.
- 2.5 More information on the ToLR process is included in Chapter 4.

Section 50 Transfer Scheme

- 2.6 If the measures summarised in Chapter 1 do not lead to a resolution of any financial or operational distress of a Licensee, then we may have the right to revoke the Licence under Schedule 2 of the Licence. In such circumstances, the SoS may be entitled to make a Section 50 Transfer Scheme, which is a scheme made by the SoS, after consultation with Ofgem, under Chapter 5 of the Energy Act 2023 to transfer designated property, rights or liabilities of a Licensee to a third party. Pursuant to section 50(3) of the Energy Act 2023, the transferee under a Section 50 Transfer Scheme may be the SoS or any person the SoS considers to be an appropriate person to achieve the objective of a Section 50 Transfer Scheme under section 50(2). A Section 50 Transfer Scheme may only be made by the SoS when a termination event has arisen in relation to the Licence (i.e. in circumstances in which Ofgem is authorised to revoke the Licence).

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- 2.7 More information on the Section 50 Transfer Scheme, which may be used in connection with a T&SCo of Last Resort Direction, is included in Chapter 4.

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3. Special Administration Regime (SAR)

The Energy Act 2023 provides for a special administration regime for carbon dioxide transport and storage licence holders, which we refer to as “T&S administration” in this guidance. This chapter provides a summary of the purpose of special administration and covers the process that may be followed in response to a Licensee entering T&S Administration and the associated regulatory framework.

Application of a Special Administration Regime for carbon dioxide transport and storage licence holders

- 3.1 T&S administration is designed to support the commencement or continuation of the activities authorised by the Licence with the objective of ensuring the Licensee's licenced activities can be continued in a manner which is efficient and economic, and which ensures the safety and security of the transport and storage network. The Energy Act 2023 enables the appointment of a T&S administrator (the insolvency practitioner appointed in relation to a T&S company for the purposes of a T&S administration order).
- 3.2 In an ordinary administration process, the objectives of the insolvency practitioner are broadly aligned to the interests of creditors. A T&S administrator is required to pursue special objectives, aligned to specific sector public policy objectives, alongside or in priority to pursuing those ordinary administration objectives. The means by which the T&S administrator can achieve the objective is by rescuing the Licensee as a going concern or by transferring its assets, rights and obligations.

The process to appoint a T&S administrator

- 3.3 The process for appointing a T&S administrator is governed by the [Carbon Dioxide Transportation and Storage \(Licensed Operators\) Administration \(England and Wales\) Rules 2025](#) (the “SAR Rules”). The SAR Rules set out the procedural requirements for making an application, including the necessary supporting documentation and notifications to relevant parties.

Summary of the T&S administration process

- 3.4 A T&S administration order can only be made in relation to a company which holds a Licence under Section 7 of the Energy Act 2023.
- 3.5 There are a number of stages in a T&S administration process. These can broadly be summarised as follows:

Stage 1 – Applying for a T&S administration order

- 3.6 If appropriate, the SoS, or Ofgem with the consent of the SoS, may apply to the Court for a T&S administration order which would appoint a T&S administrator.

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3.7 The SAR Rules provide further detail on the application process, including the form of the application, the proposed T&S administrator’s statement and consent to act, a supporting witness statement, the hearing process and the notice of the making of a T&S administration order.

Stage 2 – T&S administrator manages the affairs of the Licensee

3.8 The T&S administrator would manage the affairs, business and property of the Licensee with a view to achieving the objective of the T&S administration as set out in section 43 of the Energy Act 2023. The objective of T&S administration is to secure:

- That the activities authorised by the Licence commence, or continue in a manner which:
 - is efficient and economical, and
 - ensures the safety and security of the T&S Network, or the part of that network, to which the Licence relates, and
- That it becomes unnecessary for the T&S administration order to remain in force for that purpose.

3.9 The T&S administrator would work closely with government and Ofgem, whilst retaining their own independent decision-making capacity and having their own separate statutory duties.

3.10 During the T&S administration the SoS may provide loans, grants, guarantees or indemnities to the Licensee for the purpose of achieving the objective of the T&S administration.

3.11 Ofgem will continue to monitor the financial health of all Licensees including any Licensee that enters T&S administration. As part of the monitoring arrangements for the Licensee in T&S administration, Ofgem will seek information on how any funding being provided as part of the T&S administration process is being spent. Continuing the monitoring arrangements should enable Ofgem to better understand the likely development of the T&S administration process and the potential need for additional measures such as modifications to the Licence.

Stabilisation period

3.12 During the period immediately following the appointment of the T&S administrator, which we refer to as the “stabilisation period”, it is expected that the Licensee will continue operations.

3.13 There are a range of potential actions that a T&S administrator may undertake in the stabilisation period. While there will not be a direct role for us in a number of these areas, there are likely to be potential interactions. The potential actions a T&S administrator may take include:

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- seeking to optimise the cash position of the company in T&S administration by taking a series of actions such as recovering overdue debts
- seeking modifications to an existing Periodic Review (PR) Determination either by a Re-opener or requesting modifications to existing capital expenditure programmes.

- 3.14 In order to stabilise the financial position of a Licensee, the T&S administrator will seek to understand the Licensee's current financial position and the existing regulatory arrangements and may seek additional information from Ofgem. This may include information on the Licence, the regulatory reporting requirements and other obligations of the Licensee.
- 3.15 To support this, the SAR Rules require a statement of affairs to be prepared by a relevant person of the Licensee and be delivered to the T&S administrator. This statement will set out the company's financial position at the point of entering T&S administration, including a summary of assets and liabilities and a list of creditors.
- 3.16 In addition, the SAR Rules state that the T&S administrator must prepare and submit a statement of proposal setting out how the objectives of the administration will be achieved and how it is proposed that the T&S administration will end.

Core T&S administration period

- 3.17 During the core period (day to day running of the network and periodic reports to specific stakeholders constitutes the core period) of the T&S administration process the T&S administrator will be responsible for the day-to-day running of the network.
- 3.18 Also during this period, the T&S administrator must prepare and submit periodic progress reports in accordance with the SAR Rules. These reports provide details of progress during the period, including a receipts and payments account, information on any assets that remain to be realised and any other relevant information for the creditors. They are delivered to specific stakeholders named in the Rules including Ofgem, the SoS, creditors, registrar of companies and the court. A progress report must cover the periods of six months starting on the date on which the T&S company entered T&S administration and for each subsequent period of six months.
- 3.19 Where rescue as a going concern is reasonably practicable and the T&S administrator intends to pursue such a rescue, the T&S administrator may need to consider issues associated with restructuring the Licensee's operations and its financial arrangements with a view to improving its financial health and ultimately rescuing the company as a going concern, consistent with the T&S administrator's statutory duties.

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- 3.20 In this context, rescue as a going concern means, in summary, that the Licensee as an entity would survive and exit the T&S administration and continue to operate and be able to pay its debts for the foreseeable future. This may be following a financial or operational restructuring of the Licensee while in T&S administration. This is different from a scenario where the business of the Licensee is transferred to one or more buyers, in which case the Licensee itself would not exit administration as a going concern but is likely to be dissolved following the transfer of its business.
- 3.21 Where the T&S administrator, acting consistently with its statutory duties, achieves such a rescue of the Licensee as a going concern then the process is expected to proceed to stage 4 (End of the T&S administration process) as the T&S administration objective would have been met and the T&S administration order would no longer be required.
- 3.22 However, as an alternative to rescue as a going concern, the T&S administrator may seek to transfer all or part of the Licensee's business as part of a SAR Transfer scheme, and so the process would proceed to stage 3 (Expressions of interest and sale of all or part of a Licensee's business). One scenario where the T&S administrator may seek this option is where the rescue of the Licensee as a going concern is not reasonably practicable because a financial or operational restructuring to restore the Licensee to solvency is not likely to be achieved.

Stage 3 – Expressions of interest and sale of all or part of a Licensee's business

- 3.23 In the event that the T&S administrator decides to transfer all or part of the Licensee's business, the T&S administrator may seek interest from other companies in purchasing all or part of the Licensee's business. We would be appropriately consulted and will assess any issues associated with the sale and transfer and inform the T&S administrator and SoS accordingly. Issues that we would need to consider include but are not limited to licensing and competency issues and any competition concerns.
- 3.24 The T&S administrator has powers to make a scheme for the transfer of property, rights and liabilities of the Licensee, which is referred to as a Special Administration Regime Transfer Scheme (SAR Transfer Scheme). These powers are set out in Schedule 21 of the Energy Act 2004 and are applied to T&S administration by Section 44 of the Energy Act 2023. A SAR Transfer Scheme may be used to facilitate the sale of all or part of a Licensee's business. The Licence may also be transferred under these powers.
- 3.25 The SoS must approve any SAR Transfer Scheme before it is made. Before approving such a transfer scheme, the SoS is required to consult Ofgem and other relevant parties.
- 3.26 In order to meet its statutory duties, a T&S administrator might request that Ofgem consider initiating a ToLR process to support the transfer of all or part of

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the Licensee's business. More information on when Ofgem would trigger a ToLR process can be found in Chapter 4 of this guidance.

3.27 Stage 2 would continue in parallel to Stage 3.

Stage 4 – End of a T&S administration process

- 3.28 Section 43 of the Energy Act 2023 defines the circumstances when it becomes unnecessary for a T&S administration order to remain in force. These circumstances include when the Licensee is rescued as a going concern, or, where this objective is not pursued, consistent with the T&S administrator's duties, where all or part of the Licensee's business is transferred to another company as a going concern.
- 3.29 The SAR Rules require specific steps for concluding a T&S administration, including the filing of a final progress report. This report must summarise the T&S administrator's proposals, any major amendments or deviations from those proposals, the steps taken during the T&S administration, and the outcome. The SAR Rules also set out the process for transitioning to either liquidation or dissolution, where applicable.
- 3.30 In the event that there are outstanding amounts owed to the SoS or other costs and expenses owing from the T&S administration process, these may be recovered by a shortfall direction by the SoS. This may be achieved by a modification made by the SoS, after consultation with Ofgem, to the conditions of a Licensee's Licence to include a condition relating to the recovery of these amounts by the Licensee. These costs will ultimately be passed on to Users of the network. The powers to make such modifications are contained in Section 46 of the Energy Act 2023 and reflected in the Terms of the Licence.
- 3.31 Where a Licence transfer is required, this will need to be completed before the T&S administration comes to an end.
- 3.32 Where the objective of a T&S administration has been met, the original Licensee or a new Licensee will take over the running of the network from the T&S administrator. The role of the T&S administrator would become redundant, and the T&S administration process would end in due course.
- 3.33 Where the objective of the T&S administration cannot be met, the T&S administration process may be discontinued, and the Licensee is likely to enter normal liquidation.

Restructuring a Licensee – regulatory framework

- 3.34 As stated, the objective of a T&S administration may be achieved by means of a rescue of the Licensee as a going concern. In order to rescue a Licensee that has experienced significant financial distress, a T&S administrator may be required to restructure the Licensee's operations and its finances. Restructuring can take

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a number of forms and this guidance does not dictate nor specify the preferred approach. Restructuring activity may include, but is not limited to:

- modifying the terms of existing debt facilities or instruments
- refinancing and identifying alternative funding sources
- operational restructuring if practicable

- 3.35 There are a number of features of a restructuring process that Ofgem would need to consider, including but not limited to licensing and Periodic Review (PR) determination issues.
- 3.36 The T&S administrator leads the restructuring process and acts independently and in line with its own statutory objectives and duties. Ofgem will monitor the process and engage with the T&S administrator as relevant and appropriate to achieve an outcome where the restructured Licensee is on a sound financial footing. Ofgem would also advise the T&S administrator on whether changes proposed as part of the restructuring process may adversely impact on the Licensee's ability to fulfil its obligations under the Licence.
- 3.37 Ofgem would consider any Licence modifications that may be needed or requested as part of the restructuring process. This consideration would include, but not be limited to, proposals to adjust capital expenditure plans and the impact of this on network resilience and Users of the network. We would consider all requests on their own merits, and in line with our statutory objectives.

Transfer of all or part of a Licensee's business – regulatory framework

- 3.38 As stated, under certain circumstances, the T&S administrator may transfer all or part of the Licensee's business as a going concern for the purpose of achieving the objectives of the T&S administration instead of rescuing the Licensee as a going concern.
- 3.39 There are a number of potential issues that may arise with the transfer of all or part of a Licensee's business, including specific issues that arise as a result of a Licensee entering T&S administration. We would expect to carry out analysis of the impact of the transfer. Issues of particular interest to us would be the likely impact on network operation and development, and the extent to which the transfer would address the issues which had caused the Licensee financial problems in the first instance. Where the proposed transfer is to an existing Licensee, Ofgem would need to consider the implications of this transfer on the purchasing Licensee's ability to finance its existing operations and continue to fulfil its obligations under its Licence and the CCS Network Code. Ofgem would provide these views to the T&S administrator to inform its decision on the sale and transfer. In the event that a transfer raises any particular issues Ofgem may also consider specific additional Licence obligations to address those concerns.

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3.40 For the purposes of this guidance document the specific issues associated with a transfer that Ofgem would consider have been divided into four sections:

- competition
- licensing
- PR determination
- operational issues.

Competition

3.41 Any transfer would engage issues of competition law and merger control. Section 36 of the Energy Act 2023 sets out Ofgem’s functions with respect to competition law, including the Enterprise Act 2002 and the Competition Act 1998 which (as modified by section 36 of the Energy Act 2023) designate Ofgem as the sectoral regulator for carbon dioxide transport and storage by granting it with concurrent powers alongside the CMA in respect of the carbon dioxide transport and storage market. In the course of any transfer or ancillary transaction, Ofgem would be required to have due regard to such functions in the course of its duties.

Licensing

3.42 The Energy Act 2023 makes the transport by pipeline or other authorised means and geological storage of carbon dioxide a licensable activity and therefore it is an offence to carry out this activity unless licensed or exempt from the requirements of a Licence. A Licence can be transferred in whole or in part.

3.43 In the event of a transfer of the whole or any part of a Licensee’s business it will be necessary to make changes to the existing Licence arrangements. The required changes will depend on the structure of the transfer of the Licensee’s business and the identity of the purchaser. The appropriate response may be to allow the transfer of the existing Licence, to make modifications to a purchaser’s existing Licence and/or to issue a new Licence.

3.44 Where the T&S administration objectives are to be met by a transfer of the Licensee’s business, this may include a transfer of the Licence and such a transfer would likely be made by operation of a SAR Transfer Scheme. It might also be possible for a transfer to be made by a Section 50 Transfer Scheme.

3.45 Where Ofgem considers that a modification to an existing Licence is required to address issues with the sale of a Licensee’s business, we must do so in accordance with Section 13 of the Energy Act 2023. This sets out that before making any modifications we must give notice to each relevant Licence holder, the SoS and the appropriate devolved authorities and must consider any representation which are duly made.

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PR Determination

- 3.46 Whether adjustments to the latest PR Determination are required will depend on the nature of the sale and transfer of the Licensee's business and assets. We would generally not expect to adjust the PR Determination in the event of a sale of a T&S business as the purchaser should be able to factor the current Licence obligations into the agreed transfer arrangements. However, in a T&S administration scenario we may consider:
- the outcome of the T&S administration process and look to modify elements of the PR Determination to reflect this
 - the circumstances that led to the Licensee entering T&S administration and look to make amendments to the PR Determination to mitigate reoccurrence
- 3.47 Any merger or consolidation would also reduce the number of independent groups operating or owning T&S networks and hence limit the role which comparisons between companies can play during or between Periodic Reviews. We would seek to understand the impact of this on our functions and may look to modify the relevant licences to mitigate those impacts.

Operational

- 3.48 Where a Licensee's business is transferred there are operational arrangements that need to be taken into consideration.
- 3.49 There are a number of stakeholders and regulatory bodies involved in the carbon dioxide T&S sector that may be impacted by, or impact on, a successful sale and transfer. For example, a condition precedent to the Licence and a requirement to operate a carbon storage site is a carbon storage permit awarded by the North Sea Transition Authority (NSTA).
- 3.50 The CCS Network Code sets out the commercial, operational, and the technical arrangements for the T&S Network. Where the Licence is transferred to a new purchaser of the business, that purchaser becomes bound by all the Licence conditions (to the extent the Licence is transferred), including the obligation to comply with the CCS Network Code.
- 3.51 In the event that a sale results in the breaking up of the Licensee's business then there may be additional issues to be addressed.

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4. T&SCo of Last Resort

Standard Condition B23 (T&SCo of Last Resort) sets out the circumstances in which Ofgem may issue a direction to a Licensee to provide carbon dioxide transport and storage services previously provided by another Licensee. The appointed Licensee is the “T&SCo of Last Resort” or “ToLR”. This section provides guidance on the process to appoint a ToLR, including the scenarios in which the ToLR process may be initiated, who is eligible to be appointed as a ToLR, a high-level summary of the process we would expect to follow, and guidance on a T&SCo of Last Resort Direction.

Application of the ToLR mechanism

- 4.1 We may, following consultation with the Licensee and any other Licensees affected thereby, give a T&SCo of Last Resort Direction where we have the right to revoke the Licence of another licensee.
- 4.2 Events that could lead to the right to revoke a Licence and thus potentially the initiation of a ToLR process are set out in Schedule 2 of the Licence.
- 4.3 There is no obligation on Ofgem to initiate a ToLR process and our decision on whether to initiate a ToLR process or not will depend on the circumstances that have led to the right to revoke the Licence, and the standing of the wider carbon capture and storage sector. Before making a T&SCo of Last Resort Direction Ofgem must consult with the intended ToLR and any other Licensees who may be affected and consider any representations made.

Eligibility to be appointed as a ToLR

- 4.4 Any Licence holder under Section 2 of the Energy Act 2023 is eligible to be appointed as a ToLR.
- 4.5 Standard Condition B23 (T&SCo of Last Resort) of the Licence sets out the criteria that must be met before Ofgem may make a T&SCo of Last Resort Direction.

The process we expect to follow to appoint a ToLR

- 4.6 Where possible, we would seek to implement a competitive element to the ToLR process to ensure value to Users. In some instances, for example if there is only one suitable licensee, we would be unable to retain a competitive element but would nonetheless seek to ensure that the prospective costs associated with the T&SCo of Last Resort Direction were economic, efficient and effective. However, we consider that as the pool of Licensees increases, the risk that there would not be sufficient Licensees to invite proposals from will diminish. Where there is no appropriate Licensee that meets the criteria in Standard Condition B23 (T&SCo of Last Resort) of the Licence, we would not appoint a ToLR.

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- 4.7 Figure 1 sets out the key steps that would likely be followed, if an event that triggers the right to initiate the ToLR process occurs, and the decision is made that a ToLR process should be initiated.

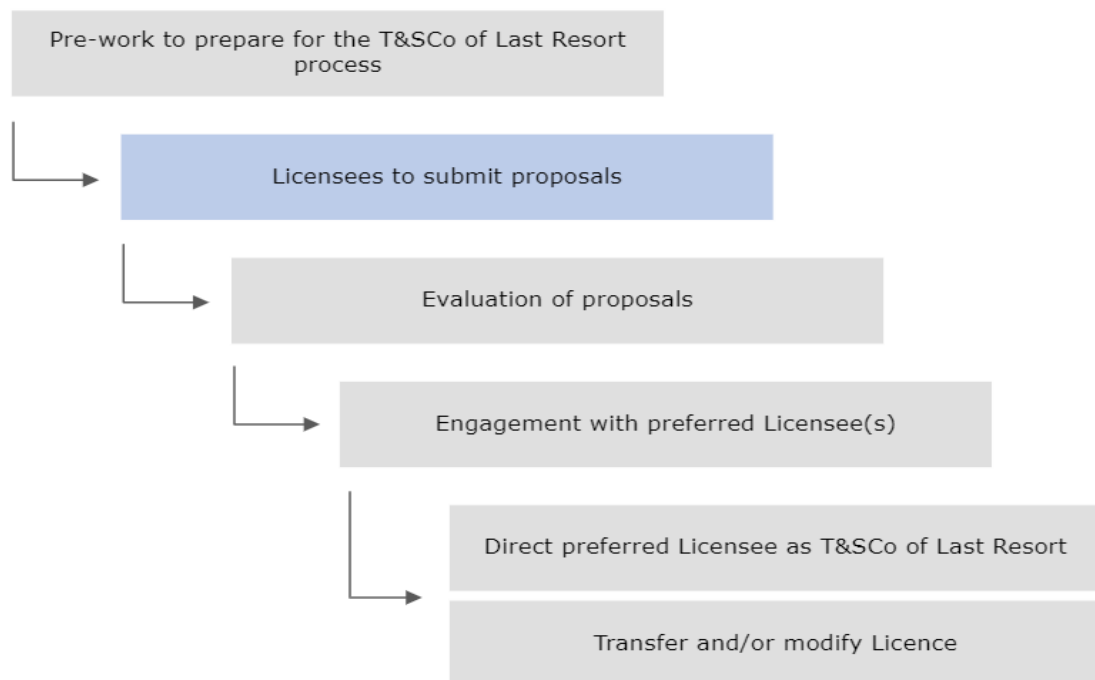


Figure 1 - Process for appointing a Transport & Storage Company of Last Resort.

- 4.8 Given that the circumstances that could trigger a ToLR process will vary on a case-by-case basis, we may need to adjust the process set out in this guidance to ensure good value for money for all relevant parties. In any case, we will set out the process we intend to follow before the start of the process.

Step 1 - Pre-work to prepare for the ToLR process

- 4.9 To assist the ToLR process, we will make all relevant information available to enable each Licensee to develop an informed proposal. Such information available to potential ToLRs might include:

Network information - for example technical information about the network, relevant consents information, relevant contract information, assumed transfer date, estimate transfer value and, where applicable, outline transfer terms offered by the incumbent Licensee

ToLR process information - such as the evaluation criteria, and the key process milestones

- 4.10 We may also need to make some assumptions to allow Licensees to put forward their proposals on an equal basis, for example we may use an assumed date of transfer.

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4.11 We may provide an estimate of the transfer value prior to inviting proposals. However, during the ToLR appointment process, we may revisit this assumed transfer value based on any new information from the incumbent Licensee or the consent requirements for a Transfer Scheme.

Step 2 - Invitation or request to submit proposals

4.12 On initiating the ToLR process, we will invite existing Licensees to set out their commercial and operational requirements in the event that they should be appointed the ToLR. We expect that such proposals would need to:

- demonstrate financial and operational capability
- set out the proposed approach to takeover and operations
- detail the expected revenue requirement in assuming ToLR responsibilities
- provide supporting information to demonstrate robustness of the proposals

4.13 Depending on the circumstances leading up to the initiation of the ToLR process, and the number of potential Licensees to become a ToLR, we may make a direct request to Licensees for the above information during this stage of the process.

4.14 The invitation or request to submit proposals will be in a standard format, ensuring that we can make like-for-like comparisons on each licensee's capability. The deadline for the submission of proposals and information will depend on the circumstances under which the process has been initiated.

4.15 The types of information required from each Licensee and the basis on which we would make decisions (criteria, timing etc.) will vary on a case-by-case basis.

Step 3 – Evaluation of proposals

4.16 The next stage in the process will be for Ofgem to evaluate the submitted proposals. The evaluation of individual proposals will be based around the requirements of the Licence, regulatory framework and specific ToLR evaluation criteria. When developing evaluation criteria, we would expect to do so on the basis of ensuring that the proposals put forward by Licensees are deliverable and offer value to Users.

4.17 The evaluation process will need to ensure that the requirements set out in Standard Condition B23 (T&SCo of Last Resort) of the Licence will be met.

4.18 At the end of the evaluation stage, if there is an appropriate Licensee or Licensees that fulfil the required criteria as set out in the licence, the Licensee(s) will be selected as a preferred ToLR(s).

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Step 4 – Engagement with preferred Licensee(s)

- 4.19 The next stage in the ToLR process will be a period of engagement with the preferred licensee(s) on the terms of a potential T&SCo of Last Resort Direction.
- 4.20 The full terms of a T&SCo of Last Resort Direction will be developed in consultation with the Licensee. The terms of a Direction may include:
- A requirement on the transfer of specific assets to enable the Licensee to fulfil the direction
 - A transfer price to be paid to the incumbent Licensee
- 4.21 Where a T&SCo of Last Resort Direction includes 5.20 a) and b), this information would reflect the terms of the relevant Transfer Scheme, subject to paragraph 4.24. The role of a SAR Transfer Scheme is explained in Chapter 3. Where a Licensee is selected as a ToLR, the Licensee may alternatively be the intended transferee pursuant to a Section 50 Transfer Scheme. The SoS is required to consult with Ofgem on the terms of a SAR Transfer Scheme or a Section 50 Transfer Scheme.

Step 5 - T&SCo of Last Resort Direction and associated Licence transfer and/or modification

- 4.22 At this stage we will direct our preferred Licensee to become the ToLR. Prior to issuing the direction, we will publish a notice of our intention to direct a ToLR. The notice would set out:
- the basis on which we consider it is reasonable to make a T&SCo of Last Resort Direction
 - the date on which we propose the T&SCo of Last Resort Direction should take effect
 - the carbon dioxide T&S network to which the T&SCo of Last Resort Direction relates (including the geographical location and technical characteristics of the network)
- 4.23 We would not expect to appoint a ToLR unless we were confident that they would have all the necessary rights to provide the carbon dioxide transport and storage service. This could be achieved via a transfer under a Transfer Scheme or via commercial negotiations between the incumbent Licensee and the ToLR.
- 4.24 Where a Transfer Scheme is to be used alongside a T&SCo of Last Resort Direction, we would only make a T&SCo of Last Resort Direction if both the incumbent Licensee and the ToLR have provided consent to the Transfer Scheme as required by the relevant legislation and the statutory consultation requirements applicable to the Transfer Scheme have been fulfilled. The consent required by relevant legislation is, in the context of a Section 50 Transfer Scheme, the consent given to the SoS under section 50 of the Energy Act 2023

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and, in the context of a SAR Transfer Scheme, the consent given to the T&S administrator under paragraph 3 of Schedule 21 to the Energy Act 2004, as applied by Section 44 of the Energy Act 2023. We would expect any relevant Transfer Scheme to take effect at the same time as a T&SCo of Last Resort Direction.

- 4.25 The appropriate changes to the existing licencing arrangements in response to a T&SCo of Last Resort Direction will vary on a case-by-case basis and may depend on any decisions made for the purposes of a transfer scheme. Our regulatory considerations on licensing issues are described in Chapter 3 in this document. Depending on the nature of the T&SCo of Last Resort Direction, modifications could be made to the ToLRs existing Licence or to the transferred Licence. Where a Licence transfer is required, this will be completed at the same time as the T&SCo of Last Resort Direction takes effect.
- 4.26 To fulfil the obligations of a T&SCo of Last Resort Direction the ToLR will need to make a payment for the transfer of the required assets and/or business of the incumbent licensee. In return, the ToLR will receive an allowed revenue that is reflective of the RAV of the acquired assets and sufficient to fund the economic, efficient and effective operation of the network.

Actions post-T&SCo of Last Resort Direction

- 4.27 Where a T&SCo of Last Resort Direction is made, the required transfers of property, rights and liabilities should be made in accordance with the terms of the relevant Transfer Scheme.
- 4.28 If at any stage in the ToLR process or following the transfer a Licensee is in breach of its Licence conditions, we can impose financial penalties of up to 10 percent of the Licensee's turnover depending upon what is reasonable in the circumstances.

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Send us your feedback

We are keen to receive your feedback about this guidance. We would also like to get your answers to these questions:

- Do you have any comments about the quality of this guidance?
- Do you have any comments about its tone and content?
- Was it easy to read and understand? Or could it have been better written?
- Do you have any further comments?

Please send your feedback to stakeholders@ofgem.gov.uk.

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Appendix 1 Glossary

A

The Authority

The Gas and Electricity Markets Authority established by section 1(1) of the Utilities Act 2000. The Authority governs Ofgem.

C

Capital Expenditure

Expenditure on investment in long-lived transport and storage network assets, such as CO₂ pipelines.

CCS Network Code

A document outlining the commercial and technical rules and arrangements between T&SCos and Users, and between individual T&SCos. Has the meaning given to it in Standard Condition B5 of the Licence

D

Disposal

means (under the laws applicable in any part of the UK) any of the following:

(a) a transfer of any asset (whether or not for value) to a person other than the Licensee (including any disposal of any right or interest in that asset whether legal or beneficial);
or

(b) a lease, licence, or loan of (or the grant of any other right of possession in relation to) any asset; or

(c) the grant of any mortgage, charge, or other form of security or encumbrance over any asset; or

(d) if the asset is an interest in land, any transaction or event that is capable under any enactment or rule of law of affecting the title to a registered interest in that land,

and references to "dispose" are to be read accordingly.

E

Economic Regulatory Regime

A framework that provides a structure for the transport and storage of carbon dioxide (CO₂). It includes regulations for T&SCo fees, revenue allowances, and service standards. The ERR is designed to ensure that users of the transport and storage network pay fees regulated by the Regulator and to allocate risks between T&S users and T&SCo.

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F

First Regulatory Period

Means the period from Licence Award to the first 31 March to occur on or following the third anniversary of the Commercial Operations Date.

H

Health and Safety Executive

The Health and Safety Executive is Britain's national regulator for workplace health, safety, and welfare.

I

Indicative Credit Rating Process

Means either a "Rating Evaluation Service" conducted by S&P, a "Rating Assessment Service" conducted by Moody's or Fitch, or an equivalent credit rating assessment conducted by DBRS Morningstar to give an assessment of the potential credit rating of the Licensee.

Insolvency

Where a company's liabilities exceed the value of its assets and/or it is unable to pay its debts as they fall due.

N

North Sea Transition Authority

The North Sea Transition Authority is the business name of the Oil and Gas Authority, which is the regulatory authority for offshore carbon dioxide storage, responsible for permitting and licensing

O

Ofgem

Office of Gas and Electricity Markets. Ofgem supports the Authority in performing its statutory duties and functions.

P

Periodic Review

The reviews undertaken by the Regulator at regular intervals in accordance with Special Condition H28 (Periodic Reviews);

PR Determination

The determination issued by the Regulator to the Licensee at the conclusion of each Periodic Review, in accordance with Special Condition H27;

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R

Regulatory Instructions and Guidance

A guidance document published by the Regulator under Standard Condition B19 of the Licence which sets out the information a Licensee must provide to the Authority on a monthly, quarterly or annual basis.

Re-opener

Re-openers are a form of uncertainty mechanism that Ofgem can use to adjust the Regulated Asset Value, allowed revenue, timings of outputs, obligations, and allowances during a regulatory period in response to material changes in circumstance outside of the control a Licensee.

S

SAR Transfer Scheme

means the T&S transfer scheme within the meaning of paragraph 3(1) of schedule 21 of the Energy Act 2004 as applied and modified by section 44 of the Energy Act 2023

Section 50 Transfer Scheme

A scheme for the transfer of designated property, rights and/or liabilities of a T&S licensee made by the Secretary of State under section 50 of the Energy Act 2023

Storage Licence

A Licence held by the Licensee in relation to one or more T&S Storage Site under section 18 of the Energy Act 2008 and expressly referenced in the Licensee's Approved Project Development Plan

Storage Permit

A storage permit or storage permits held by the Licensee in relation to one or more T&S Storage Site, under the Storage Licence(s) and the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010.

Storage Site

has the meaning given to it in the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010;

T

T&SCo

Transport and storage company.

U

User

A person other than the Licensee or any other holder of a Licence issued under section 7 of the Energy Act 2023 who is for the time being bound by the CCS Network Code.