

Guidance

Draft Adoption Agreement Guidance

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This document is for Transmission Owners to help them develop the adoption agreement template which will contain all the standard terms and conditions for self-build and transfer of assets to the Transmission Owner.

The adoption agreement template is a key part of delivering the new scope of transmission level self-build and transfer. It gives connecting customer visibility of what they need to do if they opt for self-build and transfer. It also sets out the Transmission Owner's obligations if this option is selected.

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1. Introduction

- 1.1 This document is our proposed guidance to Transmission Owners to help them draft the Standard Adoption Agreement. The Standard Adoption Agreement will contain all standard terms and conditions for connecting customers building assets and transferring these assets to the Transmission Owner.
- 1.2 We are consulting on the scope of the assets that connecting customers, including generation, demand and storage, can self-build and transfer. Our proposal is that connecting customers can self-build and transfer all the assets from the point of connection to the existing transmission network that are sole use at the time the Adoption Agreement is entered into. CSNP works are out of scope.
- 1.3 We are also consulting on introducing a new standard licence condition which would require Transmission Owners to develop, publish and maintain a Standard Adoption Agreement for the transfer of assets constructed under the self-build and transfer arrangements. In satisfying this licence conditions we are proposing that the licence holder has due regard to the Adoption Agreement Guidance.

Governance

- 1.4 We are proposing that Transmission Owners submit the Standard Adoption Agreement for Ofgem's approval. When deciding whether to approve the Standard Adoption Agreement we would consider the extent to which the Standard Adoption Agreement has been drafted in accordance with this guidance as well as alignment with our statutory and other duties and the outcomes we want to achieve through self-build and transfer. We would also consider the extent to which the Standard Adoption Agreement aligns with that of other Transmission Owners, in line with our proposal that Transmission Owners must ensure a consistent approach to self-build and transfer.
- 1.5 We are also proposing that Transmission Owners periodically review their Standard Adoption Agreement and make any changes which are needed to improve the self-build and transfer arrangements in line with the outcomes we want to achieve. Ofgem may also request that Transmission Owners undertake a review of the agreement. Material changes to the Standard Adoption Agreement will need to be approved by Ofgem.

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2. Outcomes

Section summary

This section sets out the outcomes the Standard Adoption Agreement should help deliver.

- 2.1 The adoption agreement template should support delivery of the new scope of self-build and transfer in a way which achieves what “good” looks like as outlined in our consultation document/decision following the consultation.

What good looks like

- 1.3 For assets, the outcomes we want to achieve are:
- Right technology is used in the right place
 - The required quality to ensure efficient operation
 - Connects safely into the grid
 - Ofgem able to provide the appropriate level of scrutiny to provide confidence these outcomes will be achieved
 - Flexible enough to respond to future needs
 - Mitigates the risk of inefficient assets
- 2.2 For risk allocation, the outcome we want to achieve is that the risk is allocated to the right party, considering who is best placed to mitigate the risk and that other consumers should not be disadvantaged by the connecting customer’s decision to self-build and transfer rather than the Transmission Owner doing the works.
- 2.3 For cost, the outcomes we want to achieve are:
- At a minimum other consumers should not bear any additional costs because of the project’s decision to self-build and transfer the assets rather than the Transmission Owner doing this work.
 - The wider consumer base should benefit from any cost saving achieved for delivering assets which are classed as “infrastructure” assets for charging purposes
- 2.4 For process, we want to have a clear robust quick process that gives connecting customers the confidence to self-build and transfer. The adoption agreement template should be drafted to give effect to the Ofgem’s decision

Drafting principles

- 2.5 The drafting shall be clear, minimising the risk of differing interpretations so that each party is clear what their rights and obligations are. This includes using terminology which is consistent with the relevant codes and other legal documents and providing clear definitions.

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- 2.6 Transmission Owners should work collaboratively when developing their adoption agreement templates so that these contain identical terms and conditions, unless there is a legal or operational justification for divergence.

3. Pre-construction

Section summary

This section provides guidance on the terms and conditions related to the pre-construction phase of the self-build and transfer.

- 3.1 The adoption agreement template should include terms and conditions related to the activities that the connecting customer and the Transmission Owner will do before construction starts on the self-build assets.

Connecting customer's obligations

- 3.2 The connecting customer shall:

- do the detailed design and submit to the Transmission Owner for approval
- obtain all the necessary permissions and consents (planning permission, land rights etc)
- obtain and transfer to the Transmission Owner all the required warranties for the assets that will be self-built and transferred
- warranty periods for the assets should be in line with industry best practice
- obtain Ofgem approval for PASE variant or PASE non-compliant designs
- provide the transmission owner with the information they need to complete the load re-opener process
- put together a test plan for the assets

Transmission Owner's obligations

- 3.3 The Transmission Owner shall:

- approve the design within a reasonable timeframe and provide feedback on any changes needed
- approve the test plan within a reasonable timeframe and provide feedback on any changes needed
- obtain any wayleaves they need

Cost

- 3.4 The Transmission Owner will determine how the self-build and transfer assets will be classified for charging purposes by applying the principles set out in [section 14 of the CUSC](#).
- 3.5 This classification will determine the process for agreeing how much the connecting customer will be paid for these assets.

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- 3.6 Payment will be made to the connecting customer on adoption of the asset. The connecting customer bears the risks that the cost of delivering the asset is higher than the price agreed with the Transmission Owner.

Assets classed as “connection assets” under section 14 CUSC

- 3.7 The Transmission Owner and the connecting customer will agree the price that the Transmission Owner pays for the connection asset which must not exceed the estimated costs of delivering these assets. This price will be used to calculate the connection charge that the connecting customer pays.

Connecting customer’s obligations

- 3.8 The connecting customer must provide the Transmission Owner with all the cost information that NESO needs to calculate the connection charge

Transmission Owner’s obligations

- 3.9 The Transmission Owner shall:
- negotiate in good faith and in a timely manner with the connecting customer
 - offer the connecting customer the option of doing a zero-sum transfer of the assets

Total worth of assets classed as “infrastructure assets” under section 14 CUSC under £40 million

- 3.10 The connecting customer must either run a competitive tender exercise or otherwise demonstrate value for money if the total value of the infrastructure assets is under £40 million. The outcome of that tender exercise will determine the price the Transmission Owner pays for the assets.
- 3.11 If the connecting customer is not running a competitive tender exercise, the Transmission Owner will evaluate the evidence provided on value for money and use this to determine the price paid. This price must not exceed what it would have cost for the Transmission Owner to have done the work.

Total worth of assets classed as “infrastructure assets” under section 14 CUSC over £40 million

- 3.12 If the total value of the infrastructure assets which will be self-built and transferred is over £40 million, the price that the Transmission Owner pays the connecting customer for these assets will be the economic and efficient cost of delivering these assets as determined by Ofgem through the load-reopener process.
- 3.13 Any cost incurred above this price shall be borne by the connecting customer.

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- 3.14 The connecting customer will provide the Transmission Owner with all the information they need for the load-reopener process.

4. Construction

Section summary

This section provides guidance on the terms and conditions related to the construction phase of the self-build and transfer.

- 4.1 We expect that project specific information on what will be delivered will be added to an Annex of the adoption agreement once the detailed design has been agreed. The Standard Adoption Agreement therefore should detail the general terms and conditions that will always apply to the construction phase rather than details of what the connecting customer will self-build.

Change requests

- 4.2 If something unexpected is encountered during construction which means the design needs to change then the Transmission Owner should promptly consider the request by the connecting customer to change the design and should accept all reasonable requests.

Transmission Owner's obligations

- 4.3 The Transmission Owner should inspect and quality assure the build at key project milestones, noting that such inspection:
- should not unduly restrict or delay the work and
 - must be no more onerous than the quality assurance regime used for the transmission licence holder's own activities

Connecting customers obligations

- 4.4 Connecting customers shall:
- deliver what was agreed with the Transmission Owner
 - rectify issues identified by the Transmission Owner which relate to the connecting customer not delivering what was agreed

5. Commissioning

Section summary

This section provides guidance on the terms and conditions related to the commissioning phase of the self-build and transfer.

- 5.1 The project specific details will be set out in the test plan which is agreed pre-construction. The Standard Adoption Agreement should set out the terms and conditions that will apply to all self-build and transfer projects, namely that each party shall do the actions agreed in the test plan to the times agreed.

6. Adoption

Section summary

This section provides guidance on the terms and conditions related to the adoption of the self-built assets by the Transmission Owner.

Connecting customer's obligation

- 6.1 The connecting customer shall provide any handover documentation and training reasonably required by the transmission licence holder

Transmission Owner's obligations

- 6.2 The Transmission Owner shall:
- adopt the assets after successful completion of the testing plan
 - pay the connecting customer the price agreed (see section on costs)

7. Post-adoption

Section summary

This section provides guidance on the terms and conditions related to the period after when the Transmission Owner has taken ownership of the self-built assets.

Connecting customer's obligation

- 7.1 The connecting customer shall fix any defects arising because of the self-build within the defect notification period. They can do this by either paying the transmission licence holder to do the works or by doing the required works themselves.
- 7.2 They might also have ongoing obligations in relation to insurable defects after the end of the defect notification period.

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8. Disputes

Section summary

This section provides guidance on the terms and conditions governing disputes between the connecting customer and the Transmission Owner.

- 8.1 Both parties to the adoption agreement should work collaboratively together to reduce the risk of a dispute arising. This includes an obligation on the transmission licence holder to provide detailed reasoning for the decision to reject and to give the connecting customer the opportunity to remedy any defects.
- 8.2 The adoption agreement template will list who the connecting customer can pick as the independent third party.
- 8.3 The connecting customer will have the right to refer any disputes related to the fulfilment of their obligations in the adoption agreement to the independent third party.
- 8.4 If the third party approves then that decision is final.

9. Next steps

- 9.1 This draft guidance will be updated and finalised following our decisions on the new scope of self-build and transfer of transmission assets and published on our website.