

**The conversion of existing transmission
licences for BETTA**

**Ofgem/DTI publication of explanation of
proposed licensing scheme**

August 2004

Summary

This document explains the licensing scheme that the Secretary of State is to make for the conversion of existing transmission licences under BETTA.

A draft of the licensing scheme was published on Ofgem's website on 16 August 2004. The licensing scheme is intended to have effect on 1 September 2004.

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1. Background

- 1.1. The rationale for the British Electricity Trading and Transmission Arrangements (BETTA) reforms is set out in a consultation paper of December 2001¹ ('the December 2001 consultation paper') and a report of May 2002² ('the May 2002 report'). These reforms are planned to be introduced in April 2005.
- 1.2. Since May 2002, Ofgem/DTI have published a number of consultation and conclusions documents on BETTA and its component parts. Copies of these papers and non-confidential responses to them can be found on the Ofgem website³.
- 1.3. On 30 January 2003 the DTI published a draft of the Electricity (Trading and Transmission) Bill (the E(TT) Bill) together with a Regulatory Impact Assessment (RIA), which explains the purpose and impact as well as the expected costs and benefits of the proposed primary legislation to enable the BETTA reforms. The Electricity (Trading and Transmission) provisions of E(TT) Bill have now been incorporated into the Energy Act which received Royal Assent on 22 July 2004.
- 1.4. On 17 June 2004 Ofgem/DTI published a document⁴ on the approach to the transition to and implementation of BETTA. That document described the approach to the development of legal drafting for the transition from the existing arrangements to BETTA. That document identified the principal provisions available to the Secretary of State in the Energy Bill for the implementation of BETTA (including the making of a licensing scheme pursuant to Schedule 17).

¹ 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): A consultation paper', Ofgem, December 2001. Ofgem 74/01.

² 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): Report on consultation and next steps' Ofgem/DTI, May 2002. Ofgem 38/02.

³ www.ofgem.gov.uk (see "BETTA (Publications)").

⁴ "Legal arrangements for the transition to and implementation of the British Electricity Trading and Transmission Arrangements, Ofgem/DTI Statement of approach", May 2004, Ofgem 137/04

- 1.5. On 16 August 2004 a draft of the text of the proposed licensing scheme was published on the Ofgem website⁵.
- 1.6. The purpose of this document is to explain the provisions under the Energy Act 2004 relating to the licensing scheme and to further explain its use.

⁵ www.ofgem.gov.uk (see "BETTA (Proposed designation text)").

2. Licensing scheme provisions under the Energy Act 2004 (“the Act”)

- 2.1. The licensing scheme is essentially provided for by Schedule 17 of the Act, which has effect by virtue of section 138 of the Act.
- 2.2. Under paragraph 1 of Schedule 17 the Secretary of State is required to make a scheme in relation to existing transmission licences. The scheme must be made before the commencement of section 136 of the Act, which amends section 6 of the Electricity Act 1989. It is the current intention that Section 136 will be commenced on or around 1 September 2004, the intended date of BETTA go-active.
- 2.3. The scheme must provide for each licence to which it applies to have effect on and after such date as it may specify as a licence granted under section 6(1)(b) of the Electricity Act 1989, as amended by the Act. The scheme must also provide for the incorporation of such new standard conditions for transmission licences as may be determined by the Secretary of State in accordance with the Act.
- 2.4. Paragraph 1 of Schedule 17 also provides for the scheme to have effect with such incidental, consequential and supplementary modifications as appear to the Secretary of State to be necessary or expedient. Such modifications may relate to both the terms and conditions (including standard conditions) of a licence. By virtue of paragraph 2 of Schedule 17, the Secretary of State may include in any licensing scheme provision for the amendment of a code or agreement relevant to the conditions of an existing transmission licence. The scheme may also make such transitional provision as appears to the Secretary of State to be necessary or expedient.

3. Description of legal text of the licensing scheme

Effect of the scheme

- 3.1. In accordance with the Act, the proposed licensing scheme amends the transmission licences held by each of National Grid Company plc, Scottish Hydro-Electric Transmission Limited and SP Transmission Limited (the “Existing Transmission Licences”) and provides for each such licence to have effect as a licence granted under section 6(1)(b) of the Electricity Act 1989, as amended by the Act. The scheme also amends the BSC and CUSC Framework Agreements.
- 3.2. It is the current intention that the scheme will have effect on or around 1 September 2004, being the proposed BETTA go-active date and the date that it is currently proposed that the amendments to section 6 of the Electricity Act 1989 are to take effect.

Scope of licence

- 3.3. In line with the amendment to section 6(1)(b) of the Electricity Act 1989 being introduced by the Act, the scheme modifies the terms of each of the Existing Transmission Licences to allow each of the licensees to “participate in the transmission of electricity”.

New standard conditions

- 3.4. As required by the Act, paragraph 3 of the proposed scheme incorporates such new standard conditions for transmission licences as the Secretary of State may determine into each of the Existing Transmission Licences.
- 3.5. Although the standard conditions are to be incorporated into each of the Existing Transmission Licences, it is not intended that all of the new standard conditions should have effect through the licensing scheme. It is intended that those new standard conditions contained in Sections A and B should have effect

but that Sections C and D should have effect only in the following circumstances:

- (a) in relation to Section C, following a direction by either the Secretary of State or the Authority in accordance with new standard condition A2; and
- (b) in relation to Section D, following a direction by the Authority in accordance with new standard condition A3.

3.6. The scheme therefore provides in Schedule 1 for Sections A and B of the proposed new standard conditions to replace the pre-existing standard conditions referred to in paragraph 1 of Part II of each Existing Transmission Licence and for Sections C and D to replace those pre-existing standard conditions referred to in paragraph 2 of Part II. The scheme also amends paragraph 1(a) of the terms of each of the Existing Transmission Licences to reflect the need for Sections C and D to be switched on through the issue of the relevant direction.

3.7. However, the scheme does not provide for the introduction of Section E or for any modifications to the special conditions of the Existing Transmission Licences. It is intended that Section E will be introduced and the special conditions be modified by the Secretary of State through the exercise of the power available to her by virtue of section 134 of the Act.

Other licence modifications

3.8. The scheme also provides for the modification of Schedule 1 of each of the Existing Transmission Licences so that the specified area of each licence is Great Britain.

BSC/CUSC Framework Agreements

3.9. The introduction of the new standard conditions means that it is necessary for both the BSC and CUSC Framework Agreements to be modified so as to apply on a Great Britain-wide basis. The scheme therefore also provides for those amendments that are either necessary or expedient to attain this.