

Special Condition E7: Determination of any adjustment factor to be applied to MR_t (IAE_t)

1. The purpose of this condition is to enable the licensee (and in the case of an exit income adjusting event, a shipper,) to propose; and to provide for the Authority to determine, whether any adjustment to the maximum Distribution Network Transportation Activity Revenue is appropriate.

Part A: Formula for the Distribution Network adjustment factor (IAE_t)

2. For the purposes of paragraph 5 of Special Condition E2 (Restriction of revenue in respect of the Distribution Network Transportation Activity) an income adjusting event (IAE_t) is derived from the following formula:

$$IAE_t = IE_t + ITMA_t + ITL_t$$

Where:

IE_t means an exit income adjusting event resulting from an increase or decrease in the value of $ExCP_t$ or EDC_t (having the meanings given in paragraph 10 and paragraph 17 respectively of Special Condition E6 (Distribution Network Exit capacity costs and incentive revenue (Ex_t))) and shall be derived in accordance with paragraph 3;

$ITMA_t$ means a TMA income adjusting event resulting from an increase in the costs associated with any order or regulation made pursuant to Part 3 or any provision of the New Roads and Streetworks Act 1991 amended by Part 4 of the Traffic Management Act 2004 or any equivalent provision in the Transport (Scotland) Act 2005 and shall be derived in accordance with paragraph 8; and

ITL_t means a tax liability income adjusting event and shall be derived in accordance with paragraph 12.

Part B: Obligations in respect of an exit income adjusting event (IE_t)

3. For the purposes of paragraph 2 of this condition an exit income adjusting event (IE_t) may arise from any of the following:

- (a) an event or circumstance constituting force majeure under the network code;
- (b) an event or circumstance resulting in the declaration of a Network Gas Supply Emergency (having the meaning given to such term in paragraph 1.2.3(a) of section Q of the network code); or
- (c) an event or circumstance other than those listed above which is, in the opinion of the Authority, an exit income adjusting event and is approved by it as such in accordance with paragraph 7 of this condition,

where the event has, for Formula Year t , increased or decreased the value of $ExCP_t$ or EDC_t in respect of the relevant Distribution Network (having the meaning given in paragraphs 10 and 17 of Special Condition E6 (Distribution Network Exit capacity costs and incentive revenue (Ex_t))) by more than:

- (i) £1,500,000 for Formula Year $t=1$;
- (ii) £1,000,000 for Formula Year $t=2$;
- (iii) £1,000,000 for Formula Year $t=3$;
- (iv) £1,500,000 for Formula Year $t=4$; or
- (v) 0.5 per cent of base revenue (Z_t) for all other years,

(the "Threshold Amount"). This Threshold Amount does not apply in respect of sub-paragraph (b) above.

4. Where the licensee considers, and can provide supporting evidence that, in respect of Formula Year t , there have been costs and/ or expenses that have been efficiently incurred or saved by an exit income adjusting event, then the licensee shall give notice of this event to the Authority.
5. Where any shipper considers, and can provide supporting evidence that, in respect of Formula Year t , there have been costs and/ or expenses that have been incurred or saved by an exit income adjusting event, then a shipper may give notice of this event to the Authority.
6. A notice provided to the Authority under paragraphs 4 and 5 of this condition shall in the case of the licensee, and shall, in so far as it is practicable in the case of any shipper, give particulars of:
 - (a) the event to which the notice relates and the reason(s) why the person giving the notice considers the event to be an exit income adjusting event;
 - (b) the amount of any change in costs and/ or expenses that can be demonstrated by the person giving the notice to have been caused or saved by the event and how the amount of these costs and/or expenses has been calculated;
 - (c) the amount of any allowed exit income adjustment proposed as a consequence of that event and how this allowed exit income adjustment has been calculated; and
 - (d) any other analysis or information which the person submitting the notice considers to be sufficient to enable the Authority and any relevant shipper to fully assess the event to which the notice relates.
7. Following consultation with such persons including the licensee and any relevant shipper as the Authority considers likely to be affected by its determination the Authority shall determine:

- (a) whether any or all of the costs and/or expenses referred to in a notice pursuant to paragraphs 4 or paragraph 5 of this condition were incurred or saved as a result of an exit income adjusting event;
- (b) whether the event or circumstance has increased or decreased the value of $ExCP_i$ or EDC_i ((having the meaning given in paragraphs 10 and 16 respectively of Special Condition E6 (Distribution Network Exit capacity costs and incentive revenue (Ex_i)) by more than the Threshold Amount, save in the case of sub-paragraph 3 (b) of this condition where the Threshold Amount shall not apply; and
- (c) if so, whether the amount of the proposed exit income adjustment secures that the financial position and performance of the licensee are, insofar as is reasonably practicable, the same as if that exit income adjusting event had not taken place, and if not, what allowed exit income adjustment would secure that effect.

Part C: Obligations in respect of a TMA income adjusting event ($ITMA_i$)

8. For the purposes of paragraph 2 of this condition where the licensee reasonably believes that a TMA income adjusting event ($ITMA_i$) has arisen as a result of reasonable costs incurred from the following items associated with any order or regulation made pursuant to Part 3, or any provision of the New Roads and Streetworks Act 1991 amended by Part 4 of the Traffic Management Act 2004 or equivalent provisions under the Transport (Scotland) Act 2005 ("TMA"):

- (a) permit costs;
- (b) fixed penalties;
- (c) ongoing administration; or
- (d) other costs that the Authority directs should be treated as TMA costs,

which has not been deemed by the Authority to be already included in the licensee's maximum Distribution Network Transportation Activity Revenue and where the cumulative costs have exceeded, in the period from 1 April 2008 up to and including 31 March of the relevant Formula Year i , the sum of 1 per cent of base revenue (Z_i) and any amounts that the licensee considers have been included in its base revenue allowance (Z_i), the licensee may, by notice to the Authority, propose a relevant adjustment to the ITMA _{i} term.

9. A relevant adjustment under paragraph 8 is one which, in the opinion of the licensee, would, if made, have the effect of enabling the licensee to recover the efficient costs incurred or likely to be incurred in the period from the adjustment date (defined in paragraph 10 below) of the proposal to 31 March 2013 in relation to the obligations, events or requirements referred to in that paragraph.

10. A notice served by the licensee in accordance with paragraph 8 must:

(a) state the obligations, events or requirements under the TMA to which the notice relates;

(b) set out by reference to each such obligation or requirement the basis on which the licensee has calculated the relevant adjustment;

(c) be accompanied by at least six months of actual cost data; and

(d) state the date from which the licensee wishes the Authority to agree that the relevant adjustment shall have effect ("the adjustment date").

11. Following consultation with such persons, including the licensee, as the Authority considers likely to be affected by its determination, the Authority shall determine whether any or all of the costs and/or expenses referred to in a notice pursuant to paragraph 8 of this condition were incurred as a result of a TMA income adjusting event; (having particular regard to the purpose of this condition and taking no account of the financial performance of the licensee relative to any of the assumptions, whether express or implied, by reference to which the Distribution Network Transportation

Activity Revenue Restriction Conditions may have been framed) and, if so, whether the amount of the proposed relevant adjustment secures the effect referred to in paragraph 9.

Part D: Obligations in respect of a tax liability income adjusting event (ITL_t)

12. For the purposes of paragraph 2 of this condition, a tax liability income adjusting event is one resulting from an increase in the costs associated with any corporation tax liability that arises from a change in the rate in which replacement expenditure is treated as a deductible expense for the purposes of the calculation of the licensee's profits chargeable to corporation tax, to the extent that this arises from a mandatory change in the way that such expenditure is accounted for in the licensee's statutory accounts, and providing that the licensee has used reasonable endeavours to maintain the current rate at which such expenditure is deductible.
13. Where the licensee reasonably believes that a tax liability income adjusting event (ITL_t) has arisen which has not already been included in the licensee's maximum Distribution Network Transportation Activity Revenue and where the cumulative costs have exceeded or are likely to exceed, in the period from 1 April 2008 up to and including 31 March of the Formula Year _t, the sum of 1 per cent of base revenue (Z_t), the licensee, may by notice to the Authority, propose a relevant adjustment to the ITL_t term..
14. A relevant adjustment under paragraph 13 is one which, in the opinion of the licensee, would if made, have the effect of enabling the licensee to recover efficient costs incurred or likely to be incurred in relation to the obligations, events or requirements referred to in that paragraph.
15. A notice served by the licensee in accordance with paragraph 13 must:
 - (a) state the amount of the tax liability and any associated costs the licensee believes it has incurred or will incur as a result of the tax liability income adjusting event;
 - (b) set out the basis on which the licensee has calculated the relevant adjustment;

(c) set out the steps that the licensee has taken in order to minimise the costs arising from the tax liability income adjusting event; and

(d) state the date from which the licensee wishes the Authority to agree that the relevant adjustment shall have effect ("the adjustment date").

16. Following consultation with such persons, including the licensee, as the Authority considers likely to be affected by its determination, the Authority shall determine whether any or all of the costs and/or expenses referred to in a notice given pursuant to paragraph 13 of this condition were incurred or are likely to be incurred as a result of a tax liability income adjusting event (having particular regard to the purpose of this condition and taking no account of the financial performance of the licensee relative to any of the assumptions, whether express or implied, by reference to which the Distribution Network Transportation Activity Revenue Restriction Conditions may have been framed) and, if so, whether the amount of the proposed relevant adjustment secures the effect referred to in paragraph 14.

Part E: Further Obligations in respect of an exit, TMA or tax liability income adjusting event (IEt), (ITMA_t) or (ITL_t)

17. For the purposes of Part E of this condition, an income adjusting event is one or more of:

- (a) an exit income adjusting event;
- (b) a TMA income adjusting event; and
- (c) a tax liability income adjusting event.

18. If the Authority considers that the analysis or information provided by the licensee (or in the case of an exit income adjusting event, by a shipper) in respect of an income adjusting event is insufficient to enable both the Authority (and in the case of an exit income adjusting event, shippers) to assess whether an income adjusting event has occurred and/ or the amount of any allowed income adjusting event that should be approved, the Authority can request that the supporting evidence be supplemented with additional material that it considers appropriate.

19. A notice of an income adjusting event shall be given as soon as is reasonably practicable after the occurrence of the income adjusting event, and, in any event, not later than three months after the end of the relevant Formula Year , in which it occurs.
20. The Authority will make public information, excluding any confidential information, which it has received under paragraphs 4, 5, 8 or 13 of this condition.
21. Any notice submitted to the Authority under paragraph 4, 5, 8 or 13 of this condition shall clearly identify whether any of the information contained in the notice is of a confidential nature. The Authority shall make the final determination as to confidentiality for the purpose of paragraph 20 of this condition having regard to:
- (a) the need to exclude from disclosure, so far as is reasonably practicable, information whose disclosure the Authority considers would or might seriously prejudicially affect the interests of any person to which it relates; and
 - (b) the extent to which the disclosure of the information mentioned in sub-paragraph 21 (a) of this condition is necessary for the purpose of enabling any relevant shipper to fully assess the event to which the notice relates.
22. In relation to Formula Year , the approved allowance in respect of an income adjustment (I AE_i) shall be:
- (a) the value determined by the Authority under paragraph 7, 11 or 16 above;
 - (b) if the Authority has not made a determination under paragraph 7, 11 or 16 above within six months of the date on which the notice of an income adjusting event was provided to the Authority, the amount of the allowed income adjustment proposed as a consequence of the event in the notice given to the Authority under paragraphs 4, 5, 8 or 13 of this condition; or
 - (c) in all other cases zero, including situations where the Authority has not made a determination under paragraph 7, 11 or 16 of this condition within six months of the date on which notice under paragraph 4, 5, 8 or 13 of this condition was

provided to the Authority and the Authority has, before the end of that six month period, informed the relevant persons that the Authority considers that the analysis or information provided in accordance with paragraph 18 is insufficient to enable the Authority and any relevant shipper to assess whether an income adjusting event has occurred and/or the amount of any allowed income adjustment.

23. For the purposes of this condition:

- (a) the power of the Authority to determine a relevant adjustment in accordance with paragraphs 7, 11 and 16 is the power to confirm, reject, or vary the relevant adjustment proposed by the licensee under paragraph 4, 8 or 13 or a shipper under paragraph 5;
 - (b) without prejudice to sub-paragraph (a), in determining a relevant adjustment to the Distribution Network Transportation Activity Revenue Restriction Conditions the Authority may include in its determination such adjustments as it thinks fit in respect of those costs likely to be incurred by the licensee in subsequent Formula Years within the category of costs to which the relevant adjustment applies; and
 - (c) where the Authority's determination or an adjustment made by the licensee under paragraph 22(b) of this condition has the effect of adjusting the Distribution Network Transportation Activity Revenue Restriction Conditions in relation to the Formula Year (other than the normal operation of the correction factor K_1 derived in accordance with Special Condition E4 (Distribution Network Transportation Activity Revenue adjustment (K_1))), the licensee may not propose any additional relevant adjustment in respect of the same category of costs in respect of that year.
24. The Authority's decision in relation to any notice given under paragraph 4, 5, 8 or 13 shall be in writing, shall be copied to the licensee and shall be in the public domain.
25. The Authority may revoke an approval of an income adjusting event and allowed income adjustment with the consent of the licensee, following consultation with the licensee and any relevant shipper. Revocation of any income adjusting event and

allowed income adjustment shall be in writing, shall be copied to the licensee and shall be in the public domain.