

To licensed generators and all  
other interested parties

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Date: 28 November 2014

## **Consultation on proposals to modify Standard Licence Conditions 14 and 15 of the electricity generation licence**

This letter sets out our proposal for consultation to modify provision for the exercise of compulsory powers in Standard Licence Condition (SLC) 14 (Compulsory Acquisition of Land etc.) and SLC 15 (Other powers etc.) of the electricity generation licence.

### **Background**

Permissions need to be secured by electricity licence holders from landowners and others so that licence holders may legally carry out certain activities on any land, such as installing an electric line and keeping it installed. If a voluntary agreement cannot be reached through negotiation, electricity licence holders have access to compulsory powers under the Electricity Act 1989 (the Act), subject to any restrictions set out in the licence.

### *The Act*

Schedules 3 (compulsory acquisition of land etc. by licence holders) and 4 (other powers etc. of licence holders) to the Act provide for the exercise of certain compulsory powers by licence holders.

Schedule 3 provides that the Secretary of State may authorise the compulsory purchase of any land required by a licence holder *“for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on”*.

Schedule 4 provides for the exercise of other compulsory powers by licence holders, including compulsory powers to enter upon and survey land for the purpose of ascertaining the suitability of the land, *“for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on”*.

Section 10 of the Act applies Schedules 3 and 4 to transmission licensees without restriction, and allows Schedules 3 and 4 to the Act to be applied to any other licence holder by its licence *“subject to such restrictions ... as may be included in the licence”*.

## *The electricity generation licence*

Paragraph 2 of SLC 14 of the electricity generation licence currently restricts the application of compulsory purchase powers available under Schedule 3 to activities which relate to:

- sub-paragraph (a) - *“the construction or extension of a generation station”*;
- sub-paragraph (b) - *“activities connected with the construction or extension of a generating station or connected with the operation of a generation station”*; and
- sub-paragraph (c) - *“the installation, maintenance, removal or replacement of electric lines, and electrical plant associated with them, connecting a generating station with the national electricity transmission system or a distribution system”* (emphasis added, later referred to in this document as “electric lines” for simplicity).

Paragraph 2 of SLC 15 of the electricity generation licence currently restricts the application of other compulsory powers available under Schedule 4 to activities which relate to:

- sub-paragraph (a) – *“the installation, inspection, maintenance, adjustment, repair, alteration, replacement and removal of electric lines<sup>1</sup> ... and electrical plant associated with such lines and any structures for housing or covering such lines or plant”*(emphasis added, later referred to in this document as “electric lines” for simplicity);
- sub-paragraph (b) – *“the installation of electrical plant to be used in the connection with a generation station or the operation thereof”*; and
- sub-paragraph (c) – *“in relation to electric lines or electrical plant as if the references to them in Schedule 4 to the Act included pipes for conveying directly to consumers’ premises heat produced in association with electricity and steam produced from air and water heated by such heat and associated works in relation to such pipes and as if “associated works” had the meaning given in section 10(3) of the Act”*.

Paragraph 4 of SLC 15 of the electricity generation licence further restricts the application of the compulsory power set out at paragraph 10 of Schedule 4 to the Act, to enter upon and survey land:

- sub-paragraph (a) limits the purposes for which the licensee may compulsorily enter on and survey land to the purpose of ascertaining the suitability of the land for the *“construction or extension of a generation station”*; and
- sub-paragraph (b) requires that the generation licensee obtain the Authority’s consent before exercising the rights under sub-paragraph (a).

### **Review of SLCs 14 and 15 of the electricity generation licence**

Triton Knoll Offshore Wind Farm Limited (TK) applied for the Authority’s permission to compulsorily enter on land to assess its suitability for the construction of an onshore electrical system connecting its offshore wind farm to the national electricity transmission system. The application was withdrawn following the commencement of a consultation on the Authority’s “minded-to” position in relation to the application<sup>2</sup>. The Authority was minded to refuse consent on the basis that the proposed use of the

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<sup>1</sup> Paragraph 3 of SLC 15 specifies that the electric lines in question are those connecting a generating station with the national electricity transmission system or a distribution system, or where “electric lines” has the extended meaning given by paragraph 2, those connecting a generating station with any premises .

<sup>2</sup> <https://www.ofgem.gov.uk/ofgem-publications/88889/consultationslc15tkowfjuly14publish.pdf>

land to be surveyed was not for the construction or extension of a generating station, as required by SLC 15(4)(a).

Following the withdrawal of TK's application, the Authority announced in an open Letter on 19 August 2014<sup>3</sup> its intention to undertake a review of SLCs 14 and 15 of the electricity generation licence and to consider whether modification of the electricity generation licence would be appropriate. In that letter we noted a number of issues including:

- (a) SLC 15(4) of the electricity generation licence does not refer to all of the activities mentioned in SLC 15(2); and
- (b) it is unclear whether the reference in SLC 15(2) to the installation of electric lines etc, includes work preparatory to their installation.

During the course of our review, we have considered carefully the relevant provision in the Act and all of the provisions for the exercise of compulsory powers in the electricity generation licence. Where appropriate, we would seek to remove inconsistencies in the licence in relation to the provision for the exercise of compulsory powers under the Act and improve clarity.

One particular issue that we note in this review is the lack of provision in SLC 15(4) for the electricity generation licence holder to enter on land and survey its suitability for work in relation to electric lines. This lack of provision is inconsistent with provisions for work in relation to electric lines carried out by generation licence holders in SLC 14(2)(c) for the exercise of compulsory purchase powers and in SLC 15(2) for the exercise of other compulsory powers. This in practice could cause delay and/or higher costs in developing or connecting generation.

We also note that the lack of clarity in the provision of compulsory powers to preliminary works for constructing electric lines could be a source of uncertainty. We further note that there is currently no express provision in the licence for the exercise of compulsory powers by generation licensees in relation to preliminary work for electric lines subsequently constructed by another licence holder, such as under the offshore transmission owner (OFTO) build model for offshore transmission assets<sup>4</sup>.

In addition, we note that work in relation to electric line activity is described differently under SLC 14(c) and SLC 15(a). This could be a source of confusion.

In line with our statutory duty to protect the interests of existing and future electricity and gas consumers, we have identified a number of modifications to SLCs 14 and 15 of the electricity generation licence that would:

- remove uncertainty and confusion for licence holders and other stakeholders; and
- better facilitate the timely and efficient development of generation which is required for achieving secure, affordable and low-carbon supply of electricity, including the connection of offshore generation to the national electricity transmission system.

We set out below a summary of our proposed amendments, followed by more detailed commentary of the relevant intended effect of these amendments.

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<sup>3</sup> <https://www.ofgem.gov.uk/ofgem-publications/89394/withdrawalnotice.pdf>

<sup>4</sup> Under the enduring regulatory regime, offshore transmission assets could be built either by the generation licence holder ('Generator Build model') or by the competitively appointed OFTO ('OFTO Build model'). Under the OFTO Build model, the generation licence holder will carry out preliminary works for its offshore transmission assets and an OFTO licence holder will construct, own and operate these assets.

## Summary of our proposals

We propose to amend SLCs 14 and 15 of the electricity generation licence:

- to relax the restriction in SLC 15(4)(a) (on the purposes for which the compulsory power to enter on and survey land may be exercised) to ensure that the power can be exercised to assess the suitability of land for the installation, inspection, maintenance, adjustment, repair, alteration, replacement, or removal of electric lines connecting a generating station with the national electricity transmission system or a distribution system, electric plant associated with them and any structures for housing or covering such plant (**electric line activity**), consistent with current provision in SLC 14(2) in relation to compulsory purchase powers and SLC 15(2) in relation to other compulsory powers;
- to provide, for the avoidance of doubt, that compulsory powers under Schedules 3 and 4 to the Act can be exercised by generation licensees both in relation to the electric line activity referred to in SLCs 14 and 15 and in relation to work preliminary to such electric line activity;
- to ensure that generation licensees may rely on compulsory powers under Schedules 3 and 4 to undertake work preliminary to electric line activity subsequently undertaken by an OFTO under the OFTO Build model; and
- to ensure consistency of approach in SLCs 14 and 15, including in the language used to describe the same concepts and to avoid unnecessary repetition (**the drafting issues**).

### Detailed commentary on proposed modifications to SLCs 14 and 15 of the generation licence

Our proposed modifications to SLCs 14 and 15 are set out in the Appendix. The following table identifies the intended effect of each modification proposed.

Proposed modification	Effect of proposed modification
SLC 14(2)(b) - words deleted.	Address a drafting issue by avoiding unnecessary repetition of preceding reference to “activities which relate to (a) the construction or extension of a generating station”.
SLC 14(2)(c) – words inserted.	<p>Address a drafting issue by ensuring consistency with the current description of electric line activity in SLC 15(2)(a) (which has become SLC 15(2)(c) after proposed modification to insert new SLC 15(2)(a) and (b), as set out below).</p> <p>Make it clear that compulsory powers are exercisable in relation to work preliminary to electric line activity.</p> <p>Enable compulsory powers to be exercised by the generation licensee in relation to work preliminary to electric line activity undertaken by either the generation licensee or by an OFTO.</p>

SLC 15(2) – words inserted	<p>Address a drafting issue by ensuring consistency with current references in SLC 14(2) to “activities authorised by this licence”, “the construction or extension of a generating station” and “the operation of a generating station”.</p> <p>Make it clear that compulsory powers are exercisable in relation to work preliminary to electric line activity.</p> <p>Enable compulsory powers to be exercised by the generation licensee in relation to work preliminary to electric line activity undertaken by either the generation licensee or by an OFTO.</p>
SLC 15(2) – words deleted.	Address a drafting issue by ensuring consistency with current drafting of SLC 14(2).
SLC 15(3) – cross-reference changed.	Maintain correct cross-reference to relevant sub-paragraphs of SLC 15(2) after the proposed modifications to that paragraph.
SLC 15(4) – words inserted.	<p>Ensure that the compulsory power to enter on and survey land is exercisable in relation to electric line activity and work preliminary to such activity, in the same way as other compulsory powers under Schedules 3 and 4 are exercisable in relation to the same.</p> <p>Ensure that the generation licensee must also obtain the Authority’s consent before exercising the compulsory power in relation to electric line activity and work preliminary to such activity.</p>

## Impact of our proposed changes

### *Impact of changes to address the drafting issues*

We consider that our proposed amendments to address the drafting issues would improve the clarity, remove potential causes of confusion and uncertainty for licence holders and any other relevant stakeholders. This is in line with general good practice of transparent and efficient regulation.

### *Impact of changes relating to electric line activity*

We set out below our analysis of the impact of our proposed amendments in relation to electric line activity, and preliminary work to such activity, on relevant stakeholder groups.

- Electricity generators:

The proposed changes are likely to have a positive impact on commercial activities associated with the generation of electricity.

In the majority of cases generators can rely on the electricity transmission or distribution licence holders to carry out such work, who already have full access to the compulsory powers equivalent to those considered in this review<sup>5</sup>. However, there is a genuine need for certain generators, such as those developing offshore wind projects under both Generator Build and

<sup>5</sup>As mentioned earlier in this document, Paragraph 10 of the Act applies Schedules 3 and 4 to electricity transmission licensees without restriction. The provision for the exercise of compulsory powers by electricity distribution licence holders is set out in standard license condition 28 (Application of statutory powers), which is without the requirement for consent by the Authority.

OFTO Build models, to exercise such compulsory powers to progress the development and connection of their projects.

The availability of compulsory entry powers for electric line activity will allow generators the required access to land to survey for suitability of electric line activity where agreement with landowners cannot be reached. The availability of both compulsory entry and compulsory purchase powers for preliminary works in relation to electric lines (whether or not they are built by the generators) would also improve the generators' prospect of establishing and using without undue delay or excessive costs the most suitable sites for building electric lines to connect their generating stations. This would in turn help to lower the cost and improve competition in the generation sector.

We have reviewed the potential impact of our proposed changes on nuclear generation licence holders who may have additional rights of entry and compulsory purchase powers afforded to it under SLC D3 (Compulsory Acquisition of Land etc) and SLC D4 (Other Powers etc). We do not consider that the changes proposed by this consultation impact on these additional powers. However, we welcome any stakeholder views on this point.

- Electricity consumers:

The positive impact of the proposed changes on electricity generation, particularly offshore wind projects, is in turn likely to lead to positive impact on electricity consumers by removing obstacles to achieving secure, affordable and low-carbon supply of electricity.

- Other parties:

The proposed changes are likely to have an impact on some landowners. However, we consider that this potential impact specifically caused by our proposed changes is limited for the following reasons.

- As mentioned above, compulsory powers already exist to electricity transmission and distribution licence holders who may carry out the work on electric line activity instead of generation licence holders. We do not consider making clear the allowance for generation licence holders to exercise the compulsory powers in relation to electric line activity, by itself, presents a material impact on landowners.
- With specific regard to compulsory entry powers for which our proposed changes would make available to generators carrying out electricity line activity and work preliminary to such activity, it is worth noting that generation licence holders may, under section 53 of the Planning Act 2008, apply for authorisation for a right of entry to gain access onto land for the purpose of surveys in England and Wales. We also note that compulsory entry power includes the obligation for any licence holder to "make good any damage done to the land" (as set out in paragraph 10(5) of Schedule 4 to the Act).
- Compulsory purchase powers are already available to generators for carrying out electric line activity. We do not consider extending the compulsory entry powers to generators in relation to electric line activity, by itself, presents a material impact on landowners.

We note from the analysis above that the impact on landowners could be perceived as a limited increase of potential interference with their human rights. However, we consider this as justified interference since it must be balanced against the greater public interest which is the underpinning principle of the provision for the exercise of compulsory powers over private property. As explained above, we see that the potential positive impact of the proposed changes outweighs the potential negative. Overall, we therefore consider that it is in line with our statutory duty to pursue the proposed changes.

### **Next steps**

This letter marks the start of an eight week consultation period ending Thursday, 29 January 2015 during which respondents are invited to provide feedback on our any aspect of this letter.

We welcome views from stakeholders on the proposed modifications to the electricity generation licence and also on our views of the potential impact of the proposed changes. All responses received will be placed on our website unless marked as confidential.

Responses should be sent by 5pm, 29 January 2015 to:-

Anthony Mungall  
Offshore Team  
Ofgem  
Cornerstone  
107 West Regent Street  
Glasgow  
G2 2BA

Or by e-mail to: [offshorelicensing@ofgem.gov.uk](mailto:offshorelicensing@ofgem.gov.uk)

Subject to considering all responses duly made, we plan to initiate a statutory consultation under section 11A of the Act. We intend to issue the statutory consultation in spring 2015. Subject to consultation, we intend to modify the electricity generation licence under section 11A of the Act.

If you have any queries in relation to this letter please contact Anthony Mungall ([Anthony.mungall@ofgem.gov.uk](mailto:Anthony.mungall@ofgem.gov.uk)).

Yours faithfully

**Anthony Mungall**  
**Senior Manager, Offshore Transmission**

## Appendix 1

### Condition 14. Compulsory Acquisition of Land etc.

1. This condition shall have effect and come into operation for the purpose of this licence on and from 1 May 2007.

2. The powers and rights conferred by or under the provisions of Schedule 3 to the Act (Compulsory Acquisition of Land etc. by Licence Holders) shall have effect in relation to the licensee to enable the licensee to carry on the activities authorised by this licence and which relate to:

- (a) the construction or extension of a generating station;
- (b) ~~activities connected with the construction or extension of a generating station or connected with the operation of a generating station; and~~
- (c) the installation, inspection, maintenance, ~~removal or~~ adjustment, repair, alteration, replacement or removal of electric lines and electrical plant associated with them, and any structures for housing or covering such lines or plant, connecting a generating station with:
  - (i) the national electricity transmission system; or
  - (ii) a distribution system.

including, for the avoidance of doubt, works preliminary to those activities, whether those activities are carried out by the licensee or another licence holder.

3. In paragraph 2 above:

- (a) the references to "generating station" are to an electricity generating station which:
  - (i) has, or will have when its construction or extension is completed, a capacity of not less than 50 megawatts or such other capacity as may be specified in relation thereto by order of the Secretary of State under section 36(3) of the Act; and
  - (ii) is, or will be when its extension or construction is completed, operated by or for the licensee; and
- (b) "extension" in relation to a generating station includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station.



## Condition 15. Other powers etc.

1. This condition shall have effect and come into operation for the purpose of this licence on and from 1 May 2007.

2. The powers and rights conferred by or under the provisions of Schedule 4 to the Act (Other Powers etc. of Licence Holders) shall, subject to paragraph 3 and 4 below, have effect to enable the licensee to carry on its the activities authorised ~~activities~~ by this licence and which relate to:

(a) the construction or extension of a generating station;

(b) the operation of a generating station;

(c) in relation to, or in pursuance of, the installation, inspection, maintenance, adjustment, repair, alteration, replacement and or removal of:

(i) electric lines specified in paragraph 3 below;

(ii) electrical plant associated with such lines; and

(iii) any structures for housing or covering such lines or plant;

including, for the avoidance of doubt, works preliminary to those activities, whether those activities are carried out by the licensee or another licence holder.

~~(b)~~(d) in relation to the installation of electrical plant to be used in connection with a generating station or the operation thereof;

~~(e)~~(e) in relation to electric lines or electrical plant as if the references to them in Schedule 4 to the Act included pipes for conveying directly to consumers' premises heat produced in association with electricity and steam produced from air and water heated by such heat and associated works in relation to such pipes and as if "associated works" had the meaning given in section 10(3) of the Act.

3. Electric lines are specified for the purposes of sub-paragraph ~~(a)~~(c) of paragraph 2 above:

(a) if they connect, or will connect when installed, a generating station with:

(i) the national electricity transmission system; or

(ii) any distribution system;

(b) where "electric lines" has the extended meaning given by paragraph 2(e) above, if they connect a generating station with any premises.

4. Paragraph 10 of Schedule 4 to the Act shall apply to the licensee if ~~(a) it wishes to~~ it obtains the consent of the Authority before exercising its rights of entry on land under that paragraph for the purpose of establishing ~~ascertaining~~ whether ~~or not~~ the land is would be suitable for:

(a) the construction or extension of a generating station; and or

~~it obtains the consent of the Authority before exercising those rights.~~ the installation, inspection, maintenance, adjustment, repair, alteration, replacement or removal of electric lines specified in paragraph 3 above.

electrical plant associated with them and any structures for housing or covering such plant, including, for the avoidance of doubt, works preliminary to those activities, whether those activities are carried out by the licensee or another licence holder.

5. In this condition:

- “authorised activities” means the activities which the licensee is authorised by the licence to carry on, and shall include any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from air and water heated by such heat;
- “generating station” has the meaning given in paragraph 3 of standard condition 14 (Compulsory Acquisition of Land etc);
- “extension” in relation to a generating station, has the meaning given in paragraph 3 of standard condition 14 (Compulsory Acquisition of Land etc).