

To all interested stakeholders

Email: connections@ofgem.gov.uk
Date: 13 December 2016

Consultation on the assessment criteria for derogations from the Grid Connection Codes

Summary

We are consulting on the criteria that we should use to assess derogation requests under the Requirement for Generators network code (RfG), Demand Connection Code (DCC) network code and High Voltage Direct Current (HVDC) network code. Responses to the consultation should be sent to connections@ofgem.gov.uk by 17 January 2017.

Background

RfG, DCC and HVDC are part of a suite of European Network Codes (ENCs) that have been developed following implementation of the European Third Energy Package.¹ Collectively we refer to these three ENCs as the 'Grid Connection Codes' (the GCCs). The ENCs intend to deliver a harmonised set of rules for the operation of the electricity sector in Europe.

- Requirements for Generators (RfG) network code² – specifies the technical connection requirements that new generators must adhere to.
- Demand Connection Code (DCC) network code³ – specifies the technical connection requirements that new distribution networks connecting to the transmission system, new demand users connecting to the transmission system and new customers wanting to provide demand side response services, must adhere to.
- High Voltage Direct Current (HVDC) network code⁴ – specifies the technical connection requirements that new long distance DC connections, new links between different synchronous areas (eg interconnectors) and new DC-connected generation (eg offshore wind farms) must adhere to.

It is important to note that until Brexit formally happens and any new arrangements are in place, Ofgem will continue to participate constructively in EU institutions and the European Internal Energy Market (IEM). The ENCs are European Regulations and upon entry into force will be directly applicable to GB without having to be transposed into our national laws or regulatory frameworks. Over the next couple of years, the GB energy industry will be required to modify our industry codes (eg the Grid Code and Distribution Code) to ensure that they are consistent with ENC requirements.

The requirements of the GCCs only apply to new connection customers; they do not apply to existing connection customers. If you are proposing to connect to the GB electricity

¹ More information on the European Third Energy Package can be found on our website:

<https://www.ofgem.gov.uk/gas/wholesale-market/european-market/eu-legislation>

² Requirements for Generators network code can be found here; http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2016_112_R_0001

³ Demand Connection Code network code can be found here; http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_2016.223.01.0010.01.ENG&toc=OJ:L:2016:223:TOC

⁴ High Voltage Direct Current network code can be found; <http://eur-lex.europa.eu/eli/reg/2016/1447/oj>

network from 2018 onwards - it is likely that you will be required to comply with the requirements of the GCCs.⁵

GCC Derogation Articles

The GCCs include provisions that allow parties to seek derogations from the requirements of the GCCs.⁶ The GCCs contain articles that describe the process for derogating from GCCs. While articles in the specific GCCs broadly mirror each other, there are some code specific requirements (eg HVDC has an additional Article in relation to derogation requests from DC-connected power park module owners). The GCCs give Ofgem the role of reviewing, and making decisions on, GCC derogation requests.

The GCCs state that we have nine months following entry into force to consult and decide upon **the criteria** that we will use to assess derogation applications. There will be a separate consultation on **the process** for applying for derogation in due course. RfG entered into force on 17 May 2016. We intend to decide on a set of common derogation assessment criteria that we will use to for RfG, DCC and HVDC derogation requests. If we want to issue common GCC derogation assessment criteria, the deadline for publishing our decision on them and notifying the European Commission (EC) is 17 February 2017.⁷

Proposed approach

The Grid Code and the Distribution Code set out technical requirements for connection to, and use of, the electricity transmission and distribution network. Over the next year these codes will be modified to make them consistent with the requirements of the GCCs. We have an existing Derogations Guidance Document that outlines the process for requesting derogations from GB technical codes and standards (this includes the Grid Code and Distribution Code).⁸ The Derogations Guidance Document also sets out the criteria that we use to assess GB code derogation requests.

We intend to use the existing GB code derogation assessment criteria as the basis for developing the GCC derogation assessment criteria. This will ensure that we can use broadly similar criteria to assess both ENC derogation requests and GB technical code derogation requests. This should reduce complexity for parties seeking derogations in GB in the future. Our proposed modifications are to make the GCC derogation assessment criteria consistent with the requirements of the GCCs.

It is important to note that we are currently only consulting on the criteria that we should use to assess ENC derogation requests. We are not consulting on amending the criteria used to assess derogations requests from GB domestic codes requirements. These will only change in as much they need to comply with the requirements of the GCCs.

Early next year, we want to update the existing Derogations Guidance Document, so that it can be used by licensees seeking derogations from GB technical codes and parties seeking derogations the GCCs. However, presently, we are seeking views **only** on our proposed ENC derogations assessment criteria, and **not** changes to the wider Derogations Guidance Document.

Proposed derogation assessment criteria

Our proposed GCC derogations assessment criteria are outlined in Annex 1 of this consultation document. We may review and amend the criteria for assessing GCC derogation requests at most once a year.

⁵ More detailed information on the scope of the GCCs can be found in the ENCs themselves.

⁶ Articles 60-65 of RfG, Articles 50-55 of DCC and Articles 75-81 of HVDC.

⁷ This the date required by the RfG (the first GCC to enter into force).

⁸ Our existing Guidance on licence derogation requests can be found here;

https://www.ofgem.gov.uk/sites/default/files/docs/2009/01/090119derogationsguidance_0.pdf

Some of the GCC requirements go beyond the requirements of the existing GB code derogations criteria (as set out in the Derogations Guidance Document). As a result, we propose that the GCC derogation assessment criteria includes some additional requirements, to ensure that the GCC derogation assessment criteria are consistent with the GCC requirements (eg for GCC derogation requests we are required to assess the impact on cross-border trade, cost-benefit analysis must be completed to a specified standard and the relevant distribution or transmission system operator must have assessed the impact of the derogation).

We recognise that the GCCs place requirements on some parties that are not licensees (eg unlicensed generation). For the GCC derogation assessment criteria, we therefore propose using the term "*affected party seeking a derogation*", rather than "*licensee*".

Although it is currently not identified as part of the formal GB code derogation assessment criteria, we currently assess whether any derogation request has a negative impact on the interests of consumers (eg consumers, competition, sustainable development, safety or other parties). We therefore intend to include this as an explicit part of the ENC derogation assessment criteria.

Consultation

This consultation applies to all parties that the ENCs describe as being applicable to, and is concerned specifically with the derogation assessment criteria. The consultation will close on 17 January 2017. Specifically we want to know:

- 1) Do you agree with our approach to use the existing GB derogations assessment criteria as the basis for our GCC derogation assessment criteria?**
- 2) Do you agree that the proposed GCC derogation assessment criteria, described in Annex 1, properly reflect the requirements set out in the GCCs?**
- 3) Do you identify any issues with our proposed GCC derogation assessment criteria?**

For the avoidance of doubt, this consultation seeks to satisfy our requirement in the GCCs to formally consult with stakeholders in advance of specifying the GCC derogation assessment criteria.⁹

Next Steps

We will publish our decision on the GCC derogation assessment criteria on our website and notify the EC of our decision before 17 February 2017. Once the GCC derogation assessment criteria have been notified to the EC, we will consult on our proposed changes to the Derogations Guidance Document to reflect the new processes for parties seeking a derogation from GCC requirements.

Please send your responses to connections@ofgem.gov.uk by 17 January 2017. Unless marked confidential, all responses will be published on our website.

Yours sincerely,

Min Zhu, Associate Partner, Networks

⁹ As required under paragraph 1 of Article 61 of RfG, Article 51 of DCC and Article 76 of HVDC.

Annex 1 proposed changes to the derogation criteria (track changes)

Criteria

A derogation would need to be justified along the following grounds:- We are Ofgem is likely to consider that a derogation request is justified if:-

An assessment has been provided by the applicant, and where relevant, the relevant transmission system operator or electricity distributor, that demonstrates that there are NO:-

- Significant risks associated with the non-compliance to the affected party seeking derogation¹⁰~~licensee~~, other relevant ~~parties~~licensees¹¹ or connected customers (who may or may not be a licensed party).
 - Avoidable adverse impacts (immediately or in the longer term) on the ~~licensee affected party seeking derogation~~, other relevant ~~licensees~~parties or connected customers.
 - Additional measures that could be taken to further mitigate the impact of the non-compliance on the affected party seeking derogation~~licensee~~, other relevant ~~licensees~~parties or connected customers for its duration.
 - Outstanding objections from other parties who are materially affected by the non-compliance.
 - Competitive advantages to the ~~licensee~~affected party seeking derogation arising from the derogation that cannot be addressed that are not offset by a suitable mechanism.
 - Other reasonable options to address the non-compliance that have not been considered.
 - Adverse effects on cross-border trade (if the party is seeking derogation from the RfG, DCC or HVDC European Network Code).
- The applicant has presented a robust, economic case that supports the action that it considers necessary to address the non-compliance. The economic case should take the form of a cost-benefit analysis pursuant to the requirements of the relevant European Network Code.¹²~~(We Ofgem notes that there may be cases where the impact of the non-compliance may not justify the expenditure required to restore compliance but would expect any applicant to make a strong economic case for any decision not to restore compliance.)~~
 - The applicant has presented a realistic and comprehensive implementation plan that defines, at the very least:
 - The works required to restore compliance.
 - The timetable for those works that show a deadline that is reasonable and is achievable (subject to highlighting any factors that may be outside the applicant's control, for example, third party consents).

¹⁰ The codes set out who can seek derogations.

¹¹ This language change reflects the fact that it may not be licensees who are seeking derogations from the GCC

¹² Pursuant to the requirements of Article 39 of RfG, Article 49 of DCC and Article 66 of HVDC.

- Any measures to mitigate the risks to other parties that will be (or have been) taken until the non-compliance is restored.
- The applicant has produced any other supporting information that is relevant to a specific request, including on the materiality of the issue.
- Any application for a derogation that is made by a relevant party will be considered in accordance with the requirements of the specific codes and on the basis that they will not adversely impact the interests of the consumer. In the process of assessing whether a derogation process adversely impacts on the interest of the consumer, we will specifically consider, amongst other things, the impact upon:
~~We consider that the derogation request will not have negative impact on the interests of consumers. To help determine whether a derogation request will have a negative impact on consumers, we will specifically consider, amongst other things, the impact upon:~~
 - **Consumers:** We will consider the extent to which the non-compliance impacts on consumers, for example through increased costs or reduced quality of supply.
 - **Competition:** For example, any competitive advantage that may arise from granting the derogation.
 - **Sustainable development:** Where relevant and possible, we would expect to assess the costs associated with granting a derogation (for example increased operational costs), compared to potential environmental benefits such as a reduction in carbon emissions.
 - **Health and safety:** If health and safety implications have been identified by the applicant, Ofgem we may seek expert advice from the relevant government bodies and other organisations, for example, the Health & Safety Executive (HSE)
 - **Other parties affected:** Where relevant, we will seek the views of affected parties before making a decision. We will also take into account the impact on the relevant system operator to operate its system if a derogation were granted.

Annex 2 proposed changes to the derogation criteria (clean)

Criteria

A derogation would need to be justified along the following grounds:-

An assessment has been provided by the applicant, and where relevant, the relevant transmission system operator or electricity distributor, that demonstrates that there are NO:-

- Significant risks associated with the non-compliance to the affected party seeking derogation¹³, other relevant parties¹⁴ or connected customers (who may or may not be a licensed party).
 - Avoidable adverse impacts (immediately or in the longer term) on the affected party seeking derogation, other relevant parties or connected customers.
 - Additional measures that could be taken to further mitigate the impact of the non-compliance on the affected party seeking derogation, other relevant parties or connected customers for its duration.
 - Outstanding objections from other parties who are materially affected by the non-compliance.
 - Competitive advantages to the affected party seeking derogation arising from the derogation that cannot be addressed that are not offset by a suitable mechanism.
 - Other reasonable options to address the non-compliance that have not been considered.
 - Adverse effects on cross-border trade (if the party is seeking derogation from the RfG, DCC or HVDC European Network Code).
- The applicant has presented a robust, economic case that supports the action that it considers necessary to address the non-compliance. The economic case should take the form of a cost-benefit analysis pursuant to the requirements of the relevant European Network Code.¹⁵(We note that there may be cases where the impact of the non-compliance may not justify the expenditure required to restore compliance but would expect any applicant to make a strong economic case for any decision not to restore compliance.)
- The applicant has presented a realistic and comprehensive implementation plan that defines, at the very least:
 - The works required to restore compliance.
 - The timetable for those works that show a deadline that is reasonable and is achievable (subject to highlighting any factors that may be outside the applicant's control, for example, third party consents).
 - Any measures to mitigate the risks to other parties that will be (or have been) taken until the non-compliance is restored.
- The applicant has produced any other supporting information that is relevant to a specific request, including on the materiality of the issue.
- Any application for a derogation that is made by a relevant party will be considered in accordance with the requirements of the specific codes and on the basis that they will

¹³ The codes set out who can seek derogations.

¹⁴ This language change reflects the fact that it may not be licensees who are seeking derogations from the GCC

¹⁵ Pursuant to the requirements of Article 39 of RfG, Article 49 of DCC and Article 66 of HVDC.

not adversely impact the interests of the consumer. In the process of assessing whether a derogation process adversely impacts on the interest of the consumer, we will specifically consider, amongst other things, the impact upon:

- **Consumers:** We will consider the extent to which the non-compliance impacts on consumers, for example through increased costs or reduced quality of supply.
- **Competition:** For example, any competitive advantage that may arise from granting the derogation.
- **Sustainable development:** Where relevant and possible, we would expect to assess the costs associated with granting a derogation (for example increased operational costs), compared to potential environmental benefits such as a reduction in carbon emissions.
- **Health and safety:** If health and safety implications have been identified by the applicant, we may seek expert advice from the relevant government bodies and other organisations, for example, the Health & Safety Executive (HSE)
- **Other parties affected:** Where relevant, we will seek the views of affected parties before making a decision. We will also take into account the impact on the relevant system operator to operate its system if a derogation were granted.