

Guidance on technical derogation requests

Guidance

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Target Audience:

- Electricity generation, transmission, distribution and supply licensees;
- Parties with obligations under the Requirement for Generators network code, Demand Connection Code and High Voltage Direct Current network code; and
- Wider interested parties

Overview:

This document sets out our guidance on the process for requesting a derogation from an obligation to comply with a technical requirement. It also sets out the criteria we will take into account when considering such requests.

This guidance replaces the 'Guidance on licence derogation requests' document that we issued in January 2009. It updates the previous guidance to reflect the development of several new European Network Codes.

Context

This document sets out the process for parties to apply for a derogation from an obligation to comply with relevant technical requirements, our¹ assessment of such requests and criteria of assessment. This guidance replaces the previous guidance document that we issued in 2009.

We have updated the previous guidance document to reflect the development of the Requirement for Generators network code (RfG),² Demand Connection Code network code (DCC)³ and High Voltage Direct Current network code (HVDC).⁴ These codes form part of a suite of European Network Codes (ENCs) that intend to deliver a harmonised set of rules for the operation of the electricity sector in Europe. These ENCs specify the technical connection requirements that relevant parties must adhere to. Collectively we refer to these three ENCs as the 'Grid Connection Codes' (the GCCs).

The GCCs include provisions that allow parties to seek derogations from the requirements of the GCCs.⁵ The GCCs give us the role of reviewing, and making decisions on, GCC derogation requests. We consider it is appropriate that our guidance on technical codes and standards derogation requests incorporates guidance on how we will review and assess GCC derogations requests

We have also updated the guidance to include a number of housekeeping changes.

¹ Ofgem is the Office of Gas and Electricity Markets. Our governing body is the Gas and Electricity Markets Authority and is referred to variously as GEMA or the Authority. We use "the Authority", "Ofgem" and "we" interchangeably in this document. More information can be found here

<https://www.ofgem.gov.uk/publications-and-updates/powers-and-duties-gema>

² Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators; http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2016_112_R_0001

³ Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection; 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 Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules; <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1447>

⁵ Articles 60-65 of RfG, Articles 50-55 of DCC and Articles 75-81 of HVDC.

Associated documents

- Guidance Note: Derogation from Codes and Standards In Electricity Generation, Supply, Distribution And Transmission Licences. October 2003
http://www.ofgem.gov.uk/Networks/Tech/TechStandds/Derogtns/Documents1/4956-Derogation_Guidance_Note_21oct03.pdf
- Guidance on licence derogation requests. January 2009
https://www.ofgem.gov.uk/sites/default/files/docs/2009/01/090119derogationsguidance_0.pdf

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Executive Summary

Guidance on derogation requests

What a derogation is and when it may be appropriate

Electricity generation, transmission, distribution and supply licensees are obliged to comply with certain technical codes and standards. Other parties, including new licence-exempt generators, transmission-connected demand facilities and providers of demand side response, are also obliged to comply with certain technical requirements identified in the GCCs.

Compliance with technical requirements is in the interests of electricity consumers as a failure to comply can have a direct and adverse impact on the security and quality of electricity supplied, and may have health and safety implications.

However, there may be occasions when a party assesses that it is not in a position to comply with a particular technical requirement, or that the technical requirements placed upon it may result in an inefficient outcome either in the short or longer term. In these circumstances, an affected party may submit a request to us for a derogation from the requirement to comply with a particular obligation.

This document sets out the information we will require in order to assess a request for a derogation, and outlines the factors we will take into account in its assessment.

Information required and our assessment

A request for a derogation should be submitted in writing to us and should include sufficient information to enable us to make a decision, including a comprehensive, and where possible, quantitative assessment, of the impact on:

- Consumers
- Competition
- Sustainable development
- Health and safety and the associated risk management measures
- Other parties affected by the non-compliance, including the ability of the relevant system operator (SO) or Distribution Network Operator (DNO) to operate its system

Each derogation request is assessed by us individually on its merits in terms of the likely effect on the above items and on the ability of other affected parties to comply with their statutory obligations, including the GCCs and licence conditions.

In our assessment we have regard to our principal objective and our statutory duties. This includes our duties in respect of sustainable development and duties to carry out our functions in the manner that we consider is best calculated to implement or ensure compliance with any decision of the Agency or the European Commission under the Third Package (which includes the GCCs); and will consider amongst other things the impacts set out above.



Guidance on technical derogation requests

If we are satisfied that the information received meets the minimum requirements and considers that the derogation request is justified then we will issue a derogation to the affected party granting the necessary relief from the relevant obligations for a time period specified in the derogation.

1. Introduction and background

Chapter Summary

This chapter explains what a derogation is, the circumstances in which a derogation may be appropriate, and the different types of derogation we may grant.

Background

1.1. Electricity generation, transmission, distribution and supply licensees are obliged to comply with certain technical codes and standards. Other parties that do not have a licence, including new licence-exempt generators, transmission-connected demand facilities and providers of demand side response, are also obliged to comply with certain technical codes and standards identified in the GCCs.

GB technical codes and standards

1.2. Unless we direct otherwise, electricity generation, transmission, distribution and supply licensees are required to comply with the Distribution Code and the Grid Code. In addition, Distribution Licensees must comply with the Engineering Recommendation P2/6 and Transmission Licensees with GB Security and Quality of Supply Standards (GB SQSS) when planning their respective systems. Further, transmission licensees are required to comply with the System Operator - Transmission Owner Code ('SO-TO Code' or 'STC').

1.3. A licensee may submit a request to us for a derogation from the licence requirement to comply with a particular obligation in a code or standard. This document summarises the process for requesting a derogation.

EU technical requirements

1.4. Parties with obligations under the GCCs can submit a request to us for derogation from a requirement to comply with a particular obligation in the GCCs. Where a party applies for a derogation from a GCC requirement, we will also treat this as an application from the relevant GB technical code or standard, if applicable.

Contents of this document

1.5. This document summarises the process for requesting a derogation. It also sets out the criteria we will take into account when considering a derogation request, and the process we will follow.

1.6. A list of the technical requirements to which this guidance applies, is provided in Appendix 1 to this guidance.

1.7. This document will be updated as required from time to time to reflect changes in licences, the technical codes and standards referenced, primary and secondary legislation and our processes.

What is meant by derogation?

1.8. A derogation is a direction from the Gas and Electricity Markets Authority ('the Authority') relieving the party from its obligation to comply with a requirement in specified circumstances and to a specified extent. The derogation will normally have an expiry date so that the need for it can be systematically reviewed and performance towards compliance can be monitored. The derogation will not apply to a period before the date the direction is issued.

1.9. A derogation is granted to an individual party and cannot be transferred. Thus if a non-compliant system or plant item is sold, the new entity will need to apply for a new derogation.

1.10. If an affected party would gain a competitive advantage from a derogation, then a direction would not be issued without us assessing what measures might be appropriate to offset that advantage. Such measures may also include requirements to monitor the impact of the derogation on the affected party making the application and other parties who may be affected.

When would a derogation be required?

1.11. Continued compliance with technical requirements is the responsibility of each relevant affected party. We recognise there may be occasions when an affected party assesses that it is not in a position to comply with a particular technical requirements, or that the requirements placed upon it may result in an inefficient outcome either in the short or longer term. There are a number of circumstances in which a derogation may be required, for example:

- To prevent a breach of an affected party's obligations while a system or plant item is restored to compliance with a technical requirement. Such a derogation is likely to be limited to a timescale in which the compliance could reasonably be expected to be restored.
- To prevent a breach of an affected party's obligations while changes to a code, standard, licence condition or GCC are made. Such a derogation is likely to be limited to a timescale in which the compliance could reasonably be expected to be restored.
- To permit a system or plant item to operate out of compliance with the technical requirement either indefinitely or for the lifetime of the system or plant item.

1.12. In general, where an affected party has failed to comply with their obligations, but has remedied the matter before an application for a derogation could reasonably be made, a derogation would not be issued by us retrospectively. In such circumstances, we will consider the extent to which the situation warrants

enforcement action being taken in respect of the breach based on the nature of that breach, its consequences and any remedial action taken by the affected party seeking a derogation. We will however expect to be notified of any such situations as soon as possible. If no remedial action has been taken there is an increased likelihood of enforcement action.

Types of derogation

1.13. There are three main categories of derogation that arise:

Type		Description
Definite	-	Continues for a period of time specified in the direction
Lifetime	-	Specific to a system or plant item and continues for the lifetime of the equipment forming that system or plant item
	-	Would cease should the equipment or plant item be replaced or a further derogation is made or the derogation is revoked
	-	Would only be granted when there are strong grounds for not taking action to restore compliance
	-	May be made where all parties materially affected by the non-compliance agree in writing to accept the consequences or are protected from the effects of the non-compliance
Indefinite	-	Continues until a further derogation is made or the derogation is revoked.
	-	Would only be granted if there are strong grounds for omitting an expiry date
	-	May be made where all parties materially affected by the non-compliance agree in writing to accept the consequences or are not affected by the derogation
	-	To the extent that it does not set out the actions that would be required to restore compliance, this will need to be justified against the our principal objective and statutory duties and the licence obligations of the applicant

1.14. It should be noted that a lifetime or indefinite derogation would only be issued in very limited circumstances. It is usual practice for derogations to be limited for a period of time that is specified in the direction. We may issue further directions that can vary or withdraw previous derogations.

2. Information required in a derogation request

Chapter Summary

This chapter sets out the information required to be provided by the affected party seeking a derogation to enable us to consider a derogation application.

Applying for a derogation

2.1. The process for applying for a derogation depends on who the party seeking the derogation is and the specific technical requirement that it is seeking a derogation from.

A request for a derogation from a GB technical code or standard only

2.2. Where a relevant licensee has identified that it does not, or will not in the future be in a position to comply with relevant obligations in a technical code or standard, the licensee should make a written request to us for a derogation from the licence requirement to comply with such obligations.

A request for a derogation from a EU Grid Connection Code (GCC) obligation

2.3. Where a party applies for a derogation from a GCC requirement, we will also treat this as an application from the relevant GB technical code or standard, if applicable.

2.4. The process for requesting a derogation is different depending on who you are and what you are requesting a connection for. You should use Process One for:

- A request for a derogation from any RfG obligation(s) by a power generating facility owner for a power generating module.
- A request for a derogation from any DCC obligation(s) by a demand facility owner, a Distribution Network Operator (DNO) or Closed Distribution System Operator (CDSO) for a transmission-connected demand facility, transmission-connected distribution facility, distribution or demand units used to provide demand response services to a SO or relevant DNO.
- A request for a derogation from any HVDC obligation(s) by an HVDC system owner and DC-connected power park module.

2.5. You should use Process Two for:

- A request for a derogation from any RfG obligation(s) by the relevant SO, Transmission Licensee⁶ or DNO for classes of PGMs connected, or to be connected, to their network;
- A request for a derogation from any DCC obligation(s) by the relevant SO, Transmission Licensee or DNO for transmission-connected demand facilities, transmission-connected distribution facilities, distribution systems or demand units within a demand facility or a CDS that are connected, or to be connected, to their network.
- A request for a derogation from any HVDC obligation(s) by the relevant SO, Transmission Licensee or DNO for classes of HVDCs systems or DC-connected power-park modules connected or to connected to their network; and

Process One

2.6. Once a relevant party identifies that it is unable to comply with relevant GCC obligations, then it should file a derogation request with either the relevant SO or DNO (depending on whether it is connected to the distribution or transmission system).

2.7. The derogation request should include the minimum information specified in paragraph 2.23 of this document.

2.8. Within two weeks of receiving the derogation request, the SO or relevant DNO, shall confirm to the party seeking the derogation whether the request is complete.

2.9. If the SO or relevant DNO considers that the derogation request is incomplete, the party seeking a derogation shall submit the additional required information reasonably requested by the SO or relevant DNO within one-month of receiving a request for it. If the party seeking a derogation does not supply the requested information within that time limit, the derogation request shall be deemed to have been withdrawn.

2.10. In coordination with the SO and any affected adjacent DNO, the relevant DNO shall assess the derogation request and the provided cost-benefit analysis, against the criteria outlined in Chapter 3 of this document.

⁶ This includes onshore Transmission Operators (TOs), Offshore Transmission Operators (OFTOs) and Interconnectors.

2.11. If the derogation request concerns a Type C⁷ power-generating module (PGM),⁸ a Type D PGM, a HVDC system or DC-connected power park modules⁹ that is connected to a distribution system, then the relevant DNO's assessment of the derogation application must include an assessment of the derogation from the SO. The SO must provide its assessment within two months of being requested to do so.

2.12. Within six months of receipt of a request for a derogation, the SO or relevant DNO shall forward the derogation request and their assessment of derogation request to us. The period may be extended:

- by one month, where the SO or relevant DNO or has requested additional information in accordance with paragraph 2.6, or
- by two months, where the relevant DNO requests the SO to submit an assessment of the derogation request.

2.13. We will make a decision on any relevant derogation request within six months of receiving a derogation request and the assessment of the derogation by the relevant DNO or SO. The six-month time limit for making a decision may be extended by an additional three months where we request further information from the party seeking a derogation. The three-month extension runs from when we receive the complete information. The party seeking a derogation is required to provide us with the requested information within two months. If the party seeking a derogation fails to do so within that time limit, then the request for a derogation shall be deemed to have been withdrawn (unless we decide to provide an extension of time or the party seeking a derogation informs us with a reasoned submission that the derogation request is complete).

2.14. In relation to owners (and prospective owners) of Type A power-generating modules (PGM), demand units¹⁰ within a demand facility¹¹ or a closed distribution

⁷ The requirements in the RfG depend on the size of the PGM. The smallest PGMs (Type A) incur the minimum set of requirements and number of requirements increase so that the largest PGMs (Type D) incur the most requirements.

⁸ A 'Power-generating module' is defined as either a 'synchronous power-generating module' or a 'power park module'. A 'synchronous power generating module' means an indivisible set of installations which can generate electrical energy such that the frequency of the generated voltage, the generator speed and the frequency of network voltage are in constant ratio and thus in synchronism. A 'power park module' means a unit or ensemble of units generating electricity which is either non-synchronously connected to the network or connected through power electronics, and that also has a single connection point to the transmission system, distribution system including CDS or HVDC system.

⁹ A 'DC-connected power park module' means a power park module that is connected via one or more HVDC interface points to one or more HVDC systems

¹⁰ 'demand unit' means an indivisible set of installations containing equipment which can be actively controlled by a demand facility owner or by a CDSO, either individually or commonly as part of demand aggregation through a third party.

¹¹ 'demand facility' means a facility which consumes electrical energy and is connected at one or more connection points to the transmission or distribution system. A distribution system and/or auxiliary supplies of a power generating module do not constitute a demand facility.

system (CDS)¹² connected at a voltage level of or below 1000V, a derogation requests may be made by a third party on their behalf. The derogation request could be for a single PGM or demand unit. Alternatively, the derogation request could be for multiple identical PGMs or multiple demand units within the same demand facility or CDS. If a third party requests a derogation for multiple units, then the third party will need to provide their contact information and a detailed description of the PGM or demand unit for which it is seeking a derogation, as part of the derogation request.

2.15. HVDC derogation requests will not need to provide detailed reasoning to explain their derogation request or provide evidence to demonstrate that their derogation request does not have an adverse effect on cross-border trade, if they meet the following criteria:

- The derogation request is from the owner, or prospective owner, of a DC-connected power park modules that have, or will have a single connection to a single synchronous are.
- The derogation request relates to the reactive power capability, control, network characteristics, protection, and power quality requirements of DC-connected power park modules (Article 40(2)(a) and (b) and Articles 41-45 of the HVDC).

2.16. We may attached conditions to this type of derogation. This may include a condition that we will reassess or remove the derogation on the development of the connection into a multi-terminal network or connection of further power park modules at the same point. For this type of derogation request, we will take into account the need to optimise the configuration between the DC-connected power park module and the remote-end HVDC converter station, as well as the legitimate expectations of the DC-connected power-park module owner when making a decision on any relevant derogation request.

Process Two

2.17. The SO, relevant Transmission Licensee, DNO or CDSO shall submit their derogation request to us. The derogation request shall contain the information identified in paragraph 2.23.

2.18. Where the derogation request is submitted by the relevant DNO or CDSO, within two weeks of receiving the derogation request we will ask the SO to assess the derogation request in accordance with the criteria outlined in Chapter 3 of this document.

¹² A CDS is a distribution system classified, pursuant to Directive 2009/72/EC, which distributes electricity within a geographically confined industrial, commercial or shared services site and does not supply household customers (without prejudice to incidental use by a small number of households located within the area served by the system and with employment or similar associations with the owner of the system).

2.19. Within two weeks of receiving a request for assessment, the SO shall confirm to the DNO or CDSO whether the derogation request is complete. If the SO considers that it is incomplete, then the DNO or CDSO shall submit the required additional information to the SO within one month of receiving the request for additional information.

2.20. Within six months of receiving a derogation request, the SO shall submit to us its assessment of the derogation request. The time limit may be extended by one month where the SO seeks further information from the relevant DNO or CDSO.

2.21. Within six months of receiving a derogation request, we will make a decision on any GCC derogation request. Where the request is submitted by the DNO, the six month time limit runs from when we receive the SO's assessment of the derogation.

2.22. Our six-month time limit for making a decision may be extended by three months where we request further information from either the party seeking the derogation or any other interested party. The three-month time extension runs from when we receive the complete information. The party seeking the derogation shall provide any additional information that we request within two months of receiving the request. If the party seeking the derogation fails to do so within that time limit, the request for a derogation shall be deemed to have been withdrawn (unless we decide to provide an extension of time or the relevant system operator informs us with a reasoned submission that the derogation request is complete).

Minimum requirements of the request

2.23. The request should include as a minimum:

- **Details of the applicant**, including
 - the full name, address and contact information for the party seeking a derogation, and
 - a description of the party seeking a derogation (including, where relevant, information on the location of the relevant site that the derogation is being asked for).
- **A clear description of the non-compliance** including
 - Type of licence, technical code, standard or GCC requirement (with specific relevant licence condition or code or standard or GCC reference(s))
 - The required performance
 - The existing capability of the system or plant;
- A clear description of the **reasons why the non-compliance has occurred or is expected to occur**;
- **For GCC derogation requests, cost benefit analysis (CBA)** pursuant to the requirements of Article 39 of the RfG or Article 49 of the DCC or Article 66 of HVDC respectively, explaining the rationale for the derogation request;

- A comprehensive and, wherever possible, quantitative assessment, of the **impact of the non-compliance on:**
 - **Consumers**
 - **Security of supply**
 - **Competition**
 - **Sustainable development**
 - **Health and safety** and the associated risk management measures
 - **Other parties affected** by the non-compliance, including the ability to operate the system;¹³
- Demonstration that the requested derogations would have **no adverse affect on cross-border trade**
- Details of **actions to mitigate** risks to consumers or other affected parties while the non-compliance exists;
- A description of the **proposal for restoring compliance** (where applicable) including timetable of works;
- A description of the **alternative actions** that have been considered; and
- The proposed **duration of the derogation** requested

Additional information for all applicants

2.24. The party seeking a derogation is required to justify the derogation request in terms of both the specific circumstances and the expected duration. Parties seeking a derogation are advised to give as much notice as possible when making derogation requests since a derogation will not be granted unless we are satisfied that the request is justified.

2.25. Where relevant, in assessing the likely costs and benefits in terms of carbon savings, we expect the affected party to identify the volume of the change in carbon emissions associated with a particular request, and to apply the Shadow Price of carbon and/or forecast EU ETS carbon prices in order to quantify a value for this change.

2.26. All technical terms should be fully explained, and the request should be presented in as clear a manner as possible to avoid unnecessary delays in our assessment of the request.

¹³ Specifically for DC-connected power park modules connected to one or more remote-end HVDC converter stations and are seeking a derogation under HVDC, we will need evidence that the converter station will not be affected by the derogation or, alternatively, agreement from the converter station owner to the proposed derogation.

2.27. A request cannot be made for a retrospective derogation however if non-compliance has occurred detail of any remedial action taken by the relevant party will be taken into consideration for enforcement purposes.

GCC Cost Benefit Analysis (CBA)

2.28. Where a relevant DNO, Transmission Licensee or SO requests a derogation in accordance with Article 63 of the RfG, Article 53 of the DCC or 78 of HVDC, then the relevant power generating facility owners, demand facility owners, HVDC system owners, DC-connected power park modules, DNOs or CDSOs shall help contribute to the CBA. In accordance with the GCCs and relevant data protection legislation, the relevant party will provide any necessary data requested by the SO or relevant DNO, within three months (unless otherwise agreed) and such information received shall be treated by the receiving party in accordance with the relevant confidentiality requirements in the respective GCC.

2.29. For GCC, any CBA required in accordance with Article 39 of the RfG, Article 49 of DCC or Article 69 of HVDC shall:

- Be based on one or more of the following calculating principles;
 - The net present value,
 - The return on investment,
 - The rate of return, or
 - The time needed to break even;
- Quantify the socioeconomic benefits in terms of improvement in security of supply and shall include at least
 - The associated reduction in probability of loss of supply over the lifetime of the modification,
 - the probable extent and duration of such loss of supply, and
 - the societal cost per hour of such loss of supply.
- Quantify the benefits to the internal electricity market, cross-border trade and the integration of renewable energies, including at least;
 - The active power frequency response
 - The balancing reserves
 - The reactive power provision
 - Congestion management, and
 - Defence measures
- Quantify the costs of applying the necessary rules, including at least;
 - The direct costs incurred in implementation a requirement,
 - The costs associated with attributable loss of opportunity, and
 - The costs associated with resulting changes in maintenance and operation.

3. Our assessment of derogation applications

Chapter Summary

This chapter sets out the procedure we will follow in considering a request for a derogation and the criteria against which the request will be assessed.

Our role

Our assessment

3.1. Each derogation request is assessed by us individually on its merits against the criteria outline 3.7.

3.2. Our assessment will also take into account:

- The nature of derogations that we have already granted
- The likelihood of similar derogation requests in the future
- The effect of the decision on future derogation requests
- Allowances that have been made in current and previous price controls (where relevant)
- Any other relevant information

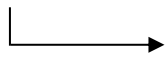
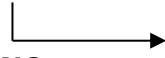
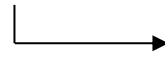
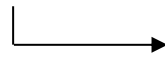
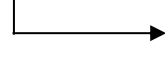
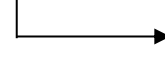
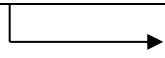
3.3. We have set out below our procedure for considering an application for derogation and the criteria that we will use to assess a derogation request.

Procedure

3.4. We may consult with the party making the request initially to clarify points relating to the derogation request and satisfy itself that there is a need for a derogation.

3.5. As part of its consideration of the request, we will consult with other parties as required in accordance with the following checklist:

Is broader industry consultation (eg an impact assessment) required to inform our decision?

	 YES	<p>We will consider the appropriate manner in which to consult with industry and affected parties.</p> <p>Should we consider an impact assessment is required, this will consider the matters set out in our Impact Assessment Guidance.¹⁴</p>
Have directly affected parties been identified?		
	 NO	Discuss with the party making the request
	 YES	Consult with those who are materially affected (this includes those parties who we consider would be affected technically and/or commercially)
Are there safety implications?		
	 YES	Consult with relevant organisations, eg the Health and Safety Executive
Does it affect a nuclear powered generating station?		
	 YES	Consult with the Office for Nuclear Regulation
Is a monitoring mechanism required?		
	 YES	Consult with affected party making the request and materially affected parties (or more publicly where necessary) about suitable mechanism
Are there other relevant factors?		
	 YES	Seek independent external advice if required.

Derogation Assessment Criteria

3.6. The criteria that we use to assess derogation requests are identified below.¹⁵ We will review and amend the criteria at most once every year. Before making any

¹⁴Impact Assessment Guidance, 4 October 2016; https://www.ofgem.gov.uk/system/files/docs/2016/10/impact_assessment_guidance_0.pdf

¹⁵ These criteria were determined following consultation with relevant stakeholders. Decision on the assessment criteria for derogations from the Grid Connection Codes, 13 February 2017;

changes to the criteria we will consult with relevant stakeholders. The possibility to review and amend the criteria for granting derogations shall not affect the derogations already granted which shall continue to apply until the scheduled expiry date (as specified in any derogation decision).

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

- An assessment has been provided by the applicant, and where relevant, the relevant SO or DNO, that demonstrates that there are NO:-
 - Significant risks associated with the non-compliance to the affected party seeking a derogation¹⁶, other relevant parties 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 a 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 a 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 a derogation from the RfG, DCC or HVDC European Network Codes).
- The applicant has presented a robust, economic case that supports the action that it considers necessary to address the non-compliance. In respect of any GCC derogation(s), the economic case should take the form of a cost-benefit analysis pursuant to the requirements of the relevant European Network Code and this guidance document.¹⁷ (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, where applicable.
 - 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).

https://www.ofgem.gov.uk/system/files/docs/2017/02/decision_on_the_assessment_criteria_for_derogations_from_the_grid_connection_codes.pdf

¹⁶ The codes set out who can seek derogations.

¹⁷ 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 code(s) and the requirement 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:
 - **Consumers:** We will consider the extent to which the non-compliance impacts on consumers, for example through increased costs.
 - **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 operating its system if a derogation were granted.

3.8. Where an applicant is unable to satisfy all the above criteria, we will assess how far the applicant's ability to satisfy the criteria is sufficient to justify the granting of a derogation. It is noted that a justified derogation request would not necessarily need to meet all of the listed criteria. We would use our judgement in assessing any derogation requests and would advise any applicant of additional information requirements that were not included in the original request.

Our decision

3.9. If we consider that the derogation request is justified then we will issue a direction to the affected party granting the necessary relief from the relevant obligation, for a time period specified in the direction.¹⁸

¹⁸ For GCC derogation requests, this is in accordance with paragraph 1 of Article 60 of the RfG, Article 50 of the DCC and Article 75 of the HVDC.

3.10. We may grant a derogation which is subject to certain conditions being satisfied, either by the affected party to which the derogation applies or in respect of the wider system.

3.11. If we considers that the derogation request has not been sufficiently justified then we will refuse the derogation.

3.12. Where we refuse a derogation request where there is non-compliance with the licence obligation, we will consider the extent to which the situation warrants enforcement action being taken in respect of the breach based on the nature of that breach, its consequences and any remedial actions taken by the relevant party.¹⁹

3.13. We may revoke a derogation if the circumstances and underlying reasons for the derogation no longer apply. We may also revoke a GCC derogation following the receipt of a reasoned recommendation from the European Commission or ACER to do so (in accordance with Article 65 of the RfG, Article 55 of the DCC or Article 81 of the HVDC).

3.14. For GCCs, we may decide that a party does not need to comply with the GCC requirement for which the derogation has been sought, from the day that the party submits the derogation request. For GCC derogation requests we will also notify other relevant parties of our decision:

- For GCC derogation requests from PGMs, demand facilities, DNOs, CDSs, HVDC system owners and DC-connected power park modules (under Article 62 of the RfG, Article 52 of the DCC or Article 77 of the HVDC) we will notify our decision to the affected party seeking a derogation, the relevant SO or DNO (depending on the network it is connected to).
- For GCC derogation requests from the SO, Transmission Licensees or DNOs (under Article 63 of the RfG, Article 53 of the DCC or Article 78 of the HVDC), we will notify our decision to the party seeking the derogation, the relevant SO and ACER.

¹⁹ In accordance with our Enforcement Guidelines, 14 September 2016;
<https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines>

4. Register of derogations

Chapter Summary

This chapter specifies that we will maintain a register of derogations outlines what information will be held in the register.

4.1. We will maintain a register of all derogations that we have granted and refused. The register will contain:

- the technical requirement or requirements for which the derogation was granted or refused,
- the content of the derogation,
- the reasons for granting or refusing the derogation, and
- the consequences resulting from granting the derogations.

4.2. For GCC requests, we will provide a copy of the register to the Agency for the Cooperation of Energy Regulators (ACER), at least once every six months.

Appendices

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1	Technical Codes and Standards to which this guidance applies	(ix)

Appendix 1 – Technical requirements to which this guidance applies

GB Technical Code or Standard	Electricity Licensee	Relevant Licence condition
Grid Code	Transmission,* Generation, Distribution, Supply licensees	C14 5 20 11
Distribution Code	Transmission,* Generation, Distribution, and Supply licensees	C15 6 20 11
SO-TO Code (STC)	Transmission licensees	B12
Engineering Recommendation P2/6	Distribution licensees	24
GB Security and Quality of Supply Standard (GB SQSS)	Transmission licensees	C17 and D3

* Applies only to National Grid Electricity Transmission plc, and not the other transmission licensees

1.1. This guidance also applies to derogation requests in relation to the following European Network Codes:

Summary - European Network Code	Full name – European Network Code
Requirements for Generators (RfG)	Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators
Demand Connection Code (DCC)	Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a Network Code on Demand Connection
High Voltage Direct Current (HVDC)	Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules

Appendix 2 – Derogation pro-forma

1.2. Here is a pro-forma for an party seeking to apply for a derogation:

Details of the applicant	Full name, address and contact information for the party seeking a derogation.	
	A description of the party seeking a derogation (including where relevant, information on the location of the relevant site)	
A clear description of the non-compliance	Type of licence, technical code standard or GCC (with specific relevant obligation)	
	The required performance	
	The existing capability of the system or plant	
A clear description of why the non-compliance has occurred or is expected to occur		
For GCC derogation requests, a cost benefit analysis (CBA).		
A comprehensive and, where possible, quantitative assessment, of the impact of the non-compliance on: <ul style="list-style-type: none"> • Consumers • Security of supply • Competition • Sustainable development • Health and Safety • Other parties affected by the non-compliance. 		
Demonstration that the requested derogation would have no adverse impact on cross-border trade.		
Details of the actions to mitigate the risks to consumers or other affected parties while the non-compliance exists		
A description of the proposal for restoring compliance (Where applicable)		
A description of the proposal for restoring compliance (where applicable) including a timetable of works		
A description of the alternative actions that have been considered		
The proposed duration of the derogation requested.		