

To all interested stakeholders

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Date: 8 February 2018

Dear Colleagues,

Preparing for EU exit: licence and industry code modifications

We are writing to set out the work that we have commenced with respect to licences and industry codes to identify where amendments may be required as we prepare to exit the European Union (EU). We are seeking your views on the analysis we have undertaken and our next steps. In particular, we would like to understand whether you think there are any significant gaps in the scope of interactions we have identified between our licences and industry codes and the EU, and any other issues that we need to address in advance of the UK's exit from the EU.

As you will be aware, the UK Government has committed to seeking a deep and special partnership with the EU to ensure that UK companies have the maximum freedom to trade with and operate within European markets in the future. The European Union (Withdrawal) Bill ('the Withdrawal Bill') will, among other things, convert direct EU law, including direct EU energy law, as it stands at the moment of exit, into domestic law. It sets out the Government's plan to 'provide a functioning statute book on the day the UK leaves the EU'.

At this stage, we cannot know with certainty what the outcome of the negotiations will be, the precise terms of any implementation period, or what detailed implications the Withdrawal Bill will have for the gas and electricity licences and the industry codes. Our intention is therefore to prepare to the greatest extent possible so that both licences and industry codes are fit for purpose following the implementation of the Withdrawal Bill. These preparations are without prejudice to the outcome of the negotiations on any implementation period or the future relationship.

We have therefore commenced work to establish the scope of interactions between licences and industry codes and EU legislation, to identify where modifications may be needed as a result of the Withdrawal Bill, and the approach that we and industry should take to ensure that licences and industry codes remain fit for purpose on the day the UK leaves the EU. We are limiting the scope of this work to ensuring that licences and industry codes are fit for purpose for the UK's exit from the EU.

Analysis of licence and industry code conditions

We have analysed all of the conditions in the current gas and electricity licences to identify where amendments may be required as a consequence of the Withdrawal Bill. Specifically, the analysis identifies all references to EU law, including provisions that originate from but do not explicitly reference to EU law. Once identified, each reference has been assessed to

determine whether it would become legally inoperable as a consequence of the UK leaving the EU.¹

In undertaking this analysis, we followed the principles laid out in the Withdrawal Bill, which assumes, amongst other things, that most EU law will be 'converted' or 'retained' as domestic law on exit day. We have assumed that all links to EU institutions, activities and cooperation need to be identified so that all references can be captured. The outcome of our analysis is in the annex to this letter,² which sets out all the links between EU legislations and licences and highlighting specific conditions that may need to be modified.

At this stage we have not identified any provisions which may prove to be legally inoperable on exit day. However, we have identified a number of areas that may require modification. Examples of these include references such as the requirement of code objectives to comply with EU law. Our analysis has also revealed that the modification of definitions and terms derived from EU law will depend on the content of the legislative framework post exit.

In addition to our analysis of licence conditions, industry code administrators have also undertaken an initial analysis of the industry codes, using the same approach and assumptions.³ Broadly speaking, the outcome of this analysis is similar to that of our licence analysis. We have included cross-references to these initial findings of the industry codes in our analysis in the annex to this letter, identifying industry code provisions which are linked to EU legislation and, where relevant, licence conditions.

Modification process

At this stage, it is not possible to know with certainty what specific changes will be required to gas and electricity licences and industry codes to ensure they are fit for purpose following the UK's exit from the EU, or when these changes will be required. This is because they will be subject to the negotiations between the UK and the EU, including any implementation period, the passage of the Withdrawal Bill through Parliament, and any subsequent changes to retained direct EU legislation. Any necessary licence and industry code modifications can therefore only be undertaken once these agreements have been confirmed, and can only be fully implemented once these changes have taken full effect in UK law.

We will progress any licence modifications as early as possible, and we expect normal industry-led processes will be undertaken for any necessary code modifications – including where appropriate through self-governance routes. We anticipate that these licence and code modifications may have to be conducted in parallel to ensure that the licence conditions and industry codes are fit for purpose after EU exit day.

Once government has published its proposed arrangements and timeframes to implement changes to the UK legislation following the Withdrawal Bill, we expect to begin the modification process of the gas and electricity licences. We will also engage with code administrators, and industry more widely, on preparations.

It is our aim to ensure that all necessary licence and code modifications are completed and take effect in time for the UK's exit from the EU. We expect industry to start preparing for this process so that necessary code modifications can commence as soon as possible, and we also expect industry to work closely with the relevant stakeholders during this period.

¹ By that we mean that the relevant provision would make the entire condition (or licence) fail from a legal perspective resulting in a regulatory gap.

² You can find the annex document in Excel format.

³ The following code administrators participated in this exercise: BSC, CUSC, DCUSA, MRA, Grid Code, Distribution Code, STC, UNC, iGT UNC, SPAA, SEC and SMICoP.

Next steps

We are sharing the initial outcome of our analysis to inform all interested stakeholders of the work being undertaken by Ofgem, to share our initial findings, and to commence preparations for potential licence and code modifications as soon as possible to make sure we are ready for the UK's exit from the EU.

Specifically, we would be grateful for your views on the following:

- Have we identified all the interactions between EU law and licences and industry codes' provisions which may be impacted by EU exit?
- Do you agree with our analysis?
- Do you agree with our proposed action?
- Are there any other areas of concern you wish to raise?

Please share your views by the 9 March 2018 by emailing us at: EUExit@ofgem.gov.uk.

Yours faithfully,

Ryan McLaughlin
Head of European Wholesale Markets