



Making a positive difference
for energy consumers

To all interested stakeholders

Email: EUExit@ofgem.gov.uk

Date: 06 December 2018

Dear Colleagues,

Update – Preparing for EU Exit: licence and industry code modifications

This letter sets out our licence change process and the timeline we expect to follow to make consequential changes as close to exit day¹ as possible. It also provides an update on our expectations in relation to the industry-led code change process.

The UK Government has agreed the full legal text of the Withdrawal Agreement with the EU and remains confident that this will provide the basis for a smooth and orderly exit. However, this letter ensures you are aware of our preparations for making licence changes in the unlikely event that the UK leaves the EU without a deal.

If, as planned, the Withdrawal Agreement is implemented, an implementation period will run until 31 December 2020. During this time, our working assumption is that consequential changes to licences and codes will not be required.

Background

In February 2018, we published a consultation² seeking views on analysis we had undertaken in respect of electricity and gas licences and code administrators had undertaken on the industry codes to identify where amendments to provisions may be required as we prepare to exit the EU. In this consultation, we also set out that we would commence the licence modification process once the Government publishes its proposed arrangements to implement changes to the domestic legislative framework and we would engage with code administrators and industry on our preparations.

We published an update³ on this work in July 2018, which confirmed that respondents to the February consultation were generally satisfied that there were no significant gaps in the analysis. Respondents broadly supported our initial conclusion that none of the direct and indirect EU references identified in provisions across both the licences and industry codes would appear to become inoperable as a consequence of the UK leaving the EU.

This analysis and initial conclusion has remained under review as we have progressed to draft our proposed modifications to licences. Throughout this process, we have encouraged all interested stakeholders to contact us at EUExit@ofgem.gov.uk should they have a

¹ 11pm on 29 March 2019.

² <https://www.ofgem.gov.uk/publications-and-updates/preparing-eu-exit-implications-licences-and-industry-codes>

³ <https://www.ofgem.gov.uk/publications-and-updates/follow-letter-preparing-eu-exit-licence-and-industry-code-modifications>

specific concern on the operability of our regulatory framework after EU Exit or wish to discuss the process with us.

Our July 2018 publication was also clear that we expect the required code changes to be made through the industry-led code modification process, including via the self-governance route where appropriate. We have been engaging with code administrators to support the work they have been undertaking.

Licences modification process

On 12 October 2018, the UK Government published Technical Notices providing guidance on how the energy sector should prepare for EU Exit in the unlikely event of no-deal.⁴ In line with this, Ofgem is continuing to prepare for multiple eventualities, including preparations required to update the regulatory framework in the unlikely event that the UK leaves without a deal.

Our consultation in February did not identify any licence provision that would become inoperable as a result of the UK leaving the EU. Nevertheless, a no-deal outcome is likely to require approximately 200 changes across the majority of the licences to reflect the legislative changes being put in place by the Secretary of State. As far as possible, the effect of the changes will be to retain the existing obligations and duties on licensees.

We plan to publish a statutory consultation on the proposed licence modifications in January 2019, or as soon as is reasonably practicable, once the draft legislation is made publicly available. This will allow us to ensure that the proposed modifications are clearly defined and supported within the UK legislative framework post-EU Exit. We understand that the Government is preparing relevant Statutory Instruments for the end of the year which will support our statutory consultation. Given we intend to consult on consequential changes to existing policies, this statutory consultation will run for four weeks (28 days).

Subject to sufficient legislative certainty, we expect to issue our final modification direction ahead of exit day on 29 March 2019. Given the current timelines, there is a strong possibility that an interregnum period - a period between exit day and the licence changes taking effect - will be unavoidable. However, we expect this period will be covered by the 56-day standstill following our modification direction and, as such, consider that there will be sufficient clarity for licensees. We will strive to take a pragmatic approach and work with industry parties to address any unforeseen issues that could arise during this time. If required, we may issue further guidance in the event of an interregnum.

Industry Codes modification process

In parallel to our licences modification work, code administrators have identified areas of their respective codes that will likely require changing to update the regulatory framework in the unlikely event the UK leaves the EU without a deal.

We have been engaging with code administrators to support this work and understand that while the extent of the changes will vary from code to code, a number of consequential changes have been identified. We expect these changes to be raised through the industry-led code modification process and, where appropriate, to follow the self-governance route. This is in line with recent publications by code administrators.⁵

To minimise uncertainty for market participants, it is vital that 'day 1' code changes are prioritised and the regulatory framework is updated in a timely manner. By 'day 1' changes we mean consequential changes required to update industry codes in line with the post-EU Exit domestic legislation.

⁴ <https://www.gov.uk/government/publications/trading-gas-with-the-eu-if-theres-no-brexite-deal> and <https://www.gov.uk/government/publications/trading-electricity-if-theres-no-brexite-deal>

⁵ https://www.nationalgrideso.com/sites/eso/files/documents/Brexit%20Code%20Admin%20Lines%20to%20Take%20Nov%202018_Final.pdf and <https://www.elexon.co.uk/news/code-administrators-preparing-brexit/>

Next Steps

We will continue with our preparations to facilitate the publication of a statutory consultation on the EU Exit licence modifications in January 2019. As noted, the timetable set out in this letter is subject to sufficient legislative clarity at key points throughout the process.

We will continue to engage with code administrators to support the code change process and encourage industry to continue making preparations so that the industry code modifications can be raised in a timely manner.

We welcome all stakeholders who have specific concerns on the operability of our regulatory framework after EU Exit or who have questions on our process to email us at EUExit@ofgem.gov.uk.

Yours faithfully,

Natasha Zoe Smith
Head of EU Coordination