

Annex 3. End of the transition period – Modification of the licence conditions of the electricity supply licence

To: All holders of an electricity supply Licence

Electricity Act 1989

Section 11A(1)(b)

Modification of the standard conditions of all electricity supply licences.

1. Each of the licensees to whom this document is addressed has a supply licence which has been granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 (the Act).
2. Under section 11A(2) of the Act the Gas and Electricity Markets Authority ('the Authority')¹ gave notice on 2 separate occasions: On 14 January 2019 ('Notice 1') and on 26 November 2020 ('Notice 2') that we propose to modify the standard conditions in accordance with the provisions of section 11A(1)(b) as set out below:

2.1 Notice 1

- SLC1 (Definitions for the standard conditions)
- SLC5 (Provision of Information to Authority and data retention)

2.2 Notice 2

- SLC1 (Definitions for the standard conditions)

We stated that any representations to this modification proposal must be made on or before 15 February 2019, and 24 December 2020 for Notice 1 and Notice 2 respectively.

3. A copy of the Notice 1 and Notice 2 were sent to the Secretary of State in accordance with section 11A(4)(b) of the Act, and we have not received a direction that the changes should not be made.
4. We received 18 responses to Notice 1, and 12 responses to Notice 2 which we carefully considered. We have placed all non-confidential responses on our website. Our response to the comments for Notice 1 are set out in Annex 9 of this publication, and our response to Notice 2 is set out in the accompanying cover letter.

¹ The terms "the Authority", "we" and "us" are used interchangeably in this document.

5. The UK and EU agreed an implementation period between 31 January 2020 and 31 December 2020. It was therefore necessary to make a number of minor alterations to the modifications in Notice 1. These alterations were set out in Notice 2 and are shown in yellow highlight in annex 3.1.a. The alterations are set out below:
 - a. SLC1 – Definition of “Directive”: Proposed modifications referred to “Exit Day” which is no longer a relevant term. We have altered the definition to refer to the new relevant term “IP completion day”
 - b. SLC1 – Definition of “Exit Day”: This definition is no longer relevant. We have replaced the definition with a definition for “IP completion day”
6. The following modifications were proposed in Notice 1 and are no longer required following legislative changes that amended licences as a result of the transposition of the Clean Energy Package²:
 - a. SLC 5.6 – Change reference from “European Commission” to “Authority”: SLC 5.6 has been omitted by The Electricity and Gas (Internal Markets) (No.2) Regulations 2020 UKSI 2020/1401
 - b. SLC 5.7 – addition of missing paragraph number “5.7”: This amendment has been implemented by The Electricity and Gas (Internal Markets) (No.2) Regulations 2020 UKSI 2020/1401
7. We are making these licence changes in order to reflect the changes in the legislative framework that have been implemented after the transition period ended at 11pm on 31 December 2020.
8. The effect of the modifications will be to ensure that the references in the licence to EU law (e.g. Directives, Regulations and Commission decisions) shall be read as references to such EU law as it had effect immediately before IP completion day³ subject to any further amendments as may be contained in statutory instruments made under the European Union (Withdrawal) Act 2018. The modifications do not seek to change the current obligations and duties of licensees, nor do they seek to change the current policy position as reflected in the licence conditions.
9. Where an application for permission to appeal our decision is made to the Competition and Markets Authority (CMA) under section 11C of the Act, Rule 5.7 of the Energy Licence Modification Appeals: Competition and Markets Authority Rules⁴ requires that the appellant must send to any relevant licence holders who are not parties to the appeal a non-sensitive notice setting out the matters required in Rule 5.2. The accompanying letter provides a list of the relevant licence holders in relation to this modification. Section 11A(10) of the Act sets out the meaning of ‘relevant licence holder’.
10. Under the powers set out in section 11A(1)(b) of the Act, we hereby modify the standard licence conditions for all electricity supply licences in the manner specified in the annex below. In accordance with s11A(9), this decision will take effect from 8 April 2021, a date not less than 56 days after the publication of this decision.

² Our open letter on these changes is available here: <https://www.ofgem.gov.uk/publications-and-updates/open-letter-changes-licence-conditions-result-transposition-clean-energy-package>

³ As defined in section 39 of the [European Union \(Withdrawal Agreement\) Act 2020](#)

⁴ CMA70 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655601/energy-licence-modification-appeals-rules.pdf

11. This document is notice of the reasons for the decision to modify the electricity supply licences as required by section 49A(2) of the Act.

Natasha Zoe Smith

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Head of European Wholesale Markets

Duly authorised on behalf of the

Gas and Electricity Markets Authority

11 February 2020

Annex 3.1.a. Electricity Supply Standard Conditions Marked Licence Text

We have included the sections of the SLCs we propose to remove or amend below. Deletions are shown in strike through and new text is double-underlined.

Condition 1. Definitions for standard conditions

Directive	means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(a) <u>as it has effect immediately before IP completion day as read with the modifications set out in the Act.</u>
<u>“IP completion day”</u>	<u>has the same meaning as that given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.</u>
Regulation	means Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) <u>as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.</u>

Condition 5. Provision of Information to Authority and data retention

5.1 After receiving a request from the Authority for Information that it may reasonably require or that it considers may be necessary to enable it to perform any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation, the licensee must give that Information to the Authority when and in the form requested.

5.2 The licensee is not required to comply with paragraph 5.1 if the licensee could not be compelled to produce or give the Information in evidence in civil proceedings before a court.

5.3 After receiving a request from the Authority for reasoned comments on the accuracy and text of any Information relating to the licensee’s activities under or pursuant to this licence which the Authority proposes to publish under section 48 of the Act, the licensee must give such comments to the Authority when and in the form requested.

5.4 The Authority’s power to request Information under this condition is additional to its power to call for information under or pursuant to any other condition of this licence.

Data retention

5.5 The licensee shall keep, for at least five years, the Relevant Data relating to any transactions in electricity supply contracts ~~and electricity derivatives~~ with wholesale customers, transmission system operators or any person who sells electricity to the licensee, which have been entered into by the licensee on or after the day after the day on which the Electricity and Gas (Internal Markets) Regulations 2011 are made.

5.6 [Omitted]

5.7 After receiving a request from the Authority for the Relevant Data, the licensee must give the Relevant Data to the Authority when and in the form requested.

5.8 Paragraphs 5.5 and 5.7 do not require the licensee to keep Relevant Data in respect of any feed-in tariff arrangements entered into by the licensee in accordance with Condition 33 or 34.

Definitions for condition

5.9 For the purposes of this condition:

“Relevant Data” means details on the characteristics of all transactions in electricity supply contracts ~~and electricity derivatives~~ with wholesale customers, transmission system operators, or any person who sells electricity to the licensee, including but not limited to the duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled electricity supply contracts ~~and electricity derivatives~~.