

Decision

Decision to implement the Whole Electricity System Licence Condition D17/7A for Transmission Owners and Electricity Distributors

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This document sets out our¹ decision to implement the Whole Electricity Licence Condition for onshore electricity network licensees following our statutory consultation in March 2020. The Whole Electricity System Licence Condition will come into force on 27 May 2021 for all onshore electricity network licensees.

This document outlines our reasoning for this decision, including the relevance and timing of the licence and expected benefits, feedback received from the statutory consultation, and how this feedback has been taken into account in reaching a decision to implement the Whole Electricity System Licence Condition.

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

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Executive summary

In June 2019, parliament passed legislation requiring the government to reduce the UK's net emissions of greenhouse gases by 100% relative to 1990 levels by 2050: net zero.² This will keep the UK in line with the commitments it made as part of the 2016 Paris Agreement to keep global warming under two degrees.

Effective coordination of electricity network investments and operations is essential to make the most of the electricity grid and meet the challenge to enable a net zero energy system at lowest cost to consumers.

In December 2020, the Department for Business, Energy and Industrial Strategy (BEIS) published its Energy White Paper, which stated that coordination between electricity networks and network users is required for efficient markets.³ In March 2021, the Scottish Government published its Energy Strategy Position Statement, defining a Whole System View as a core principle for policy design.⁴

We are implementing a principles-based licence condition to create a robust structure for effective coordination of electricity networks in the interest of consumers. The licence explains how Electricity Distributors and Transmission Owners should coordinate with other electricity network licensees and their network users, to advance coordination and cooperation across energy networks and users.

The Whole Electricity System Licence Condition will help facilitate net zero and support the development of an effective and efficient electricity network capable of meeting the demands of modern technologies and users.

Modification of Electricity Transmission Standard Licence and Electricity Distribution Standard Licence obligations

² <https://www.legislation.gov.uk/ukdsi/2019/9780111187654>

³ <https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future>

⁴ [Energy strategy: position statement - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/energy-strategy-position-statement-2021/pages/1-1-introduction.aspx)

Under section 11A(2) of the Electricity Act 1989 (Electricity Act), the Gas and Electricity Markets Authority (the Authority) gave notice on 6 March 2020 that we propose to modify the Electricity Transmission Standard Licence (through the introduction of condition D17) and Electricity Distribution Standard Licence (through the introduction of condition 7A).

This document outlines our decision to implement the Whole Electricity System Licence Condition (hereafter the "Licence Modification"). The Licence Modification applies to all electricity Distribution Network Operators (DNOs), electricity Independent Distribution Network Operators (IDNOs), and onshore electricity Transmission Owners (TOs).

In December 2018, we published an informal consultation document 'Licence Conditions and Guidance for Network Operators to Support an Efficient, Coordinated and Economical whole system'.⁵ The consultation included both a draft licence condition and draft accompanying guidance. We received responses to our consultation from twenty-five stakeholders, covering a broad spectrum of stakeholder groups. There was unanimous support for the concept of a whole electricity system approach in meeting the challenges that the energy industry now faces, including efforts to decarbonise our economy. Stakeholders gave strong support in principle for the introduction of a specific licence condition, with respondents contributing valuable suggestions to its improvement. Further to this, we held two workshops with Electricity Distributors and Transmission Owners.

In March 2020, we consulted on the proposed Licence Modification, in which we explained how Electricity Distributors and Transmission Owners should coordinate with other electricity network licensees and their network users, to advance coordination and cooperation across energy networks and users.⁶ In this document, we outline the reasons for the decisions we have taken, following consultation, and their intended effect. For the sake of brevity, we have not sought to repeat entirely the rationale and evidence base set out in our March 2020 statutory consultation, but instead refer to relevant documents where necessary.

⁵ <https://www.ofgem.gov.uk/publications-and-updates/consultation-licence-conditions-and-guidance-network-operators-support-efficient-coordinated-and-economical-whole-system>

⁶ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-proposed-whole-electricity-system-licence-condition-d177a-electricity-distributors-and-transmission-owners>

The Licence Modification will come into effect after a 56 days standstill period, from 00:01 on 27 May 2021.

We received eight responses to our March 2020 statutory consultation.⁷ We have carefully considered and taken into account these stakeholders' views. Overall, respondents to the statutory consultation were supportive of the Licence Modification. However, there were a number of comments from respondents about the proposed changes to the Electricity Transmission Standard Licence and Electricity Distribution Standard Licence.

We have highlighted and summarised this feedback, and how we have taken it into account, in the chapters below. We do not consider the changes we are implementing to constitute a substantial or material change to the licence conditions consulted on in March 2020, and any changes that have been made since then are based on the feedback we received from stakeholders. We are therefore progressing to implementation and not re-consulting.

Notice of the Licence Modifications are published alongside this decision.

⁷ <https://www.ofgem.gov.uk/publications-and-updates/consultation-licence-conditions-and-guidance-network-operators-support-efficient-coordinated-and-economical-whole-system>

1. Introduction

Our decision

- 1.1. This document notifies stakeholders of our decision to implement the Licence Modification. The Licence Modification will come into effect after a 56 days standstill period, from 00:01 on 27 May 2021. It will be contained in, and form part of, the conditions of the Electricity Transmission Standard Licence and the Electricity Distribution Standard Licence, respectively. It will apply to all DNOs, IDNOs, and TOs.
- 1.2. This decision follows our March 2020 statutory consultation on the Licence Modification, to which we received eight representations. Our decision to implement the Licence Modification has been delayed by the COVID-19 pandemic. However, we now believe that it is appropriate to implement the Licence Modification on the basis that the opportunities for customer benefits from a coordinated whole electricity system have not diminished and have, if anything, likely increased.
- 1.3. We do not consider that there have been material changes to the content of the Licence Modification since March 2020 that would require re-consultation, or amendments to the impact assessment that was published alongside the proposed Licence Modification in March 2020 (hereafter "Impact Assessment").

Relevance and timing

- 1.4. The Licence Modification provides clear and unambiguous obligations on onshore electricity network licensees to cooperate and coordinate in developing efficient energy networks. As the energy system continues to transition, the opportunities for increased coordination and collaboration between licensees in the interests of the energy consumer are increasing. In addition, network users may have new solutions to meet the challenges of the evolving energy system, providing further opportunities for energy consumers to benefit from the energy transition.

- 1.5. The first conception of a whole electricity system licence condition was in the 2017 Ofgem and BEIS joint 'Smart Systems and Flexibility Plan'.⁸ Since then, changes in industry have taken place, including increased clarity on the scope of distribution system operation (DSO), coordination across onshore electricity network licensees and network users;^{9 10 11} and a newfound emphasis on energy system digitalisation and modernising energy data.^{12 13} All of these shifts have aligned with the whole electricity system policy. These developments provide a good basis for a coordinated whole electricity system. In light of this, we believe the licence continues to be relevant and timely today, and into the future.
- 1.6. In their RII0-2 business plans, network licensees are incentivised to propose cross sector solutions. This licence condition sets a minimum standard of improving efficiency in the electricity sector and ensures learning and culture change. It makes sense, and is appropriate, for the incentive on companies in the RII0 framework to be more ambitious than this licence obligation, which is imposed at the sector level.
- 1.7. This licence is principles based. This means that it does not stipulate specific standards or actions, but instead defines the desired outcomes, with examples provided in the associated guidance document (hereafter "Guidance"). This approach to drafting ensures that the licence remains relevant as new initiatives are developed and undertaken, while simultaneously providing a degree of flexibility to how onshore electricity network licensees apply the licence to meet their specific geographical and organisational differences. We therefore believe that the licence is highly relevant and timely and will continue to provide consumer benefits. Accordingly, we have decided to implement it.

⁸ www.ofgem.gov.uk/publications-and-updates/upgrading-our-energy-system-smart-systems-and-flexibility-plan

⁹ www.ofgem.gov.uk/publications-and-updates/ofgem-position-paper-distribution-system-operation-our-approach-and-regulatory-priorities

¹⁰ www.ofgem.gov.uk/publications-and-updates/riio-ed2-sector-specific-methodology-consultation

¹¹ www.ofgem.gov.uk/publications-and-updates/next-steps-our-reforms-long-term-development-statement-ltds-and-key-enablers-dso-programme-work

¹² es.catapult.org.uk/reports/energy-data-taskforce-report/

¹³ www.gov.uk/government/groups/modernising-energy-data

- 1.8. The following sections of this document describe and explain the feedback received to the statutory consultation, and any minor amendments adopted in response to the feedback from consultees prior to implementation.

2. Responses to the statutory consultation and licence

Overview

- 2.1. We received eight representations to the statutory consultation; five of these were from DNOs, one network user, one prospective IDNO, and one consumer group. Of these, all were supportive of the licence condition except for two DNOs, who did not think that the licence condition was necessary. We have published the non-confidential responses alongside this decision document.
- 2.2. The network user was strongly supportive of the principles set out in the licence condition. They saw the requirement for wider coordination as a positive step and welcome the requirement for network licensees to engage with their users where they have ideas that may advance the overall efficiency of the network. The network user encouraged Ofgem to go further in requiring networks to engage with stakeholders, publish more network data, and to standardise the process for licensees to consider third party suggestions of total system activities.
- 2.3. The prospective IDNO was supportive of the licence, stating that they supported a structured approach to whole electricity system coordination in the interests of consumers.
- 2.4. The consumer group supported the proposal, agreeing that the Licence Modification is appropriate, and endorsing the Impact Assessment.¹⁴ They commented that the “Total System” definition could be broader and account for other energy vectors.
- 2.5. We received support from several network companies that acknowledged the value of coordination and cooperation in their approach to network development.

¹⁴ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-proposed-whole-electricity-system-licence-condition-d177a-electricity-distributors-and-transmission-owners>

- 2.6. There was also support for the Coordination Register and we welcome the intent from one DNO to investigate how the type and quality of data provided in the Coordination Register can be delivered consistently by networks.
- 2.7. One DNO was critical of the development and application of the licence condition, stating that it was unnecessary, claiming that publishing guidance on interpreting Section 9 of the Electricity Act within the context of whole electricity system would be more appropriate.
- 2.8. A second DNO did not see the value in the licence condition in the absence of prescriptive details of compliant and non-compliant behaviour and did not foresee significant consumer benefits in the short term.
- 2.9. Another DNO provided commentary on aspects of the drafting of both the Licence Modification and the Guidance but remained neutral on the content.

Whole electricity system and data modernisation

- 2.10. Data sharing by network licensees is an important element of whole electricity system coordination and has been a core consideration of Ofgem's Whole electricity system agenda from its inception. Since 2017, there are now several data initiatives in train that align with the whole electricity system licence. We see these initiatives as an important part of facilitating our whole electricity system agenda.
- 2.11. There were some comments regarding the Licence Modification no longer including the requirement for network licensees to share data. As detailed in the Statutory Consultation 2020,¹⁵ the sharing of data by network companies remains vital. Specific data requirements are being carried forwards by numerous initiatives, and will be compiled in a joint Ofgem, BEIS and Innovate

¹⁵ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-proposed-whole-electricity-system-licence-condition-d177a-electricity-distributors-and-transmission-owners>

UK Energy System Data and Digitalisation Strategy in 2021.^{16 17} This will bring together numerous initiatives being undertaken across the energy industry into a clear strategy providing further regulatory certainty on the direction of travel and needs of modern energy data management.

2.12. Some of the specific data requirements being taken forward include:

- Digitalisation licence modifications: one for network licensees to comply with Data Best Practice guidance,¹⁸ this includes requirements data sharing; and another requiring network licensees to publish Digitalisation Strategies and Action Plans.¹⁹ For TOs, the ESO, Gas Transmission and Distribution networks, these licences are in RII02 licence conditions,²⁰ and associated guidance will be consulted on in Summer 2021. For Electricity Distributors, the RII0-ED2 Sector Specific Methodology Decision explained that these licences are forthcoming, however, as part of the RII0-ED2 Sector Specific Methodology Decision Ofgem asked DNOs to voluntarily follow the licence obligations applicable to licensed RII02 companies until such time as the RII0-ED2 begins.²¹
- Reforms to the Long Term Development Statement (LTDS), which will enhance network planning and investment data. We have committed to reform the LTDS in the Key Enablers for DSO work programme.²² The update of the LTDS will modernise energy data by improving its availability, handling and quality for network planning and forecasting data.

¹⁶ <https://www.ofgem.gov.uk/publications-and-updates/forward-work-programme-202122-consultation#Point%207:%20data%20and%20digitalisation>

¹⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945899/201216_BEIS_EWP_Command_Paper_Accessible.pdf

¹⁸ Data Best Practice guidance is available on the Modernising Energy Data website here: [Modernising Energy Data \(atlassian.net\)](#)

¹⁹ Digitalisation Strategy and Action Plan guidance is available on the Modernising Energy Data website here: [Digitalisation Strategy and Action Plan, Latest Release \(v.0.1\) - Modernising Energy Data - Modernising Energy Data \(atlassian.net\)](#)

²⁰ <https://www.ofgem.gov.uk/publications-and-updates/decision-proposed-modifications-riio-2-transmission-gas-distribution-and-electricity-system-operator-licences>

²¹ Modernising Energy Data, page 52 onwards of the RII0-ED2 Sector Specific Methodology Decision: Overview. <https://www.ofgem.gov.uk/publications-and-updates/riio-ed2-sector-specific-methodology-decision>

²² <https://www.ofgem.gov.uk/publications-and-updates/next-steps-our-reforms-long-term-development-statement-ltlds-and-key-enablers-dso-programme-work>

- The introduction of Network Development Plans describing the medium term predictions of the distribution network companies, meeting the requirements of article 32 of the EU directive 2019/9448.²³ The Network Development Plan licence requires that electricity distributors use all endeavours to prepare and publish a “best view” of the investments needed for the next five-to ten-year period covering the 11kV network and above. This condition requires the publication of the data that underlies this forecast.

Interpretation of the licence requirements

- 2.13. The majority of respondents did not consider interpretation of the Licence Modification to be problematic. Two licensees raised specific concerns about how to interpret the requirements of the Licence Modification. The licensees voiced concern that it was difficult to understand the requirements of the Licence Modification without a prescriptive set of outputs and metrics, and felt that the principles based nature of the licence made this unclear.
- 2.14. We do not agree that this is a barrier to electricity network licensees assessing and evaluating whole electricity system solutions.
- 2.15. As explained under paragraph 1.7, the licence is principles based. This means that it deliberately does not provide prescriptive outputs. This provides flexibility in application to the affected licensees, and ensures the licence remains relevant as practices evolve.
- 2.16. To support licensees, we have published the Guidance alongside the Licence Modification to give more details on the type of behaviours we would expect and giving clear examples of whole electricity system outcomes. The Guidance has been updated with minor clarifications in light of feedback received from the statutory consultation. The measure of a “whole electricity system outcome” is given through a clear “logic test” and provides that the electricity network licensee must reach the threshold of “reasonable endeavours” to

²³ <https://www.legislation.gov.uk/uksi/2020/1401/made>

undertake an action. We believe that these factors sufficiently mitigate the concerns raised by the two licensees.

Parties captured by the licence

- 2.17. The Licence Modification will apply to onshore electricity network licensees: TOs, DNOs, and IDNOs.
- 2.18. The majority of respondents did not comment on the parties who will be subject to the Licence Modification. Although, one licensee felt that the licence should be extended to the Electricity System Operator (ESO), Offshore Transmission Owners (OFTOs), Competitively Appointed Transmissions Owners (CATOs) and Special Purpose Vehicles (SPVs). Whereas another licensee felt that the licence should not obligate them to coordinate with OFTOs.
- 2.19. Regarding the ESO, we agree that the ESO must undertake coordination and cooperation.
- 2.20. The ESO has obligations in the Electricity Transmission Standard Licence under condition C16 'Part A: Functions for an economic efficient & co-ordinated system operator', that states:

"The licensee must carry out its functions, as system operator, to co-ordinate and direct the flow of electricity onto and over the national electricity transmission system, in an efficient, co-ordinated and economic manner. This includes but is not limited to the following:...

c) considering the impact any action would have on the total system".²⁴

²⁴ <https://www.ofgem.gov.uk/publications-and-updates/transmission-licence-standard-conditions>

2.21. Additionally, in February 2021, the RII02 Electricity Transmission Standard Conditions were updated to include C28:²⁵

“The licensee must carry out its functions... in an efficient, co-ordinated and economical manner. This includes but is not limited to the following:

(n) co-ordinating and cooperating with transmission owners and holder of a distribution licence to identify actions and processes that advance the efficient and economic operation of the networks;

(o) using best endeavours to implement actions and processes identified and proposed through its activities under paragraph C28.4 (n) of this condition that are in the interest of the efficient and economic operation of the total system;

(p) exchanging all necessary information and co-ordinating with holder of a distribution licence in so far as is necessary to ensure the optimal utilisation of resources, to ensure the economic and efficient operation of the system and to facilitate market development”.

2.22. This further clarifies the requirement for the ESO to deliver whole electricity system outcomes and mitigates the risk of asymmetrical obligations on onshore electricity network licensees relative to the ESO. We therefore believe that this captures the critical outcomes for whole electricity system actions for the ESO.

2.23. As noted above, one licensee proposed that OFTOs, CATOs and SPVs should have the same licence obligation applied to them; another licensee considered that it was unreasonable to have to cooperate and coordinate with OFTOs.

²⁵ [Decision on the proposed modifications to the RII0-2 Transmission, Gas Distribution and Electricity System Operator licences | Ofgem](#)

- 2.24. We do not consider it appropriate to extend these new obligations to OFTOs at this time. OFTOs do not normally build assets today, but undertake the ownership, operation, and maintenance of offshore transmission networks. The assets are planned and developed by developers and generators, before being tendered for ownership.
- 2.25. The BEIS-led Offshore Transmission Network Review (OTNR) is considering future opportunities for delivery and coordination of the offshore transmission networks.²⁶ This review includes delivery over the short medium and long term – both in terms of the technical solution and the best way of delivering the optimum infrastructure for the whole electricity system. These opportunities are being managed through a clear work programme. We believe that the issues raised by this licence modification will be considered in the course of the OTNR and future frameworks will be informed by this consideration.
- 2.26. Under the existing regulatory regime, the ESO is responsible for Offshore Wider Works, obligating the ESO to consider opportunities for coordination when a developer seeks a connection to the onshore electricity transmission network. We consider that this obligation for Offshore Wider Works helps to facilitate many of the current opportunities for whole electricity system coordination including OFTOs.
- 2.27. Finally, whole electricity system outcomes are defined as those that do not negatively impact the electricity network licensee and are best value for money. OFTOs may be able to suggest valuable whole electricity system outcomes, and it is our belief that onshore electricity network licensees should not consider an obligation to coordinate and cooperate with them to be unreasonable.
- 2.28. We note also that CATOs and SPVs regimes are not yet finalised, the former requiring primary legislation and the latter requiring further development. Accordingly, they cannot currently be captured by the Licence Modification. Further, a key distinction from the CATO regime is that under the SPV model,

²⁶ <https://www.gov.uk/government/groups/offshore-transmission-network-review#previous-webinars>

the TO would retain regulatory responsibility (under the terms of its transmission licence) for, and operational control of, the relevant project.²⁷

Funding concerns

- 2.29. The majority of respondents did not comment on funding mechanisms for the delivery of a whole electricity system action. However, two licensees expressed concern about ensuring that costs relating to whole electricity system actions were fairly borne by the network, or parties, that would also accrue the benefits and that there were appropriate methods of transferring this funding.
- 2.30. Since the Licence Modification statutory consultation, Ofgem has consulted on a proposed re-opener called the Coordinated Adjustment Mechanism (CAM), which will allow DNOs to apply to Ofgem each year for spending adjustments. The CAM is a proposed re-opener that will be introduced in the remainder of the RIIO-ED1 price control to March 2023 and continue into RIIO-ED2 starting in April 2023. This will allow the reallocation of project revenues and responsibilities to the network(s) best placed to deliver the relevant projects.²⁸
- 2.31. Aside from the CAM, licensees may also use the Directly Remunerated Services category 9, which provides for:

"The provision of any service (including electric lines or electrical plant) that:

(a) is for the specific benefit of any third party who requests it; and

(b) is not remunerated under one of the charges mentioned in paragraph 5C.5 or under any other charge for a Directly Remunerated Service".²⁹

²⁷ https://www.ofgem.gov.uk/system/files/docs/2018/10/spv_consultation_2018_final.pdf

²⁸ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-proposed-changes-special-conditions-also-known-charge-restriction-conditions-crc-electricity-distribution-licence-0>

²⁹ <https://www.ofgem.gov.uk/ofgem-publications/85493/crcsupannex1pdf>

2.32. We therefore believe that there are sufficient mechanisms to enable the transfer of funding for projects and to ensure that the correct party bears the costs, while accruing the benefits.

Appropriate application of a licence condition

2.33. The majority of respondents supported the use of a licence condition to ensure the delivery of, and set expectation on, whole electricity system outcomes.

2.34. One licensee commented that, since the licence is designed to clarify their obligations under Section 9 of the Electricity Act ³⁰, this could be better achieved by publishing guidance in isolation, rather than issuing a licence obligation as well. They stated that this should have been considered as an option in the Impact Assessment.

2.35. The Electricity Act is Legislation passed by Parliament; it would not be appropriate for Ofgem to issue guidance directly on the intended meaning of primary legislation. Any guidance for the purposes of directly supporting primary legislation would need to be published by BEIS. Since this is not within Ofgem's responsibility, we did not include this option in the Impact Assessment published along-side our March 2020 statutory consultation. The Licence Modification sets out Ofgem's expectations and requirements of the licensees in complying with the Act.

2.36. While it is for Government to provide guidance on legislation, there is a well-established precedent that Ofgem's licence obligations provide detailed and tangible requirements on network licensees to comply with their duties under the Electricity Act. For example, Distribution Standard Licence Condition 52 "Competition in Connections Code of Practice", provides clear and unambiguous interpretation of how Electricity Distributors should enable competition in connections, and in doing so, removes any regulatory uncertainty and risk to the DNOs of non-compliance. This clarifies licensees' duties under section 9(1)(b) of the Electricity Act:

³⁰ www.legislation.gov.uk/ukpga/1989/29/section/9

"It shall be the duty of an electricity distributor to... facilitate competition in the supply and generation of electricity."

2.37. Similarly, we consider a Licence Modification is appropriate and required to provide greater clarity on what we, as the relevant licencing authority, expect in terms of the fulfilment of licensees' duties under section 9(1)(a) of the Electricity Act:

"It shall be the duty of an electricity distributor – to develop and maintain an efficient, co-ordinated and economical system of electricity distribution."

2.38. We also consider that whole electricity system outcomes are sufficiently important to warrant a specific licence condition, as stated in our Impact Assessment. This is supported by the majority of responses to our informal consultation on the Licence Modification, published in December 2018.

2.39. Further, the Impact Assessment considers whether there are material legal or regulatory barriers to delivering whole electricity system outcomes. It concluded that there are not significant barriers to materially impede this work. However, to meet these important outcomes, we need to provide regulatory certainty to stimulate a culture of whole electricity system thinking.

2.40. The additional clarity provided by the Licence Modification frames the requirement for TOs, DNOs, and IDNOs to consider stakeholder suggestions. The licence provides clear criteria for when onshore electricity network licensees should seek to implement proposals from network users, and contains a logic test that these proposals must pass before they are considered for delivery. This reduces the burden on licence holders and ensures that time and expense is not wasted on proposals that are not in the interests of the licensees networks'.

2.41. In addition, the Licence Modification includes a requirement for onshore electricity network licensees to maintain a Coordination Register and update it annually. These reporting requirements provide a mechanism for licensees to evidence compliance with the obligations of the Licence Modification, and

moreover provides regulatory certainty on how whole electricity system outcomes will be reviewed.

Impact Assessment development

- 2.42. One licensee asked for us to clarify the dates and timelines of documents, in particular when the Impact Assessment was developed. The licensee felt that the Impact Assessment could have been made available sooner in the policy development process.
- 2.43. Throughout our policy development on whole electricity system, we have considered the impacts and benefits of the Licence Modification. During this, we have worked with specialists, including policy specialists, economists and engineers, to ensure that our policies benefit energy consumers, and place balanced and proportionate obligations on affected licensees.
- 2.44. Our guidance on Impact Assessments³¹ states that we typically initiate an Impact Assessment at an early stage of a policy proposal. Notably, this does not equate to publishing an Impact Assessment at an early stage of a proposal. Our informal consultation in December 2018 provided meaningful input into the licence proposal at an early stage. This led us to develop our considerations of impacts into a formal Impact Assessment, initiated in summer 2019, before we held two further workshops with affected stakeholders. The Impact Assessment was continuously improved through these workshops and stakeholder engagement and was published alongside the statutory consultation in March 2020.

Competition Law

- 2.45. One licensee raised concerns about how the licence condition relates to competition law and the possibility that the required coordination could breach competition law; although no specific potential breach was identified by this licensee. It remains licensees' responsibility to ensure that they are compliant with competition law and should any stakeholder raise a concern in relation to this, we would take action to investigate and rectify any breach. Should a

³¹ <https://www.ofgem.gov.uk/publications-and-updates/impact-assessment-guidance>

licensee find themselves is a position that they truly consider causes them concern, they should raise this to us at their earliest opportunity and we would take appropriate action.

2.46. As noted in the Impact Assessment, the licence condition requires that licensees cooperate and coordinate in identifying actions or processes that benefit customers and deliver the best value for money. As stated, we consider there is considerable scope for coordination between licensees that will deliver benefits that do not constitute a breach of competition law.

2.47. As this was not raised by any other licensees, and no specific example was presented to us in their response, we have not made any further amendments to the Guidance, which already includes a provision for competition law to take precedence over the requirements of the Licence Modification in any event.

Licence definitions relative to industry definitions

2.48. It was noted by one licensee that the definition of “Total System” was not aligned to the definition being developed through the Open Networks Project. The definition used in the Licence Modification is aligned with the existing definition in the Transmission Standard Licence Condition A1 and the Distribution Standard Licence Condition 31E, and therefore the Licence Modification will use this consistent terminology. As such, we are confident that “Total System” is appropriate for the purposes of the Licence Modification.

Network information sharing and potential information imbalances

2.49. The majority of respondents did not see a problem with increased network information sharing. One network user raised concerns that confidential information sharing between onshore electricity network licensees could be used to improve their own position relative to third party market participants. This line of reasoning was advanced with particular reference to CLASS.³² We

³² [Regulatory treatment of CLASS as a balancing service in RIIO-ED2 network price control | Ofgem](#)

will, separately, be consulting on CLASS, and plan to make a decision on it in 2021.

- 2.50. There was general agreement from respondents that there are opportunities for more efficient decisions to be made across network boundaries and for these to deliver significant benefits for customers. These potential benefits cannot be achieved without more information sharing taking place. We believe that these benefits outweigh any real or perceived conflicts of interest in onshore electricity network licensees' actions or associated information imbalances. Existing laws mitigate against anti-competitive behaviour across the industry. Any undue use of sensitive information would be an egregious breach of licence conditions and competition law.
- 2.51. We also consider there to be tangible benefits to network users that can be derived from onshore electricity network licensees sharing information. For example, coordinated markets for flexibility services depend on appropriate information sharing on service requirements between onshore electricity network licensees. The ability for network users to participate across multiple markets is therefore dependent on information sharing, rather than this information sharing placing the network users at a disadvantage.

Requirement for implementation set as an action having no negative impacts on a network, rather than requiring positive impacts

- 2.52. The Licence Modification obligates licensee to "use all reasonable endeavours" to implement an action or process if it delivers benefits for the Total System, and does not negatively affect their own network. The majority of respondents did not raise any specific concerns with this obligation.
- 2.53. One licensee sought a change to the drafting of the Licence Modification so that they were only obligated to deliver actions that deliver benefits for the Total System and positively affect their network.
- 2.54. We believe our higher standard is most appropriate, and that onshore electricity network licensees should meet this higher standard.
- 2.55. We wish for the licence to be clear, and for onshore electricity network licensees to understand their obligations. We believe that it is easier to

understand and define an activity being not negative, than for it to 'have benefits', since 'have benefits' is a broad category. It is likely to be simpler to determine whether an activity has a negative impact or not, than to determine an activity's positive impact. It is likely to be more onerous to determine whether each proposal has a net positive outcome rather than to determine that it is not negative when considering options.

2.56. We have included information in the Guidance about possible arrangements in scenarios where the benefits of a solution do not accrue to the network that carries out the work, including the agreement of fair remuneration that represents "good value" for money for both sets of customers.

2.57. The onshore electricity network licensee must use "all reasonable endeavours" to undertake actions that meet the logic test. There are, therefore, certain situations where it is justifiable for onshore electricity network licensees not to implement them. We consider such situations to include proposals with an exceptionally high level of complexity to implement or those that require significant ongoing risk or expenditure to maintain.

How DNOs receive suggestions from network users

2.58. The majority of respondents did not raise concerns with the practicalities of onshore electricity network licensees receiving whole electricity system proposals from network users. However, one licensee was concerned about how they would be expected to engage with or receive suggestions from stakeholders under paragraph D17.3/7A.3. Onshore electricity network licensees have significant experience in managing stakeholder input, and we expect that they can leverage this knowledge to appropriately manage whole electricity system suggestions from network users.

2.59. Onshore electricity network licensees have many possible channels of communication and engagement with their stakeholders. In the Guidance, we highlight that a whole electricity system actions could be the coordination of onshore electricity network licensees to develop a joint process for managing suggestions from network users.

2.60. Under the Licence Modification, onshore electricity network licensees are required to "consider" actions that seek to advance the efficient and

economical operation of its network; proposed actions that seek to exclusively enhance a single stakeholder's commercial position, or that are not in the interest of the network, do not need to be considered.

- 2.61. One licensee sought clarity on whether they are required to publish a Coordination Register even if they have not received any proposals from network users since the last publication. To be clear, we do want the affected licensees to publish their Coordination Register annually regardless of whether that have received any proposals, or indeed whether they have undertaken any whole electricity system actions. This clear reporting requirement will enable readers to better understand the state of whole electricity system actions across the electricity industry, and reporting no action is itself a strong indicator of progress, or otherwise, in the industry.

Amendments to the Whole Electricity System Licence

Governance of the guidance document and associated definitions

- 2.62. Two licensees raised concern that there was no requirement for Ofgem to accept representations should we wish to amend the Guidance in the future. We have considered this feedback and deem it appropriate to adjust our licence governance to mitigate against this concern by including a requirement to consult on any future changes made to the Guidance.
- 2.63. We have no intention of updating the Guidance without consulting the licensees. However, we understand that the requirement in the Licence Modification to “*give consideration to the Guidance*” means that any update could have implications for how licensees demonstrate compliance with their obligations.
- 2.64. The definitions of “coordination” and “cooperation”, found in the Guidance, are based on their plain or ordinary meanings. Despite this, we note that one licensee commented that they would prefer for these to be contained in the Licence Modification itself.
- 2.65. Bearing this in mind, to ensure that affected licensees have the necessary confidence in the governance of the Licence Modification and Guidance, we have inserted a condition in the licence requiring that any update to the Guidance is subject to consultation with licensees. We believe this to be the most efficient solution to address the concerns referenced in the paragraphs above.
- 2.66. The amendments in D17.8 to D17.11 and 7A.8 to 7A.11 of the Licence Modification concerning the Guidance are based on text in existing licence conditions. Given this wording is already in use in Distribution Standard Licence Condition 31D and that this addition meets the request of respondents, we are moving to implement this without further consultation.

Definition of transmission user

- 2.67. One licensee raised concerns that the definition of a “Transmission System User” could include indirectly connected customers of the distribution system.

While we think the intention was clear, the addition of “directly connected” in the definition under the Licence Modification removes any ambiguity.

3. Responses specific to the whole electricity system guidance

- 3.1. We received some comments that related directly to the Guidance that was published alongside the Licence Modification in the March 2020 statutory consultation. This section sets out the responses and queries we received that we have considered carefully, but decided not to make amendments in response. We have set out our reasoning in each case.

ESO whole electricity system information sharing

- 3.2. We commented in the Guidance that network users may make proposals to the ESO and TO separately, and that in these circumstances, we expect the ESO to share information with the TO. One licensee queried how the ESO would be made aware of this obligation.
- 3.3. The proposed Electricity Transmission Standard Licence Condition C28.4 (t) specifically manages this requirement:³³

"ensuring coordination with other network operators and interested parties and identifying and delivering the most efficient network planning and development of solutions to meet future transmission network needs. These solutions should include, but are not limited to, solutions that cost-effectively alleviate the need to upgrade or replace electricity network capacity".

- 3.4. We therefore expect the ESO will appropriately share information to other network licensees.

Additions to the Coordination Register

- 3.5. One licensee raised concerns that some actions proposed by third parties may not be added to the Coordination Register unless the third party explicitly

³³ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-riio-2-transmission-gas-distribution-and-electricity-system-operator-licences>

references the Licence Modification. Since recording whole electricity system actions in the Coordination Register helps demonstrate compliance, we see it as being in the onshore electricity networks licensees' interests to record interactions with third parties that meet the criteria set out under conditions D17.2 to D17.4 and 7A.2 to 7A.4 of the licence.

- 3.6. It is possible that a licensee might seek to avoid publishing an action in their Coordination Register where they chose not to progress with the suggestion and they feel that their reasons for not taking forward the suggestion are weak. Third parties could report them to Ofgem if they think that a network licensee is deliberately omitting proposed actions, as this would constitute a breach of this licence condition. In addition, we think that if their justification for not carrying out the action is suitably robust, there would be no benefit in omitting this from the Coordination Register.

How to appropriately value monetary transfers between onshore electricity network licensees

- 3.7. One licensee sought guidance and clarification on how to value any negative impact that may be the result of a whole electricity system action on an onshore electricity network licensee. The licensee commented that it was not clear whether "negatively impacted" recognised the risk to a network.
- 3.8. Onshore electricity network licensees are expected to calculate the value of impacts of actions on their networks under existing operating procedures. We do not expect there to be a role for Ofgem in defining the terms of any compensatory negotiations between onshore electricity network licensees. We further note the ENA's Open Networks Project are developing a cost benefit analysis tool to undertake such analysis.
- 3.9. Should an onshore electricity network licensee find that another onshore electricity network licensee is not reasonably cooperating with them in agreeing the appropriate value of whole electricity system actions and remunerating, this would constitute a breach of the licence, and should be brought to Ofgem's attention.

Money transfer mechanisms

3.10. We received one request for further guidance on financial transfers. We have included more information on this under Section 2, see “funding concerns”.

Proposal cut-off date for the annual Coordination Register

3.11. One licensee sought clarity on the cut-off time for network users proposals to be included in the annual Coordination Register publication, noting that they would have a lead time to publication and that some proposals sent during this period would be unlikely to be included in the publication.

3.12. We note that the onshore network licensees are required to include “*Details of all proposals received during a relevant period from system users*”. We expect onshore electricity network licensees to be clear in their reporting about the period being covered in the reporting. We believe this would address the concern raised.

Location of Coordination Register

3.13. One licensee requested that we remove the reference to a licensee publishing their Coordination Register in a discoverable location on their website, since this was for them to determine. Given that one of the key recommendations of the Energy Data Task Force was that data be discoverable, and all the licensees have endorsed the findings in principle, we think it is fitting to include this in the Guidance.

Modern expectation of data

3.14. One licensee commented that the phrase “modern expectation” of data format should be removed on the grounds that this will organically evolve as time progresses and is open to interpretation.

3.15. It is precisely for the reasons the licensee lists that we will retain the term “modern expectation” of data format. Data formats will evolve, and should therefore remain modern through time.

Capitalisation in transmission and distribution licences

3.16. There was some confusion over the capitalisation of certain terms when referring to the *transmission* and *Distribution* Licences. This is not accidental and follows the conventions of each licence. The transmission licence does not use capitalisation for defined terms whereas the Distribution Licence does. As the Guidance covers both licence conditions the relevant phrases are either capitalised or not depending on which licence is referred to in the text.

Minor typographic changes

3.17. Two licensees made a series of minor typographical change suggestions. Some of these have been accepted, though many are immaterial to the interpretation and meaning of the Guidance, and have been rejected where we do not agree they improve the drafting.

Amendments to the Whole Electricity System Guidance Document

We received constructive feedback to improve the Guidance. This feedback has provided valuable input and is outlined below.

The whole electricity system outcomes definition

- 3.18. It was noted by a licensee that the explanation given for “whole electricity system outcomes” in the Guidance was not aligned with the intent of the wording in the Licence Modification. The definition in the Guidance in the March 2020 statutory consultation required that the licensee minimised the total spend on the network while maintaining or improving the service they offer their customers. This sought to capture the intention for the system to be as economically efficient as possible, but had the unintended consequence of excluding options that required higher initial investment but offered greater net benefits for the system and the licensees customers.
- 3.19. We have updated this definition to allow for scenarios where the onshore electricity network licensee is presented with an option for increased benefits that requires an additional spend over the minimum required, but that delivers best value for money.
- 3.20. “Best value” for money is a well-established term of art, found in the Treasury’s Green Book on Central Government Guidance on Appraisal and Evaluation,³⁴ and is applied in context by Ofgem in, for example, the Network Innovation Competition Guidance document.³⁵ Best value represents the most advantageous combination of cost, quality and sustainability in meeting the needs of the network and its customers.
- 3.21. With regards to whole electricity network outcomes, best value for money requires that onshore electricity network licensees undertake actions that may, without due accounting for compensation, suggest a negative impact for their

³⁴ <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

³⁵ <https://www.ofgem.gov.uk/publications-and-updates/version-30-network-innovation-competition-governance-documents>

network, but produce overall net benefits for the consumer. We note that the availability of funding transfer mechanisms means that we do not expect to see negative impacts to a network.

3.22. For example, licensee A may consider two options for a network issue, both of which involve coordination with licensee B.

- **Option 1:** Licensee A suggests an action that causes licensee B a negative impact of £1m but produces benefits of £5m for licensee A. Licensee A transfers £1m to licensee B and sees £4m worth of net benefits.
- **Option 2:** Licensee A suggests an action that causes licensee B a negative impact of £2m but produces benefits of £10m for licensee A. Licensee A transfers £2m to licensee B and sees £8m worth of net benefits.

3.23. Under this example, the licensees are expected to select option 2, which does not minimise expenditure, but results in far greater overall benefits.

GDPR, data privacy and commercial confidentiality

3.24. There were a number of comments regarding data protection and commercial confidentiality in relation to proposals submitted to onshore electricity network licensees by network users, and how this information is to be published in Coordination Registers. We have made some amendments to the Guidance to ensure that it is clear that data protection and managing commercial confidentiality is not governed by the Guidance, but by the relevant legislation. The Guidance reiterates the requirement to comply with this legislation.

3.25. A licensee requested that we amend the requirement on affected licensees to manage the Coordination Register and handling of network users' data in accordance with the Data Protection Act 2018 specifically, with a condition requiring licensees to comply with any data protection legislation in force in GB at the time. This change is designed to futureproof against any changes to GB data protection legislation and has been accepted.

- 3.26. The same licensee requested that we remove the requirement for affected licensee to retain proposals and associated data for five years, after which such data should be permanently deleted. The licensee favoured licensees defining and managing their own data protection measures.
- 3.27. We agree that acting in accordance with data protection legislation is the responsibility of licensees in their capacity as a data controller. We also note that licensees should retain data for a sufficient amount of time to allow for any required regulatory reporting. We have therefore amended the text in the Guidance to make it clear that the responsibility for data retention on the onshore electricity network lies with licensee as data controller.
- 3.28. The same licensee commented that they agreed with our draft Guidance, published as part of the statutory consultation, which stated that it is incumbent on network users to request that onshore electricity network licensees remove identifiable information prior to publication of the Coordination Register. We have, however, opted to remove this requirement, and instead reverted to affected onshore electricity network licensees complying with data protection legislation in force at the time. This means that as data controllers, onshore electricity network licensees must manage processes for any network users' data redactions.

Minor terminology and document structure changes

- 3.29. Within the Guidance there are some suggestions that we have updated for accuracy or readability but that do not materially affect the document.

Capitalised the term 'Customers'

- 3.30. The term Customer is defined in both the transmission and Distribution licence. As a result, we have capitalised the term where it is used, either generally or in relation to the Distribution Licence. We have not capitalised it where it refers specifically to customers of the transmission licence in line with the convention of that licence.

Moved enforcement description to the introduction

- 3.31. One licensee recommended moving a paragraph on enforcement to the introduction section. We have accepted this amendment.

Updating the System Wide Resource Register to the Embedded Capacity Register

3.32. At the time of writing the guidance, the Distribution Network Companies were developing the System Wide Resource Register. This has been superseded by the Embedded Capacity Register, so we have updated the terminology accordingly.

4. Next steps

The full licence text and guidance document are published alongside this document, alongside the Notice that we will modify the Electricity Transmission Standard Licence and Electricity Distribution Standard Licence to implement the Whole Electricity System Licence Condition D17/7A

This document is published on 1 April 2021. The licence modifications will come into effect after a 56 days standstill period, from 00:01 on 27 May 2021.

If you have any queries, please contact Flo Silver at flo.silver@ofgem.gov.uk.