

To:
Energetics Electricity Limited
ESP Electricity Limited
Harlaxton Energy Networks Limited
Independent Power Networks Limited
Peel Electricity Networks Limited
The Electricity Network Company Limited
Utility Assets Limited
UK Power Distribution Limited

(‘the Relevant Licence Holders’)

Electricity Act 1989
Section 11A(2)

Notice of statutory consultation on a proposal to modify Amended Standard Condition BA2 of the electricity distribution licence held by the Relevant Licence Holders

1. The Gas and Electricity Markets Authority (‘the Authority’)¹ proposes to modify Amended Standard Condition BA2 (Regulation of charging arrangements) of the electricity distribution licence held by the Relevant Licence Holders (‘the independent Distribution Network Operator (IDNO) licence’) granted or treated as granted under section 6(1)(c) of the Electricity Act 1989 (‘the Electricity Act’).
2. The reason why we are proposing these licence modifications is set out in our statutory consultation letter 11 December 2015, which accompanies this notice, and in our initial open letter consultation.² In summary, the changes are proposed to make the disapplication procedure consistent with the changes to the Electricity Act introduced by the Electricity and Gas (Internal Markets) Regulations 2011.³
3. The effect of the proposed modifications is to ensure that the disapplication procedure in the IDNO licence is consistent with the disapplication procedure in the DNO licence, and consistent with the Electricity Act.
4. A copy of the proposed modifications and other documents referred to in this Notice have been published alongside this Notice on our website (www.ofgem.gov.uk). Alternatively they are available from our Research and Information Centre, 9 Millbank, London, SW1P 3GE (020 7901 7003).
5. Any representations with respect to the proposed licence modifications must be made on or before 22 January 2016 to: Deirdre Bell, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to deirdre.bell@ofgem.gov.uk.
6. We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so they can be placed easily on our website.

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

² [Consultation on amending the disapplication conditions of Independent Gas Transporter and Independent Distribution Network Operator Licences, February 2015 and](#)
[Secnd consultation on amending the disapplication conditions of Independent Gas Transporters and Independent Distribution Network Operator Licences, July 2015](#)

³ <http://www.legislation.gov.uk/ukdsi/2011/9780111513965/contents>

7. If we decide to make the proposed modifications they will take effect not less than 56 days after the decision is published.



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James Veaney
Head of Distribution Policy: SG&G
Duly authorised on behalf of the
Gas and Electricity Markets Authority

11 December 2015

Appendix 1 – Proposed changes to IDNO Licence –Standard Condition BA2 (Applicable to Peel Electricity Networks Limited)

Standard Condition BA2. Regulation of charging arrangements

Introduction

1. The licensee must make, and continue to make, charges available, in accordance with the requirements of this condition, for the provision of Use of System to any Authorised supplier of electricity that uses or wishes to use the licensee's Distribution System to supply electricity to Domestic Customers.

Setting and restriction of charges

2. The licensee's Use of System Charges in relation to Domestic Customers may vary according to the Distribution Services Area of the Electricity Distributor within which Domestic Premises are connected to the licensee's Distribution System.
3. The licensee must set those Use of System Charges so that, except with the Authority's consent, the standing charge, unit rate, and any other component of the charges does not exceed the Use of System Charges to equivalent Domestic Customers ("the equivalent charges").
4. For the purposes of paragraph 3, equivalent charges are the Use of System Charges made by the Electricity Distributor which has a Distribution Services Direction that specifies the Distribution Services Area in which the Domestic Premises connected to the licensee's Distribution System are located.
5. The Authority may give the licensee a direction that specifies which of the Use of System Charges made by the Distribution Services Provider for the Distribution Services Area mentioned in paragraph 4 are relevant for the purposes of determining the equivalent charges.

Procedure for disapplying this condition

6. The charging arrangements set out above apply for so long as this licence continues in force but shall cease to have effect (in whole or in part) if the licensee makes a Disapplication Request to the Authority in accordance with will remain in force until such time and in such circumstances as are described in paragraphs 7 to 1813 of this condition and:-
 - (a) the Authority agrees in Writing to the Disapplication Request; or
 - (b) the provisions that are the subject of the Disapplication Request are disappplied by a Disapplication Notice given by the licensee in accordance with the provisions of this condition.
7. The licensee may ask the Authority to consent to the disapplication of this condition (in whole or in part) by giving it a Deisapplication Rrequest made in accordance with paragraph 8.

8. A ~~Dis~~application ~~R~~request ~~must~~shall:

- (a) be in Writing addressed to the Authority;
- (b) specify the paragraph or paragraphs of this condition (or any part or parts thereof) to which the request relates; ~~and~~
- (c) provide a full statement of the licensee's reasons for making the Disapplication Request;
- (d) contain such other information or analysis as the licensee considers necessary to enable the Authority fully to assess the Disapplication Request; and
- (ee) state the date that is proposed by the licensee (which must not be earlier than the date specified in paragraph 9) on and after which the specified paragraph or paragraphs (or any part or parts thereof) would no longer have effect ("the ~~Dis~~application ~~D~~ate").

9. Except with the Authority's consent, no disapplication of this condition following its receipt of a ~~Dis~~application ~~R~~request under paragraph 7 may have effect until a date not less than 18 months after ~~delivery receipt~~ of the ~~Dis~~application ~~R~~request.

~~10. A Disapplication Request may apply to a specified geographic area. The licensee may withdraw a disapplication request at any time.~~

~~Licensee's right to disapply this condition~~

~~11. If the licensee has given the Authority a disapplication request under paragraph 7, it may subsequently give the Authority a Notice that terminates the application of this condition or the part or parts of it specified in the request:~~

~~(a) in the circumstances described in paragraph 12, with effect from either the disapplication date or such earlier date to which the Authority has given its consent under paragraph 9; or~~

~~(b) in the circumstances described in paragraph 13, with effect from the disapplication date, so long as the licensee gives Notice within 30 days after the publication of the report mentioned in that paragraph.~~

~~12. The circumstances described in this paragraph are these:~~

~~(a) the Authority has not made a reference to the Competition and Markets Authority (CMA) under section 12 of the Act relating to the modification of this condition as specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date; and~~

~~(b) the licensee has not withdrawn its request.~~

~~13. The circumstances described in this paragraph are these:~~

~~(a) the CMA has made a report on a reference made by the Authority relating to the modification of this condition as specified in the licensee's disapplication request; and~~

~~(b) the CMA report does not find that the ending of the charging arrangements in this condition, in whole or in part, would operate or might be expected to operate against the public interest.~~

11. If, within 10 working days of receipt of a Disapplication Request, the Authority gives notice to the licensee:

- (a) specifying any further information or analysis that it reasonably considers is required in order to assess the Disapplication Request; and
- (b) requesting the licensee to provide that information or analysis, the Disapplication Request will be treated for the purposes of this condition as not delivered to the Authority until that further information or analysis is provided. If in consequence the Disapplication Date set out in the Disapplication Request no longer complies with paragraph 9, the Disapplication Date shall be treated as being the earliest date that would comply with that paragraph.

12. The giving of notice under paragraph 11 shall not preclude the Authority from making such further requests for information or analysis, or for the reformatting of information or analysis already provided, as it may consider it requires to assess the proposal.

13. The licensee may withdraw a Disapplication Request at any time.

Licensee's right to disapply this condition under a Disapplication Request

14. If the licensee has made a Disapplication Request that complies with the requirements of paragraphs 8 and 9 of this condition, and the circumstances described in paragraphs 15 or 17 of this condition apply, it may subsequently serve a Disapplication Notice on the Authority disapplying some or all of the provisions that are the subject of the Disapplication Request.

Disapplication without involvement of the Competition and Markets Authority

15. The licensee may serve a Disapplication Notice on the Authority if, by the Disapplication Date specified in the relevant Disapplication Request, the Authority has not responded to the request by publishing a decision under section 11A of the Act to modify this condition in either of the ways described in paragraph 16.

16. The ways referred to in paragraphs 15 are:

- (a) modify any of the provisions referred to in the Disapplication Request; or
- (b) modify this condition so as to remove the licensee's right to serve a Disapplication Notice on the Authority in respect of the relevant Disapplication Request.

Disapplication after involvement of the Competition and Markets Authority

17. The licensee may also serve a Disapplication Notice on the Authority if the Authority has published a decision described in paragraph 16 of this condition but:

- (a) the licensee has exercised its right to appeal to the Competition and Markets Authority against the decision of the Authority as provided for by section 11C of the Act;
- (b) the Competition and Markets Authority has quashed the Authority's decision, and has included in its direction to the Authority a provision relating to the right for the licensee to serve a Disapplication Notice on the Authority; and
- (c) no more than 20 working days have elapsed since the date from which the licensee may serve a Disapplication Notice on the Authority under the Competition and Markets Authority's direction.

18. A Disapplication Notice under paragraphs 15 and 17 must also comply with any terms or conditions specified in the Competition and Markets Authority's direction.

19. For the purposes of this condition:

(a) **Disapplication Notice** means a notice served on the Authority in accordance with paragraphs 15 and 17 of this condition disapplying some or all of the provisions the subject of a Disapplication Request.

(b) **Disapplication Request** means a request made to the Authority in accordance with paragraphs 8 and 9 of this condition to disapply some or all of the charging provisions of this condition.

(c) **Writing** includes writing that is sent or received by Electronic Communication.

Appendix 2 – Proposed changes to IDNO Licence –Standard Condition BA2

(Changes applicable to Harlaxton Energy Network Limited, UK Power Distribution Limited and Utility Assets Limited)

Standard Condition BA2. Regulation of charging arrangements

Introduction

1. The licensee must make, and continue to make, charges available, in accordance with the requirements of this condition, for the provision of Use of System to any Authorised supplier of electricity that uses or wishes to use the licensee's Distribution System to supply electricity to Domestic Customers.

Setting and restriction of charges

2. The licensee's Use of System Charges in relation to Domestic Customers may vary according to the Distribution Services Area of the Electricity Distributor within which Domestic Premises are connected to the licensee's Distribution System.

3. The licensee must set those Use of System Charges so that, except with the Authority's consent, the standing charge, unit rate, and any other component of the charges does not exceed the Use of System Charges to equivalent Domestic Customers ("the equivalent charges").

4. For the purposes of paragraph 3, equivalent charges are the Use of System Charges made by the Electricity Distributor which has a Distribution Services Direction that specifies the Distribution Services Area in which the Domestic Premises connected to the licensee's Distribution System are located.

5. The Authority may give the licensee a direction that specifies which of the Use of System Charges made by the Distribution Services Provider for the Distribution Services Area mentioned in paragraph 4 are relevant for the purposes of determining the equivalent charges.

Procedure for disapplying this condition

6. The charging arrangements set out above apply for so long as this licence continues in force but shall cease to have effect (in whole or in part) if the licensee makes a Disapplication Request to the Authority in accordance with will remain in force until such time and in such circumstances as are described in paragraphs 7 to 13 18 of this condition and:

- (a) the Authority agrees in Writing to the Disapplication Request; or
- (b) the provisions that are the subject of the Disapplication Request are disappplied by a Disapplication Notice given by the licensee in accordance with the provisions of this condition.

7. The licensee may ask the Authority to consent to the disapplication of this condition (in whole or in part) by giving it a Disapplication Request made in accordance with paragraph 8.

8. A Disapplication Request must ~~shall~~:

- (a) be in Writing addressed to the Authority;

(b) specify the paragraph or paragraphs of this condition (or any part or parts thereof) to which the request relates; and
(c) provide a full statement of the licensee's reasons for making the Disapplication Request;
(d) contain such other information or analysis as the licensee considers necessary to enable the Authority fully to assess the Disapplication Request; and
(ee) state the date that is proposed by the licensee (which must not be earlier than the date specified in paragraph 9) on and after which the specified paragraph or paragraphs (or any part or parts thereof) would no longer have effect ("the Disapplication Date").

9. Except with the Authority's consent, no disapplication of this condition following its receipt of a Disapplication Request under paragraph 7 may have effect until a date not less than 18 months after receipt of the Disapplication Request, whichever is the later of:
~~(a) a date not less than 18 months after delivery of the disapplication request; and~~
~~(b) 31 March 2011.~~

~~10. The licensee may withdraw a disapplication request at any time.~~

10. A Disapplication Request may apply to a specified geographic area.

11. If, within 10 working days of receipt of a Disapplication Request, the Authority gives notice to the licensee:

(a) specifying any further information or analysis that it reasonably considers is required in order to assess the Disapplication Request; and
(b) requesting the licensee to provide that information or analysis, the Disapplication Request will be treated for the purposes of this condition as not delivered to the Authority until that further information or analysis is provided. If in consequence the Disapplication Date set out in the Disapplication Request no longer complies with paragraph 9, the Disapplication Date shall be treated as being the earliest date that would comply with that paragraph.

12. The giving of notice under paragraph 11 shall not preclude the Authority from making such further requests for information or analysis, or for the reformatting of information or analysis already provided, as it may consider it requires to assess the proposal.

13. The licensee may withdraw a Disapplication Request at any time.

Licensee's right to disapply this condition under a Disapplication Request

~~11. If the licensee has given the Authority a disapplication request under paragraph 7, it may subsequently give the Authority a Notice that terminates the application of this condition or the part or parts of it specified in the request:~~

~~(a) in the circumstances described in paragraph 12, with effect from either the disapplication date or such earlier date to which the Authority has given its consent under paragraph 9; or~~

~~(b) in the circumstances described in paragraph 13, with effect from the disapplication date, so long as the licensee gives Notice within 30 days after the publication of the report mentioned in that paragraph.~~

~~12. The circumstances described in this paragraph are these:~~

~~(a) — the Authority has not made a reference to the Competition Commission under section 12 of the Act relating to the modification of this condition as specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date; and
(b) — the licensee has not withdrawn its request.~~

~~13. — The circumstances described in this paragraph are these:~~

~~(a) — the Competition Commission has made a report on a reference made by the Authority relating to the modification of this condition as specified in the licensee's disapplication request; and~~

~~(b) — the Commission's report does not find that the ending of the charging arrangements in this condition, in whole or in part, would operate or might be expected to operate against the public interest.~~

14. If the licensee has made a Disapplication Request that complies with the requirements of paragraphs 8 and 9 of this condition, and the circumstances described in paragraphs 15 or 17 of this condition apply, it may subsequently serve a Disapplication Notice on the Authority disapplying some or all of the provisions that are the subject of the Disapplication Request.

Disapplication without involvement of the Competition and Markets Authority

15. The licensee may serve a Disapplication Notice on the Authority if, by the Disapplication Date specified in the relevant Disapplication Request, the Authority has not responded to the request by publishing a decision under section 11A of the Act to modify this condition in either of the ways described in paragraph 16.

16. The ways referred to in paragraphs 15 are:

(a) modify any of the provisions referred to in the Disapplication Request; or

(b) modify this condition so as to remove the licensee's right to serve a Disapplication Notice on the Authority in respect of the relevant Disapplication Request.

Disapplication after involvement of the Competition and Markets Authority

17. The licensee may also serve a Disapplication Notice on the Authority if the Authority has published a decision described in paragraph 16 of this condition but:

(a) the licensee has exercised its right to appeal to the Competition and Markets Authority against the decision of the Authority as provided for by section 11C of the Act;

(b) the Competition and Markets Authority has quashed the Authority's decision, and has included in its direction to the Authority a provision relating to the right for the licensee to serve a Disapplication Notice on the Authority; and

(c) no more than 20 working days have elapsed since the date from which the licensee may serve a Disapplication Notice on the Authority under the Competition and Markets Authority's direction.

18. A Disapplication Notice under paragraphs 15 and 17 must also comply with any terms or conditions specified in the Competition and Markets Authority's direction.

19. For the purposes of this condition:

(a) **Disapplication Notice** means a notice served on the Authority in accordance with paragraphs 15 and 17 of this condition disapplying some or all of the provisions the subject of a Disapplication Request.

(b) **Disapplication Request** means a request made to the Authority in accordance with paragraphs 8 and 9 of this condition to disapply some or all of the charging provisions of this condition.

(c) **Writing** includes writing that is sent or received by Electronic Communication.

Appendix 3 – Proposed changes to IDNO Licence –Standard Condition BA2

(Changes applicable to the Electricity Network Company Limited, ESP Electricity Limited, Energetics Electricity Limited and Independent Power Networks Limited)

Standard Condition BA2. Charging Arrangements

1. The licensee shall make available and continue to make available charges for the provision of use of system to any authorised supplier using the licensee's network to supply domestic customers.
2. The licensee's distribution use of system charges to domestic customers may vary according to the distribution services area of the licensed distributor within which domestic premises are connected to the licensee's distribution system.
3. The licensee shall set these charges so that, except with the prior written consent of the Authority, the standing charge, unit rate and any other component of charges shall not exceed the distribution use of system charges to equivalent domestic customers.
4. For the purposes of this condition, distribution use of system charges to equivalent domestic customers are the distribution use of system charges made by the licensed distributor that has a Distribution Services Direction specifying the distribution services area where the domestic premises connected to the licensee's system are located.
5. The Authority may specify by direction which of the distribution use of system charges made by the licensed distributor with Distribution Services Obligations for the distribution services area are relevant for the purposes of determining distribution use of system charges to equivalent domestic customers.
6. These charging arrangements set out above apply for so long as this licence continues in force but shall cease to have effect (in whole or in part) if the licensee makes a Disapplication Request to the Authority in accordance with shall have effect within this licence until such time and in such circumstances as are described in paragraphs 7 to 12¹⁸ of this standard condition and:-
 - (a) the Authority agrees in Writing to the Disapplication Request; or
 - (b) the provisions that are the subject of the Disapplication Request are disappplied by a Disapplication Notice given by the licensee in accordance with the provisions of this condition.
7. The licensee may ask the Authority to consent to the disapplication of this condition (in whole or in part) by giving it a Disapplication Request made in accordance with paragraph 8. This condition shall cease to have effect (in whole or in part as the case may be) if the licensee delivers to the Authority a disapplication request made in accordance with paragraph 8 of this standard condition or notice is given to the Authority by the licensee in accordance with either paragraph 11 or paragraph 12 of this standard condition.
8. A Disapplication Request must ~~shall~~:

- (a) be in writing addressed to the Authority;
- (b) specify the paragraph or paragraphs of this ~~standard~~ condition (or any part or parts thereof) to which the request relates; ~~and~~
- (c) provide a full statement of the licensee's reasons for making the Disapplication Request;
- (d) contain such other information or analysis as the licensee considers necessary to enable the Authority fully to assess the Disapplication Request; and
- (ee) state the date that is proposed by the licensee (which must not be earlier than the date specified in paragraph 9 being not earlier than the date specified in paragraph 10 of this standard condition) on and after which the specified paragraph or paragraphs would no longer have effect ("the Disapplication Date") from which the licensee wishes the Authority to agree that the conditions shall cease to have effect (the disapplication date).

~~9. The licensee may withdraw a disapplication request at any time.~~

~~10. Save where the Authority otherwise consents in writing, no disapplication following delivery of a disapplication request pursuant to paragraph 8 of this standard condition shall have effect until a date being the later of:~~

- ~~(a) not less than 18 months after delivery of the disapplication request; and~~
- ~~(b) 31 March 2007.~~

~~11. If the Authority has not made a reference to the Competition Commission under section 12 of the Act relating to the modification of this standard condition or the part or parts thereof specified in the disapplication request before the beginning of the period of 12 months which will end with the disapplication date and the licensee has not withdrawn this disapplication request, the licensee may deliver a written notice to the Authority terminating the application of this standard condition or the part or parts thereof specified in the disapplication request with effect from the disapplication date or such earlier date to which the Authority has given its consent under paragraph 10.~~

~~12. If the Competition Commission makes a report on a reference made by the Authority relating to the modification of this standard condition or the part or parts thereof specified in the disapplication request and such report does not include a conclusion that the cessation of such revenue restrictions in this standard condition, in whole or in part, operates or may be expected to operate against the public interest, the licensee may within 30 days after the publication of the report by the Authority in accordance with section 13 of the Act deliver to the Authority written notice terminating the application of this standard condition or the part or parts thereof specified in the disapplication request with effect from the disapplication date.~~

9. Except with the Authority's consent, no disapplication of this condition following its receipt of a Disapplication Request under paragraph 7 may have effect until a date not less than 18 months after receipt of the Disapplication Request.

10. A Disapplication Request may apply to a specified geographic area.

11. If, within 10 working days of receipt of a Disapplication Request, the Authority gives notice to the licensee:

- (a) specifying any further information or analysis that it reasonably considers is required in order to assess the Disapplication Request; and
- (b) requesting the licensee to provide that information or analysis,

the Disapplication Request will be treated for the purposes of this condition as not delivered to the Authority until that further information or analysis is provided. If in consequence the Disapplication Date set out in the Disapplication Request no longer complies with paragraph 9, the Disapplication Date shall be treated as being the earliest date that would comply with that paragraph.

12. The giving of notice under paragraph 11 shall not preclude the Authority from making such further requests for information or analysis, or for the reformatting of information or analysis already provided, as it may consider it requires to assess the proposal.

13. The licensee may withdraw a Disapplication Request at any time.

Licensee's right to disapply this condition under a Disapplication Request

14. If the licensee has made a Disapplication Request that complies with the requirements of paragraphs 8 and 9 of this condition, and the circumstances described in paragraphs 15 or 17 of this condition apply, it may subsequently serve a Disapplication Notice on the Authority disapplying some or all of the provisions that are the subject of the Disapplication Request.

Disapplication without involvement of the Competition and Markets Authority

15. The licensee may serve a Disapplication Notice on the Authority if, by the Disapplication Date specified in the relevant Disapplication Request, the Authority has not responded to the request by publishing a decision under section 11A of the Act to modify this condition in either of the ways described in paragraph 16.

16. The ways referred to in paragraphs 15 are:

- (a) modify any of the provisions referred to in the Disapplication Request; or
- (b) modify this condition so as to remove the licensee's right to serve a Disapplication Notice on the Authority in respect of the relevant Disapplication Request.

Disapplication after involvement of the Competition and Markets Authority

17. The licensee may also serve a Disapplication Notice on the Authority if the Authority has published a decision described in paragraph 16 of this condition but:

- (a) the licensee has exercised its right to appeal to the Competition and Markets Authority against the decision of the Authority as provided for by section 11C of the Act;
- (b) the Competition and Markets Authority has quashed the Authority's decision, and has included in its direction to the Authority a provision relating to the right for the licensee to serve such a Disapplication Notice on the Authority; and
- (c) no more than 20 working days have elapsed since the date from which the licensee may serve a Disapplication Notice on the Authority under the Competition and Markets Authority's direction.

18. A Disapplication Notice under paragraphs 15 and 17 must also comply with any terms or conditions specified in the Competition and Markets Authority's direction.

19. For the purposes of this condition:

- (a) **Disapplication Notice** means a notice served on the Authority in accordance with paragraphs 15 and 17 of this condition disapplying some or all of the provisions the subject of a Disapplication Request.

(b) **Disapplication Request** means a request made to the Authority in accordance with paragraphs 8 and 9 of this condition to disapply some or all of the charging provisions of this condition.

(c) **Writing** includes writing that is sent or received by Electronic Communication.

Appendix 4: Relevant Licence Holders

<p>Energetics Electricity Limited International House Stanley Boulevard Hamilton International Technology Park Glasgow South Lanarkshire G72 0BN</p> <p>Company no: SC234694</p>	<p>ESP Electricity Limited Hazeldean Station Road Leatherhead Surrey KT22 7AA</p> <p>Company no: 04718806</p>
<p>Harlaxton Energy Networks Limited Toll Bar Road Marston Grantham Lincolnshire NG32 2HT</p> <p>Company no: 07330883</p>	<p>Independent Power Networks Limited Energy House Woolpit Business Park Woolpit Bury St Edmunds Suffolk IP30 9UP</p> <p>Company no: 04935008</p>
<p>Peel Electricity Networks Limited Peel Dome The Trafford Centre Manchester M17 8PL</p> <p>Company no: 06684589</p>	<p>The Electricity Network Company Limited Energy House Woolpit Business Park Woolpit Bury St Edmunds Suffolk IP30 9UP</p> <p>Company no: 05581824</p>
<p>UK Power Distribution Limited 22-26 King Street Kings Lynn Norfolk PE30 1HJ</p> <p>Company no: 06339585</p>	<p>Utility Assets Limited 53 High Street Cheveley Newmarket Suffolk CD8 9DQ</p> <p>Company no: 07255054</p>