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Independent Distribution Network  
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## **Statutory consultation on amending the disapplication conditions of the Independent Gas Transporter (IGT) and Independent Distribution Network Operator (IDNO) licences**

### **Introduction**

On 18 February 2015<sup>1</sup> and on 15 July 2015<sup>2</sup> we<sup>3</sup> consulted on our proposal to amend the disapplication conditions of the IGT and IDNO licences. We received two responses to the first consultation. In order to take account of the comments received, we issued a second consultation with amendments to our proposed drafting of the licence modifications.

We have decided to proceed with a statutory consultation to modify the existing disapplication conditions set out in the licences of IGTs and IDNOs.

Statutory notices in relation to the proposed modifications are published alongside this letter.

Representations on the proposed modifications to the licences should be made in writing on or before 22 January 2016.

### **Background**

The disapplication conditions of the IGT and IDNO licences allow the relevant licensees to make a disapplication request to the Authority in relation to the regulation of charging arrangements under the relevant licence. Disapplication conditions can be found in the licences of all gas and electricity transmission operators, gas and electricity distribution network operators and all independent gas and electricity network operators.

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<sup>1</sup> Our consultation document is available on the Ofgem website here: <https://www.ofgem.gov.uk/publications-and-updates/consultation-amending-disapplication-conditions-independent-gas-transporter-and-independent-distribution-network-operator-licences>

<sup>2</sup> [Consultation on amending the disapplication conditions of the Independent Gas Transporter \(IGT\) and Independent Distribution Network Operator \(IDNO\) licences, July 2015](#)

<sup>3</sup> The terms "we", "us", "our", "the Authority" and "Ofgem" are used interchangeably in this document. The Authority is the Gas and Electricity Markets Authority (GEMA). Ofgem is the office of the Authority.

We are proposing to modify the current IGT and IDNO disapplication conditions in the respective licences following changes to the Gas Act 1986 (the Gas Act) and Electricity Act 1989 (the Electricity Act) introduced by the Electricity and Gas (Internal Markets) Regulations 2011 (the 2011 Regulations).<sup>4</sup>

Our proposed changes relate to the following licence conditions:

- In all IGT licences: Special Condition 1 – paragraphs 8 to 13
- In all IDNO licences: Amended Standard Condition BA2 – paragraphs 6 to 13

### **Reasons for our proposed changes**

The reason for the proposed licence modifications is to align the disapplication condition in the IGT and IDNO licences with the new licence modification appeals process set out in the Gas Act and in the Electricity Act, which was introduced by the 2011 Regulations.

The 2011 Regulations had the effect of removing sections of the Gas Act and the Electricity Act which gave the Authority the power to refer a disapplication request to the CMA.<sup>5</sup> The 2011 Regulations replaced this power with a new licence modification appeals process.

We have already reviewed and amended the disapplication conditions in the gas and electricity transmission licences and the gas and electricity distribution licences.<sup>6</sup> For consistency, and in order to ensure that the cross-references in the licences are to the current versions of the Gas Act and of the Electricity Act, similar changes should also be made to the IGT and IDNO licences.

### **Amendments to our previously proposed changes**

We received two responses to the February consultation.<sup>7</sup> The respondents supported our approach to modify the licences, subject to the inclusion of some further proposed changes, some further drafting changes and the correction of some typographical errors. In our July consultation letter, we summarised which of the proposed changes we had taken on board, and we explained why we did not agree with some of the proposed changes.

### **Response to the July Consultation**

We received one response to our July consultation. The respondent suggested an amendment to our proposed drafting of paragraph 19 of Special Condition 1 and paragraph 17 of Amended Standard Condition BA2. The suggestion was to include references to section 23E(2)(b) and (c) of the Gas Act to clarify that the Disapplication Notice can only be served if the CMA has not remitted nor substituted the matter back to the Authority.

We are of the view that the proposed drafting is sufficiently clear and the proposal suggested by the respondent is not required.

The respondent also raised two queries:

- If the Authority has been directed under section 23E(2)(b) or (c) of the Gas Act and the Authority does not undertake the required action, can the licensee still serve the Disapplication

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<sup>4</sup> [The Electricity and Gas \(Internal Markets\) Regulations 2011](#)

<sup>5</sup> Competition and Markets Authority

<sup>6</sup> [Disapplication Conditions – Informal licence drafting consultation, October 2012](#)

<sup>7</sup> [Responses to February Consultation](#)

Notice (as if the CMA had not been involved, as per paragraph 17 of Amended Standard Condition BA2)?

Our view is that the licensee cannot serve the Disapplication Notice. However, if the Authority does not undertake the required action, the licensee would have scope to challenge the Authority's actions on that basis (for not adhering to the directions of the CMA).

- Whether a Disapplication Notice can be applied retrospectively if the CMA process took longer than 18 months.

Our view is that the Disapplication Notice cannot be applied retrospectively. There would be impacts on charging and also there would be less certainty if the notice could be applied retrospectively.

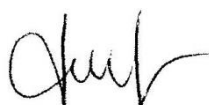
### Next Steps

We have today issued Notices under section 11A(2) of the Electricity Act and under section 23(2) of the Gas Act to modify the IDNO and IGT licences. The proposed drafting can be found in the appendices to this letter. Responses to our statutory consultation should be submitted by 22 January 2016.

Please submit responses by email to Deirdre Bell at: [deirdre.bell@ofgem.gov.uk](mailto:deirdre.bell@ofgem.gov.uk). Unless clearly marked as confidential, all responses will be published on our website. Ofgem shall respect requests to keep a submission confidential, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

If you would like to discuss this statutory consultation please contact: [deirdre.bell@ofgem.gov.uk](mailto:deirdre.bell@ofgem.gov.uk)

Yours faithfully



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