

To: All holders of an electricity supply licence:

**Electricity Act 1989
Section 11A**

Notice of statutory consultation on a proposal to modify Standard Condition 11 and introduce Standard Condition 11B of all electricity supply licences

1. The Gas and Electricity Markets Authority ('the Authority')¹ proposes to modify the standard conditions of all electricity supply licences granted or treated as granted under section 6(1)(d) of the Electricity Act 1989 ('the Act') by amending Standard Condition 11, and introducing standard condition 11B in the manner set out in Schedule 1 to this Notice.
2. The reason why the Authority proposes to make this modification is in summary to facilitate the implementation of, and thereafter electricity suppliers' accession to and compliance with, the Retail Energy Code, which we expect to give effect through designation in early 2019. The Retail Energy Code will provide governance for the new faster, more reliable switching arrangements, particularly those involving the new Central Switching Service. We also anticipate that the Retail Energy Code will in due course provide simpler, more effective governance of the wider gas and electricity market arrangements.
3. We are also proposing to place a duty on electricity supply licensees, along with other holders of licences granted under the Gas Act 1986 or Electricity Act 1989, to cooperate with the Authority or any person(s) appointed by the Authority, as may be required to give full effect to the conclusions of a Significant Code Review. The reason for this is to ensure a continuity of effective programme governance beyond the point at which the Authority may direct modifications to relevant licences and/or industry codes, through the design, build and test phase to the subsequent implementation of associated IT systems.
4. These reasons are set out further in the following documents published by the Authority:
 - a) Switching Programme: Regulation and Governance - way forward and statutory consultation on licence modifications - published 15 October 2018; and
 - b) Switching Programme: Proposed modifications to regulation and governance – published 5 June 2018.

These documents, together with copies of this proposed modification and any other documents referred to in this Notice have been published on our website (www.ofgem.gov.uk).

5. In summary, the effect of the modifications are to:
 - a) introduce standard condition 11B, which states the scope and relevant objectives of the Retail Energy Code, and sets out the requirement for all

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

- electricity suppliers to become parties to and thereafter to comply with that document;
- b) add a duty to cooperate with the Authority in delivery of a significant code review into standard condition 11;
 - c) include definitions of new terms where appropriate.
6. Any representations with respect to the proposed licence modification must be made on or before **16 November 2018** to: Jon Dixon, Office of Gas and Electricity Markets, 10 South Colonnade Canary Wharf London E14 4PU9, or preferably by email to switchingprogramme@ofgem.gov.uk.
 7. 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.
 8. If we decide to make the proposed modification, it will take effect not less than 56 days after the decision is published.

Rachel Clark,
Programme Director, Switching Programme
Duly authorised on behalf of the Gas and Electricity Markets Authority

15 October 2018

Condition 1: Definitions for standard conditions

Modify:

"Industry Codes" means any and all of the following:

- (a) the Balancing and Settlement Code;
- (b) the Connection and Use of System Code
- (c) the Distribution Code;
- (d) the Distribution Connection and Use of System Agreement;
- (e) the Grid Code; ~~and~~
- (f) the Master Registration Agreement; and
- (g) the Retail Energy Code.

"Retail Energy Code" means the Retail Energy Code designated by the Authority in accordance with standard condition 11B (Retail Energy Code) of the licensee's Electricity Supply Licence

Condition 11: Compliance with Code

Insert:

Duty to cooperate

11.13 The licensee will cooperate, as necessary, with the Authority and/or any person(s) appointed by the Authority or appointed pursuant to a direction of the Authority, to undertake any planning, project assurance and/or coordination/systems integration in order to give full effect to the conclusions of a "significant code review".

11.14 Cooperation for the purposes of condition 11.13 may include but not be limited to:

- a) the sharing of such information as reasonable, and constructive participation in industry engagement in order to undertake appropriate planning of changes to IT systems or industry standard operational processes system changes pursuant to the conclusions of a significant code review;
- b) the provision of such data as may be identified and reasonably requested in order to undertake testing and/or the population of any new central systems;
- c) the preparation and cleansing of such data as may reasonably be requested in order to facilitate live operation of the new central system;
- d) the provision of test scripts and results of any testing as may be requested by any person appointed to assure the success of any testing;
- e) all reasonable steps to:
 - i) meet key programme milestones for the completion of any action(s) assigned to the licensee;
 - ii) adhere to any remedial plan put in place to address any issues, delays or slippage that may impact the licensee's ability to meet programme milestones, to the extent that failure to do so may jeopardise the successful and timely implementation of the programme;

- iii) identify any dependencies that the licensee may have upon agents or other third-parties and secure the necessary support from such parties; and,
- iv) promptly escalate and/or resolve any disputes that if unresolved may jeopardise the fulfilment of these obligations.

11.15 For the purposes of condition:

Significant Code Review means a review of matters which the Authority considers are likely to relate to one or more of the documents referred to in this condition, or to which the licensee is required under this licence to be a party, and concerning which the Authority has issued a notice to the parties stating that the review will constitute a significant code review.

Insert:

Condition 11B: Retail Energy Code

11B.1 The licensee must be a party to, comply with and maintain the Retail Energy Code (for this condition only, the "REC"), as may be designated by the Authority for the purposes of this condition.

11B.2 If a Consequential Change is required, the licensee must take all reasonable steps to secure and implement, and must not take any unreasonable steps to prevent or delay, the making or implementation of that Consequential Change.

11B.3 Paragraph 11B.2 is without prejudice to:

(a) any right of appeal that the licensee may have in relation to a decision made by the Authority under the Industry Codes; and

(b) any right of approval, veto or direction that the Authority or the Secretary of State may have in relation to changes to Industry Codes.

11B.4 The licensee must take all reasonable steps to secure and implement changes to its systems, procedures and processes which are necessary to give full, timely and practical effect to any modification of the REC.

11B.5 The licensee must take all reasonable steps to ensure that the REC remains an agreement which:

(a) is designed to facilitate the achievement of the relevant objectives set out in paragraph 11B.6; and

(b) includes the matters set out in paragraph 11B.7

11B.6 The relevant objectives referred to in sub-paragraph 11B.5 (a) are:

- a) to ensure the REC operates and evolves in a manner that facilitates the achievement of its mission statement;
- b) to ensure customers interests and data is protected in the operation of the REC; and,
- c) to drive continuous improvements and efficiencies in the operation of the REC and the central systems and communication infrastructures it governs.

11B.7 The matters referred to in sub-paragraph 11B.5(b) are:

- (a) provision for enabling the REC to be modified from time to time so as to better facilitate the achievement of the relevant objectives set out in paragraph 11B.6;
- (b) provision for enabling parties to the REC, and such other persons as may be specified in the code, to appeal against a decision to implement or reject any proposed modification of it, where that modification does not require the Authority's approval, to the Authority for determination;
- (c) for the REC, and all ancillary documents and products to be published on a free to access website; and
- (d) where an appeal has been raised in respect of a modification proposal in accordance with sub-paragraph (b), provision for that modification proposal to be treated in accordance with any decision and/or direction of the Authority following that appeal.

11B.8 The REC must provide for:

- (a) a panel body, as specified in the REC (the "panel") whose functions shall include the matters required by this condition and as set out in the REC; and
- (b) a person or body, as specified in the REC, to perform the role of code manager (the "REC manager"). In addition to any powers, duties or functions set out in the REC, the REC manager shall:
 - (i) together with other code managers and/or code administrators, publish, review and (where appropriate) amend from time to time the Code of Practice approved by the Authority (any amendments to the Code of Practice are to be approved by the Authority);
 - (ii) facilitate the procedures for making a modification to the REC;
 - (iii) have regard to, and in particular (to the extent relevant) be consistent with the principles contained in, the Code of Practice; and
 - (iv) provide assistance, insofar as is reasonably practicable and on reasonable request, to parties (including, in particular, Small Participants) and, to the extent relevant, consumer representatives that request the code manager's assistance in relation to the REC including, but not limited to, assistance with:
 - a. drafting a modification proposal;
 - b. understanding the operation of the REC;
 - c. their involvement in, and representation during, the modification procedure processes (including, but not limited to, code panel and/or workgroup meetings);
 - d. accessing information relating to modification proposals and/or modifications.

and

- (c) a "performance assurance board" to conduct and administer activities identified within the REC and being appropriate to provide assurance that all participants in the REC arrangements, particularly those relating to switching activities, are suitably qualified and that the relevant standards are maintained.

11B.9 The modification procedures referred to in sub-paragraph 11B.7(a) must provide:

- (a) for a modification report to be prepared in such manner and with all such contents as specified in the REC, which shall include an assessment of the extent to which the proposed modification would better facilitate achieving the relevant objectives and a detailed explanation of the reasons for that assessment;
- (b) where the proposed modification requires Authority approval in accordance with the provisions of the REC, for the revision and resubmission of the modification report upon, and in accordance with, a direction issued to the panel by the Authority, where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal;
- (c) without prejudice to paragraph 11B.10B, that proposals for the modification of the REC falling within the scope of a significant code review may not be made during the significant code review phase, except:
 - a. where the Authority determines that the modification proposal may be made, having taken into account (among other things) the urgency of the subject matter of the proposal; or
 - b. at the direction of, or by, the Authority;
- (d) that where a modification proposal is made during a significant code review phase the panel shall:
 - (i) unless exempted by the Authority, notify the Authority as soon as practicable of:
 - 1. any representations received in relation to the relevance of the significant code review; and
 - 2. the panel's assessment of whether the proposal falls within the scope of the significant code review and its reasons for that assessment; and
 - (ii) if the Authority so directs, not proceed with the modification proposal until the significant code review phase has ended;
- (e) for proposals for the modification of the REC to be made by the licensee or the Authority (in relation only to modifications which fall within the scope of paragraph 11B.10E);
- (f) for modification proposals made by the Authority and the licensee in accordance with paragraphs 11B.9(e) and 11B.9(g)(i) respectively which fall within the scope of paragraph 11B.10E:
 - (i) to be accepted into the REC modification procedures by the REC Manager and/or REC Panel;
 - (ii) where they are raised by the licensee, not to be withdrawn without the Authority's prior consent; and
 - (iii) to proceed in accordance with paragraph 11B.9(g);
- (g) for compliance by the licensee and (where applicable) the panel with any direction(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a modification proposal which falls within the scope of paragraph 11B.10E) for:
 - (i) the licensee to raise a modification proposal(s); and/or
 - (ii) the completion of each of the procedural steps outlined in the direction, to the extent that they are relevant; and/or
 - (iii) the implementation of a modification.

11B.10 If, within twenty eight (28) days after the Authority has published its significant code review conclusions:

- (a) the Authority issues directions to the licensee, the licensee shall comply with those directions and shall treat the significant code review phase as ended;
- (b) the Authority issues to the licensee a statement that no directions under sub-paragraph (a) will be issued in relation to the REC, the licensee shall treat the significant code review phase as ended;
- (ba) the Authority raises a modification proposal in accordance with paragraph 11B.9(e), the licensee shall treat the significant code review phase as ended;
- (bb) the Authority issues a statement that it will continue work on the significant code review, the licensee shall treat the significant code review phase as continuing until it is brought to an end in accordance with paragraph 11B.10A;
- (c) neither directions under sub-paragraph (a) nor a statement under sub-paragraph (b) or (bb) have been issued, nor a modification proposal under sub-paragraph (ba) has been made, the significant code review phase will be deemed to have ended.

The Authority's published conclusions and directions to the licensee will not fetter any voting rights of REC parties or members of the panel, or the procedures informing the modification report described at sub-paragraph 11B.9(a).

11B.10A Where the Authority issues a statement under sub-paragraph 11B.10(bb) and/or a direction in accordance with paragraph 11B.10D, the significant code review phase will be deemed to have ended when:

- (a) the Authority issues a statement that the significant code review phase has ended;
- (b) one of the circumstances in sub-paragraphs 11B.10(a) or (ba) occurs (irrespective of whether such circumstance occurs within twenty-eight (28) days after the Authority has published its significant code review conclusions); or
- (c) the Authority makes a decision consenting, or otherwise, to the modification of the REC following the submission of the modification report prepared pursuant to sub-paragraph 11B.9(c) a.

11B.10B Where the Authority issues a statement in accordance with sub-paragraph 11B.10(bb) and/or a direction in accordance with paragraph 11B.10D, the Authority may submit a modification proposal for a modification falling within the scope of sub-paragraph 11B.10E(b) to the panel.

11B.10C The modification procedures must provide, where the Authority submits a significant code review modification proposal to the panel in accordance with paragraph 11B.10B, for compliance with the modification procedures set out in sub-paragraphs 11B.9(a) and (b).

The Authority's published conclusions and significant code review modification proposal will not fetter any voting rights of REC parties or members of the panel, or the procedures informing the modification report described at sub-paragraph 11.9(a).

11B.10D The modification procedures must provide for modification proposals raised in accordance with sub-paragraph 11B.10(a) or 11B.9(g), or by the Authority under sub-paragraph 11B.10(ba) and which fall within the scope of paragraph 11B.10E(b), the Authority may issue a direction (a "backstop direction"), which

requires such proposal(s) and any alternatives to be withdrawn and which causes the significant code review phase to recommence.

11B.10E Modification proposals fall within the scope of this paragraph where:

- (a) the Authority reasonably considers the modifications are necessary to comply with, or implement, the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators; and/or
- (b) the modification proposal is in respect of a significant code review.

11B.11 Eligible grounds for appeal under the provisions referred to in sub-paragraph 11B.7(b) shall be that, in the opinion of the Authority:

- (a) (i) the appealing party is likely to be unfairly prejudiced by the implementation or non-implementation of that modification proposal; or
- (ii) the appeal is on the grounds that:
 - 1. in the case of implementation, the modification proposal may not better facilitate the achievement of at least one of the relevant objectives; or
 - 2. in the case of non-implementation, the modification may better facilitate the achievement of at least one of the relevant objectives; and
- (b) the appeal is not brought for reasons that are trivial or vexatious, nor does the appeal have no reasonable prospect of success.

11B.12 The procedures for the modification of the REC must provide that recommendations or decisions for or against the implementation of a modification proposal shall be made with regard to whether that modification would, as compared with the existing provisions of the REC, better facilitate the achievement of the relevant objectives.

11B.13 The procedures for the modification of the REC must be consistent with the principles set out in the Code of Practice, to the extent that they are relevant.

Interpretation

11B.14 For the purposes of this condition:

"Code of Practice" means the Code Administration Code of Practice approved by the Authority and:

- (a) developed and maintained by the code administrator(s) and/or manager(s) in existence from time to time;
- (b) amended subject to the Authority's approval from time to time; and
- (c) re-published from time to time

"Small participant" means

- (a) a supplier, or new entrant to the electricity and/or gas market in Great Britain that can demonstrate to the REC Manager that it is resource-constrained and, therefore, in particular need of assistance;
- (b) any other participant or class of participant that the code administrator considers to be in particular need of assistance; and

(c) a participant or class of participant that the Authority has notified the code administrator as being in particular need of assistance.