

**To: All holders of an electricity distribution licence**

**Electricity Act 1989  
Section 11A (2)**

**Notice of statutory consultation on a proposal to modify the standard conditions  
of all electricity distribution licences**

1. The Gas and Electricity Markets Authority ('the Authority')<sup>1</sup> proposes to modify the standard conditions of all electricity distribution licences granted or treated as granted under 6(1)(c) of the Electricity Act 1989 by amending Standard Conditions 31A-31C, 42-43 and adding Standard Condition 31D and 43B in the manner set out in Schedules 1 and 2 to this Notice.
2. We are proposing these modifications to ensure barriers are removed for technologies which can enable more market participants to provide flexibility to manage the electricity system. This will help deliver cost savings and protect security of supply for the current and future electricity system by creating greater competition in the provision of grid services. Where competitive activities are carried out by monopoly network operators, such as distribution network operators (hereafter referred to as 'licensees'), there is potential for competition to be distorted, for new market entrants to be deterred, and for network operator's incentives to invest efficiently in their networks to be affected. We want to clarify that licensees must ensure there is separation of operation of generation assets from the licensee's activities, even where such assets may be licence exempt. The new licence condition will extend these separation requirements to the operation of any unlicensed generation, including assets with capacity of less than 50MW which have previously been granted automatic exemptions as per government policy. This new licence condition ensures that the effectiveness of unbundling requirements is retained for assets below the 50MW threshold and any ownership of such generation by licensees has no potential to distort or foreclose flexibility markets. We further note that these modifications aim to ensure compliance with EU law, in particular Article 26 of the Electricity Directive which describes for the unbundling requirements for distribution system operators<sup>2</sup>. We also acknowledge the direction of future European rules on storage ownership in particular on ownership of assets with generation capability, as spelled out in the proposals of the 'Clean Energy for all Europeans' package<sup>3</sup>.
3. The effect of these proposed modifications is to ensure that licensees are legally separate from the operation of generation assets, regardless of whether they are required to have a generation licence to operate such assets. The new licence condition 31D inserted in Chapter 7 of the electricity distribution licence (see Schedule 1) will prohibit independent distribution network operators (IDNOs) from carrying out any generation activities, unless the activity is captured by an exception or the licensee has been issued with a direction. The new licence condition 43B inserted in Chapter 11 of the electricity distribution licence (see Schedule 2) will prohibit distribution network operators (DNOs) from carrying out any generation activities, unless the activity is captured by an exception or the licensee has been issued with a direction.

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

<sup>2</sup> The EU Electricity Directive can be found [here](#)

<sup>3</sup> The Commission's proposals can be found in their entirety [here](#)

4. A copy of the proposed modification/modifications and other documents referred to in this Notice have been published on our website ([www.ofgem.gov.uk](http://www.ofgem.gov.uk)). Alternatively, they are available from [foi@ofgem.gov.uk](mailto:foi@ofgem.gov.uk).
5. Any representations with respect to the proposed licence modification/modifications must be made on or before 27 October 2018 to: Chiara Redaelli, Energy Systems Transition, Systems & Networks, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or preferably by email to [flexibility@ofgem.gov.uk](mailto:flexibility@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.
7. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.

**Louise van Rensburg, Interim Deputy Director, SO and Whole System  
Duly authorized on behalf of the Gas and Electricity Markets Authority**

**28/09/2018**

## **Schedule 1 – Proposed modification of Standard Condition 31A-31D of the electricity distribution licence**

### **Condition 31A. Accounts**

#### **Provisions applying to Independent Distribution Network Operators**

31A.1 This condition and standard conditions 31B (Independence of the Distribution Business and restricted use of Confidential Information), 31C (Appointment of Compliance Officer) and 31D (Prohibition on Generating by Licensee) apply where the licensee is not a Distribution Services Provider.

#### **Keeping accounts at the disposal of the public**

31A.2 The licensee shall draw up, submit to audit and publish its annual accounts in accordance with any obligations to which it is subject under national company law.

31A.3 To the extent that the licensee is not subject to an obligation to draw up and submit to audit annual accounts under national company law, the licensee shall draw up, submit to audit and publish its annual accounts as if it were a limited liability company within the meaning of sections 1 and 3 of the Companies Act 2006.

31A.4 The licensee shall keep a copy of its annual accounts at the disposal of the public at its principal place of business.

#### **Internal accounting**

31A.5 The licensee, in its internal accounting, shall:

- (a) keep separate accounts for its distribution activities and each if any of its transmission activities as if such activities were carried out by separate undertakings, to avoid discrimination, cross-subsidisation between these activities and distortion of competition;
- (b) keep accounts, which may be consolidated, for other electricity activities not relating to transmission or distribution.
- (c) ensure that revenue from ownership of the interconnector operation of the distribution system is separately identifiable;
- (d) where appropriate, keep consolidated accounts for other non-electricity activities;
- (e) include a balance sheet and a profit and loss account for each activity in the accounts.

## Audit

- 31A.6 The licensee must at its own expense enter into a contract of appointment with an Appropriate Auditor for the completion of Agreed Upon Procedures in relation to the prohibition of cross-subsidy and discrimination generally and in particular under standard condition 31B.
- 31A.7 The contract must require that Agreed Upon Procedures are conducted in relation to each Regulatory Year and that the licensee will arrange for the Appropriate Auditor to address a report to the Authority by 31 July following the end of each Regulatory Year which states that he has, in a manner consistent with the relevant auditing standards, completed the Agreed Upon Procedures issued by the Authority in respect of the Regulatory Year under report and which sets out his findings.
- 31A.8 If the Authority is satisfied that the report referred to in paragraph 6 above demonstrates that the licensee has complied with the obligation to avoid discrimination and cross-subsidies that is specified in Article 31 of Directive 2009/72/EC of the European Parliament and the European Council of 13 July 2009 and is imposed on the licensee by the condition of this licence referred to in paragraph 6 above, the report is deemed to represent the results of an audit of that obligation, as required by the Article.

## Interpretation

- 31A.9 In this condition:

**Agreed Upon Procedures**

means procedures from time to time agreed between the Authority, the Appropriate Auditor and the licensee for the purpose of enabling the Appropriate Auditor to review and report to the Authority on matters relating to the licensee's compliance with the obligation mentioned at paragraph 7.

**Appropriate Auditor**

means:

- (a) in the case of a licensee that is a company within the meaning of section 1 of the Companies Act 2006 a person appointed as auditor under Chapter 2 of Part 16 of that Act;
- (b) in the case of any other licensee that is required by the law of a country or territory within the European Economic Area to appoint an auditor under provisions analogous to those of Chapter 2 of Part 16 of that Act, a person so appointed; and

- (c) in any other case a person who is eligible for appointment as a company auditor under Part 42 of that Act.

**National company law**

means:

- (a) in the case of a licensee that is a company within the meaning of section 1 of the Companies Act 2006, that Act;
- (b) in the case of any other licensee that is required by the law of a country or territory within the European Economic Area to comply with obligations to draw up, audit and publish annual accounts, that law.

## **Condition 31B. Independence of the Distribution Business and restricted use of Confidential Information**

31B.1 This condition applies where the licensee is not a Distribution Service Provider but is part of a Vertically Integrated undertaking.

### **Licensee's obligations**

- 31B.2 The licensee must put in place and at all-time maintain managerial and operational systems that prevent any Relevant ~~Licence Holder~~ Undertaking from having access to Confidential Information except and to the extent that such information:
- (a) is made available on an equal basis to any Electricity Supplier, gas supplier, or gas shipper;
  - (b) is referable to a Customer who at the time to which the information relates was a Customer of the Relevant ~~Licence Holder~~ Undertaking; or
  - (c) is of a type that has been confirmed by the Authority in Writing as corporate information.

### **Compliance Statement must always be in place**

- 31B.3 Except with the Authority's consent, the licensee must at all times have in place a Compliance Statement, approved by the Authority, that describes the practices, procedures, and systems which the licensee has adopted (or intends to adopt) to ensure compliance with paragraph 2.
- 31B.4 If the Authority does not direct the licensee to amend the Compliance Statement within 60 days of receiving it, the statement is to be treated as approved by the Authority.
- 31B.5 The licensee must take all reasonable steps to ensure that it complies with the terms of the Compliance Statement in place under this condition.

### **Specific contents of the Compliance Statement**

- 31B.6 The Compliance Statement must, in particular, set out how the licensee will:
- (a) maintain the full managerial and operational independence of the Distribution Business from any Relevant ~~Licence Holder~~ Undertaking;
  - (b) maintain the branding of the Distribution Business so that it is fully independent from the branding used by any Relevant ~~Licence Holder~~ Undertaking; and
  - (c) manage the transfer of employees from the Distribution Business to any Relevant ~~Licence Holder~~ Undertaking.

- 31B.7 The Compliance Statement must also ensure that any arrangements to which the licensee is party that fall within any of the descriptions given in paragraph 8 are such as to prevent any breach of the requirements for paragraph 2.
- 31B.8 The arrangements referred to in paragraph 7 are those that enable any Relevant Undertaking, or any person engaged in or in respect of the activities of such a Relevant Licence Holder Undertaking, to have any use of or access to:
- (a) premises or parts of premises occupied by persons engaged in, or in respect of, the management or operation of the Distribution Business;
  - (b) systems for recording, processing, or storing data to which persons engaged in, or in respect of, the management or operation of the Distribution Business also have access;
  - (c) equipment, facilities, or property employed for the management or operation of the Distribution Business; and
  - (d) the services of any persons who are (whether or not as their principal occupation) engaged in, or in respect of, the management or operation of the Distribution Business.

#### **Revision and publication of Compliance Statement**

- 31B.9 The licensee may, with the Authority's approval, revise a Compliance Statement prepared in accordance with paragraph 3.
- 31B.10 The licensee must publish a copy of every Compliance Statement prepared in accordance with paragraph 3 (or revised in accordance with paragraph 9) on its Website (if it has one) within 21 days of its approval by the Authority.

#### **Interpretation**

- 31B.11 In this condition:

**Confidential Information** means information relating to, or derived from, the Distribution Business that is not published or otherwise legitimately in the public domain.

**Relevant Licence Holder** means the holder of:

- (a) a Supply Licence; or
- (b) a gas supply licence; or
- (c) a gas shipper licence; or
- (d) an electricity generation licence;

that is also an Affiliate or a Related Undertaking of the licensee.

**Vertically Integrated Undertaking**

means an electricity undertaking or a group of electricity undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform in the European Economic Area at least one of the functions of transmission or distribution, and perform in the European Economic Area at least one of the functions of generation or supply of electricity. Terms within this definition shall have the meaning given to them by the Directive.

**Relevant Undertaking**

means either a Relevant Licence Holder, or a Relevant Exemption Holder.

**Relevant Exemption Holder**

means a person who:

(a) carries out the activity specified in Section 4(1)(a) of the Act,

(b) is authorised to do so by an exemption pursuant to Section 5 of the Act, and

(c) is an Affiliate or a Related Undertaking of the licensee.

but does not include a person who at the relevant time benefits, and only to the extent that person so benefits, from an exception under condition 31D.1.



## **Condition 31C. Appointment of Compliance Officer**

### **Application to Vertically Integrated Undertakings**

31C.1 This condition applies where the licensee is not a Distribution Services Provider but is part of a Vertically Integrated Undertaking.

#### **Purpose of appointment**

31C.2 The licensee must ensure, following consultation with the Authority, that a competent person (who is to be known as the Compliance Officer) is appointed for the purpose of facilitating the licensee's compliance with the Relevant Obligations.

#### **Appropriate tasks for the Compliance Officer**

31C.3 The licensee must at all times ensure that the Compliance Officer is engaged for the performance of such duties and tasks as the licensee considers it appropriate to assign to him for the purpose specified at paragraph 2.

31C.4 Those duties and tasks for the Compliance Officer must include:

- (a) providing relevant advice and information to the licensee for the purpose of facilitating its compliance with the Relevant Obligations;
- (b) monitoring the effectiveness of the practices, procedures, and systems adopted by the licensee in accordance with the Compliance Statement required under paragraph 3 of standard condition 31B (Independence of the Distribution Business and restricted use of Confidential Information);
- (c) advising whether, to the extent that the implementation of such practices, procedures, and systems requires the co-operation of any other person, they are designed so as reasonably to allow the required co-operation;
- (d) investigating any complaint or representation made available to him in accordance with paragraph 6;
- (e) recommending and advising on the remedial action that any such investigation has demonstrated to be necessary or desirable;
- (f) providing relevant advice and information to the licensee for the purpose of ensuring its effective implementation of the practices, procedures, and systems referred to at sub-paragraph (b), and of any remedial action recommended in accordance with sub-paragraph (e); and
- (g) reporting annually to the licensee's directors about his activities during the period covered by the report, including the fulfilment of any other duties assigned to him by the licensee under this condition.

#### **Licensee's duties to the Compliance Officer**

- 31C.5 The licensee must ensure that the Compliance Officer is sufficiently independent to comply with the requirements of Article 26(2)(d) of the Directive and that he:
- (a) is provided with such staff, premises, equipment, facilities, and other resources; and
  - (b) has such access to the licensee's premises, systems, information, and documentation,
- as he might reasonably expect to require for the fulfilment of the duties and tasks assigned to him
- 31C.6 The licensee must give the Compliance Officer a copy of any complaint or representation that it receives from any person about a matter arising under or because of the Relevant Obligations.

#### **Licensee's own Compliance Report**

- 31C.7 The licensee must, ~~as soon as is reasonably practicable after receiving each annual report of the Compliance Officer under paragraph 3(g),~~ produce a report ("the Compliance Report"):
- (a) about its compliance during the relevant year with the Relevant Obligations; and
  - (b) about its implementation of the practices, procedures, and systems adopted in accordance with the Compliance Statement required under paragraph 3 of standard condition 31B.
- 31C.8 The Compliance Report produced in accordance with paragraph 6 must, in particular, do the things described in paragraphs 9 to 11.
- 31C.9 It must detail the activities of the Compliance Officer during the relevant year.
- 31C.10 It must refer to such other matters as are or may be appropriate in relation to the licensee's implementation of the practices, procedures, and systems adopted in accordance with the Compliance Statement required under paragraph 3 of standard condition 31B.
- 31C.11 It must set out the details of any investigations conducted by the Compliance Officer, including:
- (a) the number, type, and source of the complaints or representation on which those investigations were based;
  - (b) the outcome of the investigations; and
  - (c) any remedial action taken by the licensee following them.

#### **Publication of Compliance Report**

31C.12 The licensee must:

- (a) ~~give~~ provide the Authority a copy of every Compliance Report in accordance with the Regulatory Instructions & Guidance (RIGs) document issued under standard condition 46 (Regulatory Instructions and Guidance); and
- (b) publish each such report on, and in a way that is readily accessible from, its Website (if it has one).

### Interpretation

31C.13 For the purposes of this condition, Relevant Obligations means:

- (a) the requirements of standard condition 31B (Independence of Distribution Business and restricted use of Confidential Information);

and, so far as they relate to relationships with Relevant Licence Holders within the meaning of standard condition 31B, the requirements of:

- (b) paragraph 9 of standard condition 4 (No abuse of the licensee's special position) (which prohibits cross-subsidy between the licensee's Distribution Business and any other business of the licensee or of an Affiliate or Related Undertaking of the licensee); and
- (c) Paragraph 1 of standard condition 19 (Prohibition of discrimination under Chapters 4 and 5) (which prohibits the licensee from discriminating between any person or class or classes of persons when providing Use of System or connections or carrying out works for the purposes of connection); and
- (d) the requirements of standard condition 31D (Prohibition on Generating by Licensee).

## **Condition 31D. Prohibition on Generating by Licensee**

### **Part A: Prohibition on Licensee engaging in the activity of electricity generation**

31D.1 The licensee must not carry out the activity specified in Section 4(1)(a) of the Act, except where the licensee:

- (a) operates assets as part of island networks solely for the purpose of ensuring security of supply of that island, and those assets form part of a facility originally commissioned prior to this licence condition taking effect (known as Category A exception); or
- (b) owns and operates assets, which are situated on sites on which the licensee carries out Distribution Business, for purposes of security of supply, system resilience, or energy management (known as Category B exception); or
- (c) has been issued a direction from the Authority under 31D.2.

31D.2 A direction may be given where the Authority considers the licensee to have satisfied the following criteria:

- (a) taken reasonable steps to obtain a market-based solution prior to making an application for a direction under this section; and
- (b) justified that a licensee-operated asset provides the most economic and efficient solution; and
- (c) put in place arrangements that minimise the risk of discrimination or distortion of current and future markets.

31D.3 Any direction given under 31D.2 may be given to such an extent, for such a period of time and subject to such conditions as may be specific in the direction.

31D.4 The Licensee must, if directed to do so by the Authority, publish details of assets subject to any exception in standard licence condition 31D.1.

#### **Part B: The Prohibition on Generating Guidance (POGG)**

31D.5 The Authority will issue, and may from time to time revise, guidance regarding the manner in which it will exercise its powers under 31D.2 and 31D.4, and such guidance will be known as the Prohibition on Generating Guidance (POGG).

31D.6 The guidance issued in accordance with 31D.5 may, in particular, set out:

- (a) detail on the exceptions described in 31D.1;
- (b) detail on the criteria against which applications for a direction will be assessed as referred to under 31D.2;
- (c) the process and procedures that will be in place for the assessment and issuing of a direction under 31D.2;
- (d) any other matter relating to the process of granting of a direction under this 31D.2;
- (e) the circumstances in which a direction may be issued under 31D.4; and
- (f) the details to be published pursuant to a direction made under 31D.4.

31D.7 Where the POGG imposes any obligations on the licensee, the obligation has effect as if it were a part of this condition.

#### **Part C: Procedure for issuing and revising the POGG**

31D.8 Before issuing the POGG under this condition, the Authority, by Notice given to the licensee, will:

- (a) state that it proposes to issue the POGG, and specify the date on which it proposes that the document should take effect;
- (b) set out the text of the POGG and the Authority's reasons for proposing to issue it; and

(c) specify the date (which must not be less than a period of 28 days from the date of the Notice) by which representations with respect to the proposed POGG may be made.

31D.9 The Authority will consider any representations that are duly made and not withdrawn.

31D.10 The requirements of paragraphs 31D.8 and 31D.9 may be satisfied by action taken before, as well as action taken after, the commencement of this condition.

31D.11 In paragraph 31D.8, "issuing the POGG" includes issuing any revision of the document, and the procedure provided for under the paragraph will apply to any such revision.

## **Schedule 2 – Proposed modification of Standard Conditions 42- 43B of the electricity distribution licence**

### **Condition 42. Independence of the Distribution Business and restricted use of Confidential Information**

#### **Licensee's obligations**

- 42.1 The licensee must put in place and at all times maintain managerial and operational systems that prevent any Relevant ~~License Holder~~ Undertaking from having access to Confidential Information except and to the extent that such information:
- (a) is made available on an equal basis to any Electricity Supplier, gas supplier, or gas shipper;
  - (b) is referable to a Customer who at the time to which the information relates was a Customer of the Relevant ~~License Holder~~ Undertaking; or
  - (c) is of a type that has been confirmed by the Authority in Writing as corporate information.

#### **Compliance Statement must always be in place**

- 42.2 Except with the Authority's consent, the licensee must at all times have in place a Compliance Statement, approved by the Authority, that describes the practices, procedures, and systems which the licensee has adopted (or intends to adopt) to ensure compliance with paragraphs 42.1.
- 42.3 If the Authority does not direct the licensee to amend the Compliance Statement within 60 days of receiving it, the statement is to be treated as approved by the Authority.
- 42.4 The licensee must take all reasonable steps to ensure that it complies with the terms of the Compliance Statement in place under this condition.

#### **Specific contents of the Compliance Statement**

- 42.5 The Compliance Statement must, in particular, set out how the licensee will:
- (a) maintain the full managerial and operational independence of the Distribution Business from any Relevant ~~License Holder~~ Undertaking;
  - (b) maintain the branding of the Distribution Business so that it is fully independent from the branding used by any Relevant ~~License Holder~~ Undertaking; and
  - (c) manage the transfer of employees from the Distribution Business to any Relevant ~~License Holder~~ Undertaking.
- 42.6 The Compliance Statement must also ensure that any arrangements to which the licensee is party that fall within any of the descriptions given in paragraph 42.7 are such as to prevent any breach of the requirements of paragraphs 42.1.

- 42.7 The arrangements referred to in paragraph 42.6 are those that enable any Relevant Licence Holder Undertaking, or any person engaged in or in respect of the activities of such a Relevant Licence Holder Undertaking, to have any use of or access to:
- (a) premises or parts of premises occupied by persons engaged in, or in respect of, the management or operation of the Distribution Business;
  - (b) systems for recording, processing, or storing data to which persons engaged in, or in respect of, the management or operation of the Distribution Business also have access;
  - (c) equipment, facilities, or property employed for the management or operation of the Distribution Business; and
  - (d) the services of any persons who are (whether or not as their principal occupation) engaged in, or in respect of, the management or operation of the Distribution Business.

#### **Revision and publication of Compliance Statement**

- 42.8 The licensee may, with the Authority's approval, revise a Compliance Statement prepared in accordance with paragraph 42.2.
- 42.9 The licensee must publish a copy of every Compliance Statement prepared in accordance with paragraph 42.2 (or revised in accordance with paragraph 42.8) on its Website (if it has one) within 21 days of its approval by the Authority.

#### **Interpretation**

- 42.10 In this condition:

**Confidential Information** means information relating to, or derived from, the Distribution Business that is not published or otherwise legitimately in the public domain.

**Relevant Undertaking** means either a Relevant Licence Holder, or a Relevant Exemption Holder.

**Relevant Licence Holder** means any holder of:

- (a) a Supply Licence; or
- (b) a gas supply licence; or
- (c) a gas shipper licence; or
- (d) an electricity generation licence,

that is also an Affiliate or a Related Undertaking of the licensee.

**Relevant Exemption Holder** means a person who:

- (a) carries out the activity specified in Section 4(1)(a) of the Act, and
- (b) is authorised to do so by an exemption pursuant to Section 5 of the Act, and
- (c) is an Affiliate or a Related Undertaking of the licensee.

but does not include a person who at the relevant time benefits, and only to the extent that person so benefits, from an exception under condition 43B.1.



## **Condition 43. Appointment of Compliance Officer**

### **Purpose of appointment**

43.1 The licensee must ensure, following consultation with the Authority, that a competent person (who is to be known as the Compliance Officer) is appointed for the purpose of facilitating the licensee's compliance with the Relevant Requirements.

### **Appropriate tasks for the Compliance Officer**

43.2 The licensee must at all times ensure that the Compliance Officer is engaged for the performance of such duties and tasks as the licensee considers it appropriate to assign to him for the purpose specified at paragraph 43.1.

43.3 Those duties and tasks for the Compliance Officer must include:

- (a) providing relevant advice and information to the licensee for the purpose of facilitating its compliance with the Relevant Requirements;
- (b) monitoring the effectiveness of the practices, procedures, and systems adopted by the licensee in accordance with the Compliance Statement required under paragraph 2 of standard condition 42 (Independence of the Distribution Business and restricted use of Confidential Information);
- (c) advising whether, to the extent that the implementation of such practices, procedures, and systems requires the co-operation of any other person, they are designed so as reasonably to allow the required co-operation;
- (d) investigating any complaint or representation made available to him in accordance with paragraph 43.5;
- (e) recommending and advising on the remedial action that any such investigation has demonstrated to be necessary or desirable;
- (f) providing relevant advice and information to the licensee for the purpose of ensuring its effective implementation of the practices, procedures, and systems referred to at sub-paragraph (b), and of any remedial action recommended in accordance with sub-paragraph (e); and
- (g) reporting annually to the licensee's directors about his activities during the period covered by the report, including the fulfilment of any other duties assigned to him by the licensee under this condition.

### **Licensee's duties to the Compliance Officer**

43.4 The licensee must ensure that the Compliance Officer is sufficiently independent to comply with the requirements of Article 26(2)(d) of the Directive and that he:

- (a) is provided with such staff, premises, equipment, facilities, and other resources; and
- (b) has such access to the licensee's premises, systems, information, and documentation,

as he might reasonably expect to require for the fulfilment of the duties and tasks assigned to him.

43.5 The licensee must give the Compliance Officer a copy of any complaint or representation that it receives from any person about a matter arising under or because of the Relevant Requirements.

#### **Licensee's own Compliance Report**

43.6 The licensee must, ~~as soon as is reasonably practicable after receiving each annual report of the Compliance Officer under paragraph 43.3(g),~~ produce a report ("the Compliance Report"):

- (a) about its compliance during the relevant year with the Relevant Requirements; and
- (b) about its implementation of the practices, procedures, and systems adopted in accordance with the Compliance Statement required under paragraph 2 of standard condition 42.

43.7 The Compliance Report produced in accordance with paragraph 43.6 must, in particular, do the things described in paragraphs 43.8 to 43.10.

43.8 It must detail the activities of the Compliance Officer during the relevant year.

43.9 It must refer to such other matters as are or may be appropriate in relation to the licensee's implementation of the practices, procedures, and systems adopted in accordance with the Compliance Statement required under paragraph 2 of standard condition 42.

43.10 It must set out the details of any investigations conducted by the Compliance Officer, including:

- (a) the number, type, and source of the complaints or representations on which those investigations were based;
- (b) the outcome of the investigations; and
- (c) any remedial action taken by the licensee following them.

#### **Publication of Compliance Report**

43.11 The licensee must:

- (a) ~~give~~ provide the Authority a copy of every Compliance Report in accordance with the Regulatory Instructions & Guidance (RIGs) document issued under standard condition 46 (Regulatory Instructions and Guidance); and
- (b) publish each such report on, and in a way that is readily accessible from, its Website (if it has one).

#### **Interpretation**

43.12 For the purposes of this condition, **Relevant Requirements** means:

- (a) the requirements of standard condition 42 (Independence of Distribution Business and restricted use of Confidential Information);

and, so far as they relate to relationships with Relevant Licence Holders within the meaning of standard condition 42, the requirements of:

- (b) paragraph 9 of standard condition 4 (No abuse of the licensee’s special position) (which prohibits cross-subsidy between the licensee’s Distribution Business and any other business of the licensee or of an Affiliate or Related Undertaking of the licensee);
- (c) paragraph 1 of standard condition 19 (Prohibition of discrimination under Chapters 4 and 5) (which prohibits the licensee from discriminating between any person or class or classes of persons when providing Use of System or connections or carrying out works for the purposes of connection); ~~and~~
- (d) paragraphs 1 and 3 separately of standard condition 41 (Prohibition of discrimination under Chapter 9) (which prohibit the licensee from discriminating between any person or class or classes of persons when providing, respectively, Legacy Metering Equipment and Data Services); ~~and~~ and
- (e) the requirements of standard condition 43B (Prohibition on Generating by Licensee).

### **Condition 43A. Requirement for sufficiently independent directors**

- 43A.1 Subject to paragraph 43A.11, except and to the extent that the Authority consents otherwise, the licensee must ensure that at all times after a date which is the later of:
- (a) 1 April 2014; and
  - (b) 12 months after this condition comes into effect in respect of the licensee,
- it has at least two non-executive directors who meet the criteria set out in paragraphs 43A.2, 43A.3, and 43A.5 below. In this condition such directors are referred to as “sufficiently independent directors”.
- 43A.2 A sufficiently independent director must:
- (a) be a natural person; and
  - (b) in the reasonable opinion of the licensee, have the skills, knowledge, experience, and personal qualities necessary to perform effectively as a non-executive director of the licensee; and
  - (c) not have any executive duties within the Distribution Business.
- 43A.3 Except and to the extent that the Authority consents otherwise, and subject to paragraph 43A.4, a sufficiently independent director must not be, and must not have been during the 12 months before his appointment as a director of the licensee or the coming into force of this condition (whichever is the later):
- (a) an employee of the licensee; or
  - (b) a director or employee of an Associate of the licensee.
- 43A.4 The reference to ‘director’ in sub-paragraph 43A.3(b) does not include appointment as a non-executive director of:

- (a) an Associate of the licensee that is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence;
- (b) a wholly-owned subsidiary of the licensee that has been incorporated by it solely for the purpose of raising finance for a Permitted Purpose (as that term is defined in Standard condition 1 (Definitions for the standard conditions)); or
- (c) a Qualifying Group Company.

43A.5 A sufficiently independent director must not:

- (a) have, or have had during the 12 months before his appointment as a director or the coming into force of this condition (whichever is the later), any material business relationship with the licensee or any Associate of the licensee;
- (b) hold a remit to represent the interests of any particular shareholder or group of shareholders of the licensee or the interests of any Associate of the licensee; or
- (c) receive remuneration from the licensee or any Associate of the licensee apart from a director's fee and reasonable expenses.

43A.6 For the purposes of sub-paragraphs 43A.5(a) and 43A.5(c) respectively:

- (a) the holding of a small number of shares or associated rights shall not, of itself, be considered a material business relationship; and
- (b) the receipt or retention of any benefit accrued as a result of prior employment by or service with the licensee or any Associate of the licensee shall not be considered to be remuneration.

43A.7 The licensee must notify the Authority of the names of its sufficiently independent directors within 14 days of the later of the two dates referred to in paragraph 43A.1 and must notify the Authority within 14 days where any new directors are appointed to fulfil the obligation in paragraph 43A.11 of this condition.

43A.8 The terms of appointment of each sufficiently independent director must include a condition stipulating that both the licensee and the appointee will use their best endeavours to ensure that the appointee remains sufficiently independent during his term of office, having particular regard to the criteria set out in paragraphs 43A.2, 43A.3 and 43A.5.

43A.9 A term of appointment for a sufficiently independent director may not be for longer than eight years, but an individual may be reappointed thereafter provided that he continues to meet the criteria set out in paragraphs 43A.2, 43A.3, and 43A.5.

43A.10 The licensee must notify the Authority in Writing within 14 days if any sufficiently independent director is removed from office or resigns, giving reasons for the removal or (to the extent that they are known to the licensee) the resignation. For the purposes of this requirement, the reasons for a resignation may, if appropriate, be stated to be personal reasons.

43A.11 If at any time the licensee has fewer than two sufficiently independent directors because of a removal or resignation or other reason (including death or

incapacity), the licensee must use its reasonable endeavours to ensure that a new director is, or new directors are, appointed to fulfil the obligation in paragraph 43A.1 as soon as is reasonably practicable to bring the number of sufficiently independent directors up to at least two.

## Interpretation

43A.12 In this condition:

**Associate** means:

- (a) an Affiliate or Related undertaking of the licensee;
- (b) an Ultimate Controller of the licensee;
- (c) a Participating Owner of the licensee; or
- (d) a Common Control Company.

**Common Control Company** means any company, any of whose Ultimate Controllers (applying the definition set out in standard condition 1 (Definitions for the standard conditions) but substituting that company for the licensee) is also an Ultimate Controller of the licensee.

**Participating Owner** – For the purposes of the definition of Associate above, a person is subject to a Participating Interest by another person (a **Participating Owner**) if:

- (a) that other person holds a Participating Interest in the person; or
- (b) the person is subject to a Participating Interest by a person who is himself subject to a Participating Interest by that other person.

**Participating Interest** has the meaning given in section 421A of the Financial Services and Markets Act 2000.

**Qualifying Group Company** means:

- (a) an immediate parent company of the licensee that holds 100% of the shares of the licensee and no other shares except for shares in one or more wholly-owned subsidiaries, each of which is the holder of a gas transporter licence or an electricity transmission licence or an electricity distribution licence;
- (b) the parent company of a group whose other members may only include :
  - (i) a company meeting the criteria set out in sub-paragraph (a) or a subsidiary of such a company, of the type referred to in that sub-paragraph; and
  - (ii) intermediate holding companies between the parent company concerned and a company meeting the criteria set out in sub-paragraph (b)(i) provided that such intermediate holding companies:
    - (aa) have no shareholders other than the parent company concerned or another intermediate holding company; and

(bb) hold no shares other than shares in a company meeting the criteria set out in sub-paragraph (a) or shares in another intermediate holding company;

and

(c) intermediate holding companies meeting the criteria set out in sub-paragraph (b)(ii).

## **Condition 43B. Prohibition on Generating by Licensee**

### **Part A: Prohibition on Licensee engaging in the activity of electricity generation**

43B.1 The licensee must not carry out the activity specified in Section 4(1)(a) of the Act, except where the licensee:

- (a) operates assets situated on an island solely for the purpose of ensuring security of supply of that island, and those assets form part of a facility originally commissioned prior to this licence condition taking effect (known as Category A exception); or
- (b) owns and operates assets, which are situated on sites on which the licensee carries out Distribution Business, for purposes of security of supply, system resilience, or energy management (known as Category B exception); or
- (c) has been issued a direction from the Authority under 43B.2.

43B.2 A direction may be given where the Authority considers the licensee to have satisfied the following criteria:

- (a) taken reasonable steps to obtain a market-based solution prior to making an application for a direction under this section; and
- (b) justified that a licensee-operated asset provides the most economic and efficient solution; and
- (c) put in place arrangements that minimise the risk of discrimination or distortion of current and future markets.

43B.3 Any direction given under 43B.2 may be given to such an extent, for such a period of time and subject to such conditions as may be specific in the direction.

43B.4 The Licensee must, if directed to do so by the Authority, publish details of assets subject to any exception in standard licence condition 43B.1.

### **Part B: The Prohibition on Generating Guidance (POGG)**

43B.5 The Authority will issue, and may from time to time revise, guidance regarding the manner in which it will exercise its powers under 43B.2 and 43B.4, and such guidance will be known as the Prohibition on Generating Guidance (POGG).

43B.6 The guidance issued in accordance with 43B.5 may, in particular, set out:

- (a) detail on the exceptions described in 43B.1;
- (b) detail on the criteria against which applications for a direction will be assessed as referred to under 43B.2;
- (c) the process and procedures that will be in place for the assessment and issuing of a direction under 43B.2;
- (d) any other matter relating to the process of granting of a direction under 43B.2;
- (e) the circumstances in which a direction may be issued under 43B.4; and
- (f) the details to be published pursuant to a direction made under 43B.4.

43B.7 Where the POGG imposes any obligation on the licensee, the obligation has effect as if it were a part of this condition.

**Part C: Procedure for issuing and revising the POGG**

43B.8 Before issuing the POGG under this condition, the Authority, by Notice given to the licensee, will:

- (a) state that it proposes to issue the POGG, and specify the date on which it proposes that the document should take effect;
- (b) set out the text of the POGG and the Authority's reasons for proposing to issue it; and
- (c) specify the date (which must not be less than a period of 28 days from the date of the Notice) by which representations with respect to the proposed POGG may be made.

43B.9 The Authority will consider any representations that are duly made and not withdrawn.

43B.10 The requirements of paragraphs 43B.8 and 43B.9 may be satisfied by action taken before, as well as action taken after, the commencement of this condition.

43B.11 In paragraph 43B.8, "issuing the POGG" includes issuing any revision of the document, and the procedure provided for under the paragraph will apply to any such revision.