

Annex 3. EU Exit – Notice of proposed licence modifications to the licence conditions of the Electricity Supply Licence

To: All holders of an Electricity Supply Licence

Electricity Act 1989

Section 11A(2)

Notice of statutory consultation on a proposal to modify the standard conditions of all Electricity Supply Licences.

1. The Gas and Electricity Markets Authority (the Authority) 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 by amending Standard Licence Conditions under section 11A(1)(b):
 - SLC1 (Definitions for standard conditions)
 - SLC5 (Provision of Information to Authority and data retention)set out in Annex 3.1.a and 3.1.b to this Notice.
2. The modifications we propose to make are to reflect the changes in the legislative framework that will be implemented in the event that the United Kingdom (UK) leaves the European Union (EU) without a deal.
3. The effect of these proposed modifications is to ensure that the references in the licence to EU law (e.g. Directives, Regulations and Commission decisions) shall be read as references to such EU law as it had effect immediately before exit day subject to any further amendments as may be contained in statutory instruments made under the European Union (Withdrawal) Act 2018. As far as possible, the modifications do not seek to change the current obligations and duties of licensees, nor do they seek to change the current policy positions as reflected in the licence conditions.
4. The proposed modifications and the reasons why they are proposed are stated in Annex 3.1.a to this Notice. The effect of the proposed changes is set out in paragraph 3 of this Notice. Further information concerning the proposed modifications is contained in the letter entitled 'Preparing for EU Exit: statutory consultation on consequential licence modifications in the event the UK leaves the EU without a deal' which can be found at www.ofgem.gov.uk.
5. Any representations with respect to the proposed licence modifications must be made on or before 15 February 2019 to: Heather Stewart, Office of Gas and Electricity Markets, 10 South Colonnade, Canary Wharf, London, E14 4PU or by email to EUExit@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 However, if you do not wish your response to be made public then please clearly mark it as not for publication.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.

Cathryn Scott
Director, Wholesale Markets & Commercial

Duly authorised on behalf of the
Gas and Electricity Markets Authority

14 January 2019

Annex 3.1.a. Electricity Supply Standard Conditions Modification Table

Standard Licence condition	Current wording	Proposed change	Reasons for change
1.3	Directive means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(a);	Directive means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(a) <u>as it has effect immediately before Exit Day as read with the modifications set out in the Act;</u>	The licence refers to the Directive in a number of conditions. This proposal will ensure that the references to the Directive are to be interpreted on the basis of the Directive as it has effect immediately before Exit Day as read with the modifications inserted into section 5B of the Electricity Act 1989 by regulation 39 of the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 ¹ (the “Regulations”).
1.3	New definition	<u>“Exit Day” has the same meaning as that given in section 20(1) of the European Union (Withdrawal) Act 2018;</u>	This new definition is required to give effect to the revised definition of “Directive”.
5.6	With respect to transactions in electricity derivatives, the obligation to keep the Relevant Data shall only apply once the European Commission has adopted guidelines pursuant to paragraph 4	With respect to transactions in electricity derivatives, the obligation to keep the Relevant Data shall only apply once the European Commission <u>Authority</u> has adopted guidelines pursuant to paragraph 4 of Article 40 of the Directive, <u>to be read</u>	Proposed amendment is required to reflect the fact that the guidelines will be adopted by the Authority rather than the European Commission post EU exit.

¹The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 were published in draft on 17th December 2018 (<https://assets.publishing.service.gov.uk/media/5c17d12140f0b60c70c4ba79/Regulations.pdf>) and have been laid in draft before the sifting committees of both Houses of Parliament. The modifications that are proposed to the licence are on the assumption that the draft Regulations will be made and come into force in their published format before any proposed licence modification is to take effect. Cross references to the Regulations reflect the numbering in the published draft as at the date of this notice.

	of Article 40 of the Directive.	<u>as if the references to the European Commission are references to the Authority</u>	
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Annex 3.1.b. Electricity Supply Standard Conditions Change Marked Licence Text

We have included the sections of the licence conditions we propose to remove or amend below. Deletions are shown in strike through and new text is double underlined.

Standard conditions of Electricity Supply Licence

Condition 1. Definitions for standard conditions

Directive means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(a) as it has effect immediately before Exit Day as read with the modifications set out in the Act;

Exit Day has the same meaning as that given in section 20(1) of the European Union (Withdrawal) Act 2018;

Condition 5. Provision of Information to Authority and data retention

5.1 After receiving a request from the Authority for Information that it may reasonably require or that it considers may be necessary to enable it to perform any functions given or transferred to it by or under any legislation, including any functions conferred on the Authority by or under the Regulation, the licensee must give that Information to the Authority when and in the form requested.

5.2 The licensee is not required to comply with paragraph 5.1 if the licensee could not be compelled to produce or give the Information in evidence in civil proceedings before a court.

5.3 After receiving a request from the Authority for reasoned comments on the accuracy and text of any Information relating to the licensee's activities under or pursuant to this licence which the Authority proposes to publish under section 48 of the Act, the licensee must give such comments to the Authority when and in the form requested.

5.4 The Authority's power to request Information under this condition is additional to its power to call for information under or pursuant to any other condition of this licence.

Data retention

5.5 The licensee shall keep, for at least five years, the Relevant Data relating to any transactions in electricity supply contracts and electricity derivatives with wholesale customers, transmission system operators or any person who sells electricity to the licensee, which have been entered into

by the licensee on or after the day after the day on which the Electricity and Gas (Internal Markets) Regulations 2011 are made.

5.6 With respect to transactions in electricity derivatives, the obligation to keep the Relevant Data shall only apply once the ~~European Commission~~ Authority has adopted guidelines pursuant to paragraph 4 of Article 40 of the Directive, to be read as if the references to the European Commission are references to the Authority

5.7 After receiving a request from the Authority for the Relevant Data, the licensee must give the Relevant Data to the Authority when and in the form requested.

5.8 Paragraphs 5.5 and 5.7 do not require the licensee to keep Relevant Data in respect of any feed-in tariff arrangements entered into by the licensee in accordance with Condition 33 or 34.

Definitions for condition

5.9 For the purposes of this condition:

“Relevant Data” means details on the characteristics of all transactions in electricity supply contracts and electricity derivatives with wholesale customers, transmission system operators, or any person who sells electricity to the licensee, including but not limited to the duration, delivery and settlement rules, the quantity, the dates and times of execution and the transaction prices and means of identifying the wholesale customer concerned, as well as specified details of all unsettled electricity supply contracts and electricity derivatives.