



Making a positive difference
for energy consumers

To all interested stakeholders

Email: EUExit@ofgem.gov.uk

Date: 14 January 2019

Dear Colleagues,

Preparing for EU Exit: statutory consultation on consequential licence modifications in the event the UK leaves the EU without a deal

This statutory consultation sets out the modifications we propose to make, in the event the UK leaves the EU without a deal, to ensure licences are fit for purpose.

The effect of the proposed modifications is to ensure that retained EU law will function effectively at the point of exit and that licences take into account the provisions in the relevant Statutory Instruments that have been prepared under the European Union (Withdrawal) Act 2018. As far as possible, the proposed modifications do not seek to change the current obligations and duties of licensees, nor do they seek to change current policy positions.

For the avoidance of doubt, the proposed modifications set out in the accompanying documents will only be made in the event the UK leaves the EU without a deal. Alongside responses to this consultation, we will consider material developments in the terms on which the UK will exit the EU and the status of the legislative changes being put in place by the UK Government. Subject to sufficient clarity, we expect to issue our final modification direction ahead of exit day on 29 March 2019.

The UK Government has agreed the full legal text of the Withdrawal Agreement with the EU and remains confident that this will provide the basis for a smooth and orderly exit. If, as planned, the Withdrawal Agreement is implemented, an implementation period will run until 31 December 2020. During this time, our working assumption is that consequential changes to licences and codes will not be required.

Responses to this statutory consultation should be submitted on or before Friday 15 February 2019.

Background

In February 2018, we published a consultation seeking views on the analysis we had undertaken in respect of gas and electricity licences to identify where amendments may be required as we prepare to exit the EU.¹

¹ <https://www.ofgem.gov.uk/publications-and-updates/preparing-eu-exit-implications-licences-and-industry-codes>

We published a follow up to this consultation exercise in July 2018, which confirmed that respondents were generally satisfied that there were no significant gaps in the analysis. Respondents broadly supported our initial conclusion that none of the direct and indirect EU references identified in the licence provisions would appear to become inoperable as a consequence of the UK leaving the EU.²

This analysis and initial conclusion has remained under review. Throughout this process, we have encouraged all interested stakeholders to contact us at EUExit@ofgem.gov.uk should they have a specific concern on the operability of our regulatory framework after the UK leaves the EU or wish to discuss the process with us.

In December 2018, we published an update setting out our licence change process and the timeline we expected to follow to make consequential changes as close to exit day as possible.³ This set out our intention to publish a statutory consultation on the proposed licence modifications in January 2019, or as soon as is reasonably practicable, once the draft legislation was made publicly available. The letter also notified stakeholders that, as we intended to consult on consequential changes to existing policies, the statutory consultation would run for 28 days.

The draft legislation relevant to the changes we propose to make was published online on 17 December 2018 - www.legislation.gov.uk.⁴ This statutory consultation sets out the modifications we propose to make to ensure licenses reflect those legislative changes in the event the UK leaves the EU without a deal.

Consultation documents

Having reviewed all licence conditions, we consider that only the following eight licences require modification:

- Electricity Distribution Licence (Annex 1)
- Electricity Interconnector Licence (Annex 2)
- Electricity Supply Licence (Annex 3)
- Electricity Transmission Licence (Annex 4)
- Smart Meter Communication Licence (Annex 5)
- Gas Interconnector Licence (Annex 6)
- Gas Supply Licence (Annex 7)
- Gas Transporter Licence (Annex 8)

Annexed within this letter, for each licence we propose to modify are:

- a statutory consultation notice
- a modification table containing the current wording, proposed change and reason for the change to each provision we intend to modify, and
- a changed marked version of the relevant licence provisions.⁵

National Grid Electricity System Operator (NGESO)

Subject to sufficient clarity, we expect to issue our final modification direction ahead of exit day on 29 March 2019. On 01 April 2019, National Grid Electricity Transmission's (NGET) system operator obligations will be transferred to National Grid Electricity System Operator (NGESO). We consider that those parts of NGET's licence that are transferred to NGESO on

² <https://www.ofgem.gov.uk/publications-and-updates/follow-letter-preparing-eu-exit-licence-and-industry-code-modifications>

³ <https://www.ofgem.gov.uk/publications-and-updates/update-preparing-eu-exit-licence-and-industry-code-modifications>

⁴ <https://www.gov.uk/government/publications/eu-exit-energy-legislation-explanatory-letter-for-proposed-statutory-instruments>

⁵ For each licence we propose to modify, relevant licensees will receive a hard copy of this letter and the annex relating to their respective licence.

1 April 2019 will reflect any changes to NGET's licence prior to the date of transfer irrespective of the conditions being transferred ahead of the statutory stand still period. We have indicated as much in our Consent Document issued on the 4 September 2018.⁶

Proposed changes

The effect of the proposed modifications is to ensure that retained EU law will function effectively at the point of exit and that licences take into account the provisions of the Statutory Instruments that have been prepared under the European Union (Withdrawal) Act 2018. As far as possible, the proposed modifications do not seek to change the current obligations and duties of licensees, nor do they seek to change current policy positions.

In preparing the proposed modifications our approach has been to:

- Remove reference to the UK as a Member State of the EU, as well as any obligations and roles of EU bodies that will no longer be relevant to the UK
- Update references to EU law to refer to Retained EU Law
- Amend references to the European Economic Area while ensuring that the obligations on relevant parties remain the same
- Remove references where there is no longer a practical application to the UK or to reflect contingency arrangements introduced by the UK Government.

In relation to implementing government contingencies, we have identified one consequential change in Part C of National Grid Gas's transporter licence.⁷ This relates to the carbon tax which the UK Government plans to introduce.⁸

To help to minimise the number of changes and to ensure as much continued consistency and clarity as possible, many of the proposed modifications have been made to existing definitions that are used consistently in provisions throughout the licences.

Next Steps

We invite interested parties to submit consultation responses on or before Friday 15 February 2019.

The proposed modifications set out in the accompanying documents will only be made in the event the UK leaves the EU without a deal. Alongside responses to this consultation, we will consider material developments in the terms on which the UK will exit the EU and the status of the legislative changes being put in place by the UK Government. Subject to sufficient clarity, we expect to issue our final modification direction ahead of exit day on 29 March 2019.

Given the current timelines, we expect an interregnum period – a period between exit day and the licence changes taking effect – will be unavoidable. However, we expect this period will be covered by the standstill period following our modification direction and, as such, we consider that there will be sufficient clarity for licensees. Licence conditions arising from requirements under EU law will continue to have effect⁹ and any breach will continue to be subject to enforcement proceedings. If required, we may issue further guidance in the event of an interregnum.

Yours sincerely

Cathryn Scott
Director, Wholesale Markets & Commercial

⁶ https://www.ofgem.gov.uk/system/files/docs/2018/09/s11a_decision.pdf

⁷ National Grid Gas Transporter Licence Special Conditions 3 D, para 3D.16.

⁸ <https://www.gov.uk/government/publications/carbon-emissions-tax/carbon-emissions-tax>

⁹ See sections 2 and 3 of European Union (Withdrawal) Act 2018

How to respond

We invite interested parties to submit consultation responses on or before Friday 15 February 2019. Please send your response to EUExit@ofgem.gov.uk or to:

Heather Stewart
Ofgem
European Coordination
Systems & Networks
10 South Colonnade
London
E14 4PU

We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

You can ask us to keep your response, or parts of your response, confidential. We will respect this, subject to obligations to disclose information, for example, under the Freedom of Information Act 2000, the Environmental Information Regulations 2004, statutory directions, court orders, government regulations or where you give us explicit permission to disclose. If you do want us to keep your response confidential, please clearly mark this on your response and explain why.

If you wish us to keep part of your response confidential, please clearly mark those parts of your response that you *do* wish to be kept confidential and those that you *do not* wish to be kept confidential. Please put the confidential material in a separate appendix to your response. If necessary, we'll get in touch with you to discuss which parts of the information in your response should be kept confidential, and which can be published. We might ask for reasons why.

If the information you give in your response contains personal data under the General Data Protection Regulation 2016/379 (GDPR) and domestic legislation on data protection, the Gas and Electricity Markets Authority will be the data controller for the purposes of GDPR. Ofgem uses the information in responses in performing its statutory functions and in accordance with section 105 of the Utilities Act 2000.

If you wish to respond confidentially, we'll keep your response itself confidential, but we will publish the number (but not the names) of confidential responses we receive. We won't link responses to respondents if we publish a summary of responses, and we will evaluate each response on its own merits without undermining your right to confidentiality.