



Making a positive difference
for energy consumers

To National Grid Electricity
System Operator and all
interested stakeholders

Email: EUExit@ofgem.gov.uk

Date: 04 July 2019

Dear Colleagues,

EU Exit: statutory consultation on consequential changes to the National Grid Electricity System Operator Limited electricity transmission licence

This statutory consultation sets out the modifications we propose to make to the National Grid Electricity System Operator Limited (NGESO) electricity transmission licence, in the event the United Kingdom (UK) leaves the European Union (EU) without a deal.

The effect of the modifications is to ensure that the NGESO licence will continue to function effectively and 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 modifications do not seek to change the current obligations and duties of licensee, nor do they seek to change current policy positions.

Background

On 14 January 2019, we consulted on licence modifications, in the event the UK leaves the EU without a deal, to ensure licences remain fit for purpose.¹ Our consultation letter referred to our expectation, subject to sufficient clarity, to issue our final modification directions ahead of 29 March 2019. We considered that those parts of National Grid Electricity Transmission's (NGET) licence transferred to NGESO on 01 April 2019 would reflect the consequential EU Exit changes.

One of the requirements stipulated in our consent to transfer part of NGET's licence to NGESO was that *"Those parts of NGET's electricity transmission licence which are subject to this consent and which will be transferred to NGESO on 1st April 2019, will reflect any modifications made under s11A of the Act **prior to the date of transfer** as if they had been included in the Notice of Proposed Partial Transfer of 24 May 2018"*².

¹ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-licence-modifications-event-uk-leaves-eu-without-deal>

² <https://epr.ofgem.gov.uk/Content/Documents/Consent%20to%20partial%20transfer%20of%20National%20Grid's%20electricity%20transmission%20licence.pdf>

As a consequence of this, and following the extension to Article 50 beyond 29 March 2019 and NGENSO becoming a holder of its own distinct electricity transmission licence on 01 April 2019,³ we consider that a separate consultation is needed to amend the conditions transferred to NGENSO in the event the UK leaves the EU without a deal.

Proposed changes

The modifications we propose to the NGENSO licence adopt the same approach used for modifying equivalent provisions in the electricity transmission licence, which we consulted on in January 2019. Proposed modifications to the NGENSO licence also incorporate changes we intend to make to the relevant conditions in the electricity transmission licence following stakeholder feedback to the January 2019 consultation. These changes are set out in a letter we have published⁴ responding to stakeholder feedback received and updating on our EU Exit licence change work.

The effect of the proposed modifications is to ensure that retained EU law will function effectively at the point of exit and that NGENSO's licence takes 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 in the NGENSO licence, 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.

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.

Consultation documents

Annexed within this letter is:

- a statutory consultation notice for the NGENSO licence
- 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.

³ <https://www.ofgem.gov.uk/publications-and-updates/eso-separation-authority-s-decision-grant-or-transfer-relevant-consents-and-issue-direction-national-grid-electricity-system-operator>

⁴ https://www.ofgem.gov.uk/system/files/docs/2019/07/eu_exit_minded_to_decision_letter.pdf

Next Steps

We invite interested parties to submit consultation responses on or before 02 August 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.

Given the current timelines an interregnum period for the consequential EU Exit changes may occur. In the period between exit day and the licence changes taking effect, we will interpret the licence conditions affected by EU exit in line with the European Union (Withdrawal) Act 2018 and the Statutory Instruments prepared under it. Requirements arising from licence conditions will continue to have effect and any breach of such requirements will continue to be subject to enforcement action in accordance with our Enforcement Guidelines.⁵

Yours sincerely

Cathryn Scott
Director, Wholesale Markets & Commercial

⁵ <https://www.ofgem.gov.uk/publications-and-updates/enforcement-guidelines>

How to respond

We invite interested parties to submit consultation responses on or before 02 August 2019. Please send your response to EUExit@ofgem.gov.uk or to:

Anna Fenton
Ofgem
European Coordination
Systems & Networks
10 South Colonnade
London
E14 4PU

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). Alternatively, they are available from foi@ofgem.gov.uk.

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.

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