

Annex 2. End of the transition period – Notice of proposed licence modifications to the licence conditions of the Electricity Interconnector Licence

To: All holders of an Electricity Interconnector Licence

Electricity Act 1989

Section 11A(2)

Notice of statutory consultation on a proposal to modify the standard conditions of all Electricity Interconnector Licences and the special conditions of Nemo Link Limited and National Grid North Sea Link Limited Licences.

1. The Gas and Electricity Markets Authority (the Authority) proposes to modify the standard conditions of all Electricity Interconnector Licences granted or treated as granted under section 6(1)(e) of the Electricity Act 1989 by amending Standard Licence Conditions under section 11A(1)(b):
 - SLC1 (Definitions and interpretation)
 - SLC22 (Notification of changes that may affect eligibility for certification)set out in Annex 2.1.a and 2.1.b to this Notice.
2. The modifications we propose to make are to reflect the changes in the legislative framework that will be implemented after the transition period ends at 11pm on 31 December 2020.
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 IP completion 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 position as reflected in the licence conditions.
4. The proposed modifications and the reasons why they are proposed are stated in Annex 2.1.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 'Statutory consultation on consequential licence modifications due to the end of the transition period' which can be found at www.ofgem.gov.uk.
5. Any representations with respect to the proposed licence modification/modifications must be made on or before 24 December 2020 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 However, if you do not wish your response to be made public then please clearly mark it as not for publication.
7. If we decide to make the proposed modifications, they will take effect not less than 56 days after the decision is published.

Kristian Marr

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Interim Head of European Wholesale Markets
Duly authorised on behalf of the
Gas and Electricity Markets Authority

26 November 2020

Annex 2.1.a Electricity Interconnector Standard Conditions Modification Table

Standard Licence Condition	Current wording	Proposed change	Reasons for change
1	the “Agency” means the European Union Agency for the Cooperation of Energy Regulators established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast);	The “Agency” means the European Union Agency for the Cooperation of Energy Regulators established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 <u>establishing a European Union Agency for the Cooperation of Energy Regulators (recast); (EC) No 713/2009 as construed as reference to and read in accordance with the correlation table in Annex II of Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (recast) and as it had effect immediately before IP completion day.</u>	The licence refers to the Agency for the Cooperation of Energy Regulators in a number of conditions. This proposal will clearly identify the meaning of the term used, as Regulation (EU) 2019/942 has been revoked by The Electricity and Gas (Internal Markets and Network Codes) (Amendment etc.) (EU Exit) Regulations 2020 ¹
1	the “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	the “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 <u>as it has effect immediately before IP completion 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 IP completion day as defined in Section 39 of the European Union (Withdrawal Agreement) Act 2020 ²

¹ <https://www.legislation.gov.uk/ukdsi/2020/9780348209495>

² <https://www.legislation.gov.uk/ukpga/2020/1/contents/enacted>

Standard Licence Condition	Current wording	Proposed change	Reasons for change
1	New definition	“ <u>IP completion day</u> ” has the same meaning as that given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.	This new definition is required to give effect to the revised definition of “Directive”
1	The “Regulation” means Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)	The “Regulation” means Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) <u>as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006</u>	The licence refers to the Regulation 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 IP completion day
22(3)	If at any time from 3 March 2013 the licensee knows or reasonably should know that any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third country, or that a person from a third country has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.	If at any time from 3 March 2013 the licensee knows or reasonably should know that, <u>on or after IP completion day</u> , any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a third <u>country outside the United Kingdom</u> , or that a person from a third <u>country outside the United Kingdom</u> has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.	Regulation 43(a) of the draft Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 removes reference to “on or after 3 rd March” in section 10B of the Electricity Act, so corresponding change is being made. The text has been also amended to align with proposed amendments to certification provisions (in sections 10B to 10O) of the Electricity Act

Standard Licence Condition	Current wording	Proposed change	Reasons for change
			made by the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 to replace the term “person from a third country” with “person from a country outside the UK”. This is to reflect the fact that post EU Exit, the UK will become a “third country”.
22(5)(b)	Whether any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third country, or that a person from a third country has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013; and	Whether, <u>on or after IP completion day</u> , any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a third <u>country outside the United Kingdom</u> , or that a person from a third <u>country outside the United Kingdom</u> has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 <u>March 2013</u> ; and	Changed to align with proposed amendments to certification provisions (in sections 10B to 10O) of the Electricity Act made by the Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 to replace the term “person from a third country” with “person from a country outside the UK”. This is to reflect the fact that post IP completion, the UK will become a “third country”. Regulation 43(a) of the Electricity and Gas etc. (Amendment etc.) (EU Exit)

Standard Licence Condition	Current wording	Proposed change	Reasons for change
			Regulations 2019 removes reference to “on or after 3rd March” in section 10B of the Electricity Act, so corresponding change made.

Annex 2.1.b Electricity Electricity Interconnector 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.

Condition 1. Definitions and interpretation

1. In these licence conditions unless the context otherwise requires:

the “Agency”	means the European Union Agency for the Cooperation of Energy Regulators established established by Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast); <u>(EC) No 713/2009 as construed as reference to and read in accordance with the correlation table in Annex II of Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (recast) and as it had effect immediately before IP completion day.</u>
the “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 <u>as it has effect immediately before IP completion day as read with the modifications set out in the Act</u>
<u>“IP completion day”</u>	<u>has the same meaning as that given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.</u>
the “Regulation”	means Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) <u>as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.</u>

Condition 22. Notification of changes that may affect eligibility for certification

1. Where the licensee has made or makes an application for certification under section 10B of the Act, if at any time prior to the Authority notifying the licensee of its ~~final~~ certification decision under section 10D(~~74~~) of the Act the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.
2. Where the licensee has been certified, if at any time the licensee knows or reasonably should know of any event or circumstance that has occurred or is likely to occur that may affect its eligibility for certification, the licensee shall as soon as reasonably practicable notify the Authority in writing of the event or circumstance and the reasons it considers that the event or circumstance may affect its eligibility for certification.
3. If at any time ~~from 3 March 2013~~ the licensee knows or reasonably should know that, on or after IP completion day, any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee is or may become a person from a ~~third~~ country outside the United Kingdom, or that a person from a ~~third~~ country outside the United Kingdom has or may take control of the licensee, the licensee shall as soon as reasonably practicable notify the Authority in writing.
4. If at any time from the relevant date the licensee exercises or is likely to exercise any shareholder right or right of appointment in the circumstances described in section 10M of the Act, the licensee shall as soon as is reasonably practicable notify the Authority in writing of the right that has been or is likely to be exercised and the effect of exercising that right.
5. Where the licensee has been certified, by 31 July of each year following certification the licensee shall provide the Authority with a written declaration, approved by a resolution of the board of directors of the licensee and signed by a director of the licensee pursuant to that resolution, setting out:
 - (a) Whether any event or circumstance has occurred in the previous 12 month period, or such part of that 12 month period since the licensee was certified, that

may affect the licensee's eligibility for certification, and if so, the reasons it considers that the event or circumstance may affect its eligibility for certification;

- b) Whether, on or after IP completion day, any event or circumstance has occurred, or is likely to occur, that may cause the Authority to think that the licensee has become a person from a ~~third~~ country outside the United Kingdom, or that a person from a ~~third~~ country outside the United Kingdom has taken control of the licensee, in the previous 12 month period or such part of that 12 month period since the licensee was certified, ~~providing that the licensee is only required to provide a written declaration under this paragraph (b) in relation to a period that occurs after 3 March 2013~~; and
- (c) Whether the licensee has exercised any shareholder right or right of appointment in the circumstances described in section 10M of the Act in the previous 12 month period or such part of that 12 month period since the licensee was certified and if so the effect of exercising that right, providing that the licensee is only required to provide a written declaration under this paragraph (c) where it has been certified on the certification ground in section 10E(3) of the Act and in relation to a period that occurs after the relevant date.

6. In this condition:

“certified” has the same meaning as in section 10O of the Act

“control” has the same meaning as in section 10O of the Act

“person from a ~~third~~ country outside the United Kingdom” has the same meaning as in section 10O of the Act

“relevant date” has the same meaning as in section 10M of the Act

“shareholder right” has the same meaning as in section 10O of the Act