

Annex 4. End of the transition period – Notice of proposed modifications to the licence conditions of the Electricity Transmission Licence

To: All holders of an Electricity Transmission Licence

Electricity Act 1989

Section 11A(2)

Notice of statutory consultation on a proposal to modify the standard conditions of all Electricity Transmission Licences, the special conditions of National Grid Electricity Transmission Plc and the Amended Standard Conditions of all Electricity Offshore Transmission Licences.

1. The Gas and Electricity Markets Authority (the Authority) proposes to modify the standard conditions of all electricity transmission licences granted or treated as granted under section 6(1)(b) of the Electricity Act 1989 by amending Standard Licence Conditions under section 11A(1)(b):
 - SLCA1 (Definitions and interpretation)
 - SLCB3 (Disposal of relevant assets and restrictions on charges over receivables)
 - SLCB21 (Notification of changes that may affect eligibility for certification)
 - SLCE2 (Regulatory Accounts)
 - SLCE23 (Notification of changes that may affect eligibility for certification)

set out in Annex 4.1.a and 4.1.b to this Notice. SLCs E will apply to the licences held by OFTOs only.

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. 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 4.1.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 4.1.a. Electricity Transmission Standard Conditions Modification Table

Standard Licence condition	Current wording	Proposed change	Reasons for change
A1	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
A1	“the Electricity 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 Electricity 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 <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
A1	“the Electricity 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 Electricity 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

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
A1	New definition	<u>“IP completion day” has the same meaning as that given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.</u>	This new definition is required to give effect to the revised definition of “Directive”.
B3.8	... where the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union.	... where the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation or directive of the Council or Commission of the European Union <u>that has effect in EU law immediately before IP completion day.</u>	This preserves the position so that the licensee is only required to comply where the transaction “is required by or under” retained EU regulations.
B21.3	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 country <u>outside the United Kingdom,</u> or that a person from a third country <u>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.	Updated reference to "third country" to "country outside the United Kingdom" to reflect the amendments to section 100 of the Electricity Act made by regulation 54 of the Regulations. This is to reflect the fact that post IP completion, the EU will become a “third country”. Proposed deletion of "from 3 March 2013" to reflect the amendment to section 10B of the Electricity Act made by regulation 43 of the Regulations.
B21.5(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	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 country <u>outside the United Kingdom,</u> or that a person from a third country <u>outside the United Kingdom</u> has	Proposed deletion of "from 3 March 2013" to reflect the amendment to section 10B of the Electricity Act made by regulation 43 of the Regulations. Updated reference to "third country" to "country outside the United Kingdom" to reflect the amendments to section 100 of the

Standard Licence condition	Current wording	Proposed change	Reasons for change
	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	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	Electricity Act made by regulation 54 of the Regulations. This is to reflect the fact that post IP completion, the EU will become a “third country”.
E23.3 (Licence held by OFTO only)	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 country <u>outside the United Kingdom</u> , or that a person from a third country <u>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.	Updated reference to "third country" to "country outside the United Kingdom" to reflect the amendments to section 100 of the Electricity Act made by regulation 54 of the Regulations. This is to reflect the fact that post IP completion, the EU will become a “third country”. Proposed deletion of "from 3 March 2013" to reflect the amendment to section 10B of the Electricity Act made by regulation 43 of the Regulations.
E23.5(b) (Licence held by OFTO only)	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	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 <u>outside the United Kingdom</u> , or that a person from a third country <u>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	Proposed deletion of "from 3 March 2013" to reflect the amendment to section 10B of the Electricity Act made by regulation 43 of the Regulations. Updated reference to "third country" to "country outside the United Kingdom" to reflect the amendments to section 100 of the Electricity Act made by regulation 54 of the Regulations. This is to reflect the fact that post IP completion, the EU will become a “third country”.

Standard Licence condition	Current wording	Proposed change	Reasons for change
	this paragraph (b) in relation to a period that occurs after 3 March 2013; and	under this paragraph (b) in relation to a period that occurs after 3 March 2013; and	

Annex 4.1.b. Electricity Transmission 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 A1: Definitions and interpretation

1. In the standard 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); (EC) No 713/2009~~ as it had effect immediately before IP completion day.

“the Electricity 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 as it has effect immediately before IP completion day as read with the modifications set out in the Act.

“IP completion day” has the same meaning as that given in section 39(1) of the European Union (Withdrawal Agreement) Act 2020.

Condition B3: Disposal of relevant assets and restrictions on charges over receivables

1. The licensee must not dispose of or relinquish operational control over any relevant asset except in accordance with the provisions of this condition.
2. Subject to paragraph 3, the licensee must not, after 1 April 2013, grant any mortgage, charge, or other form of security over any receivable except in accordance with the provisions of this condition.
3. The licensee may permit any mortgage, charge, or other form of security over any receivable in effect at the date mentioned in paragraph 2 to remain in effect and may vary its terms so long as the variation does not have the effect of materially extending the scope

of the mortgage, charge, or other form of security insofar as it applies to the licensee's receivables.

4. Save as provided in paragraphs 3, 5 or, as applicable, 6, or 8 the licensee shall give to the Authority not less than two months' prior written notice of:
 - (a) its intention to dispose of or relinquish operational control over any relevant asset, together with such further information as the Authority may request relating to such asset or the circumstances of such intended disposal or relinquishment of control or to the intentions in regard thereto of the person proposing to acquire such asset or operational control over such asset; or
 - (b) its intention to grant any mortgage, charge, or other form of security over any receivable or class or classes of receivables together with such further information as the Authority may request relating to such receivable, class or classes of receivables or the circumstances of the intended grant of the mortgage, charge or other form of security.

5. Notwithstanding paragraphs 1 and 4(a), the licensee may dispose of or relinquish operational control over any relevant asset where:-
 - (a) the Authority has issued directions for the purposes of this condition containing a general consent (whether or not subject to conditions) to:
 - (i) transactions of a specified description; or
 - (ii) the disposal of or relinquishment of operational control over relevant assets of a specified description; andthe transaction or the relevant assets are of a description to which such directions apply and the disposal or relinquishment is in accordance with any conditions to which the consent is subject;or
 - (b) the disposal or relinquishment of operational control in question is to another transmission licensee and is required by or under standard condition B12 (System Operator – Transmission Owner Code).

6. Notwithstanding paragraphs 2 and 4(b), the licensee may grant a mortgage, charge, or other form of security over a receivable or class or classes of receivables where:
- (a) the indebtedness of the licensee which is to be secured represents the novation or rollover of existing indebtedness; and
 - (b) the proceeds of the indebtedness of the licensee which is to be secured are used to repay the existing indebtedness referred to in sub-paragraph (a).
7. For the purposes of paragraph 6, what is meant in any particular case by:
- (a) “existing indebtedness”; and
 - (b) “proceeds of the indebtedness”
- is to be treated as a question of fact.
8. Notwithstanding paragraphs 1, 2 and 4, the licensee may dispose of or relinquish operational control over any relevant asset or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivable where the transaction in question is required by or under any enactment, any provision of subordinate legislation within the meaning of the Interpretation Act 1978, or a regulation ~~or directive~~ of the Council or Commission of the European Union that has effect in EU law immediately before IP completion day.
9. Notwithstanding paragraphs 1 and 2, the licensee may dispose of or relinquish operational control over any relevant asset or grant a mortgage, charge, or other form of security over a receivable or class or classes of receivable as is specified in any notice given under paragraph 4 where:
- (a) the Authority confirms in writing that it consents to such disposal or relinquishment or grant (which consent may be made subject to acceptance by the licensee or any third party to the transaction in question, of such conditions as the Authority may specify); or
 - (b) the Authority does not inform the licensee in writing of any objection to such disposal, relinquishment or grant within the notice period referred to in paragraph 4.
10. In this condition:
- "disposal" includes
- (a) in relation to disposal of a relevant asset situated

in England and Wales any sale, gift, exchange, assignment, lease, licence, loan, mortgage, charge or grant of any other encumbrance or the permitting of any encumbrance to subsist or any other disposition;

- (b) in relation to disposal of a relevant asset situated in Scotland, the grant of any disposition, conveyance, contract of excambion, any lease, assignation, licence, the grant of any right of possession, loan, standard security, floating charge to a third party or the grant of any servitude right, wayleave or any other transaction or event which is capable under any enactment or rule of law of affecting the title to a registered interest in land;

and "dispose" and cognate expressions shall be construed accordingly.

“receivable”

means a contractual right to receive any sum or sums or any other financial asset from another person.

"relevant asset"

means any asset for the time being forming part of the national electricity transmission system, any control centre for use in conjunction therewith and any legal or beneficial interest in (or right, title or interest in) land upon which either of the foregoing is situate (which for the purposes of property located in Scotland means any estate, interest, servitude or other heritable or leasehold right in or over land including any leasehold interests or other rights to occupy or use and any contractual or personal rights in favour of the licensee relating to the occupation, use or acquisition of such property).

Condition B21: 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(7)~~10D(4) 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 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 of that 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.

Condition E23: 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 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 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.