

To all interested stakeholders

Email: EUExit@ofgem.gov.uk

Date: 26 November 2020

Dear Colleagues,

Preparing for the end of the transition period: Statutory consultation on consequential licence modifications due to the end of the transition period

This statutory consultation sets out the additional modifications we propose to make to ensure that licences are appropriate for the period after the transition period ends at 11pm on 31 December 2020. This consultation complements our January 2019 statutory consultation¹ ahead of the original EU exit date (29 March 2019), our 4 July 2019 statutory consultation on changes to the National Grid ESO (NGESO) electricity transmission licence², and our 4 July 2019 EU exit update.³

The effect of the proposed modifications is to ensure that retained EU law will function effectively after the transition period ends and reflect the additional legislative changes that have occurred since our earlier statutory consultation. This should ensure that licences take into account the provisions in the relevant Statutory Instruments (SIs) that have been prepared under the European Union (Withdrawal) Act 2018. The proposed modifications do not seek to change the current obligations and duties of licensees, nor do they seek to change current policy positions. Their purpose is to accurately reflect the current legislative framework.

Alongside responses to this consultation, we will consider material developments in the terms of the UK's future relationship with the EU after the transition period ends.

Responses to this statutory consultation should be submitted on or before Thursday 24 December 2020.

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 prepared to leave the EU.⁴

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

² <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-changes-national-grid-eso-electricity-transmission-licence>

³ <https://www.ofgem.gov.uk/ofgem-publications/153587>

⁴ <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.⁵

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, from the end of the transition period, 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.⁶ 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 legislation relevant to the changes we propose to make was published online and available at www.legislation.gov.uk. There is also a dedicated page on Gov.UK setting out the Brexit legislation originally published in December 2018.⁷ In addition to this, further Statutory Instruments (SIs) that are relevant to our proposals here were created during the transition period. As an overview, these amend previous Brexit SIs to refer to the end of the transition period rather than Exit Day, and amending (including some revocations) various parts of the retained EU legislation along with corresponding implementing domestic legislation which together make up the legislative framework for Great Britain's energy system.⁸ Please see the government's legislation website for further details.

In January 2019, we published our statutory consultation which set out the modifications we proposed to make to ensure licenses reflected legislative changes in the event the UK left the EU without a deal. In July 2019, we published our minded-to decision letter which provided our response to stakeholder feedback. We also published an additional consultation making similar changes to NGEN's licence which was granted on the 1 April 2019, after the date of our original consultation on EU exit changes.

The UK left the EU on 31 January 2020 and entered into the transition period during which EU law still applies. The transition period is due to end at 11pm on 31 December 2020. This statutory consultation sets out the modifications we propose to make (in addition to those in our July 2019 minded-to decision letter) to ensure licences reflect any legislative changes after the transition period ends.

Consultation documents

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

- Electricity Distribution Licence (Annex 1)
- Electricity Interconnector Licence (Annex 2)
- Electricity Supply Licence (Annex 3)
- Electricity Transmission Licence (Annex 4)

⁵ <https://www.ofgem.gov.uk/publications-and-updates/follow-letter-preparing-eu-exit-licence-and-industry-code-modifications>

⁶ <https://www.ofgem.gov.uk/publications-and-updates/update-preparing-eu-exit-licence-and-industry-code-modifications>

⁷ <https://www.gov.uk/government/publications/eu-exit-energy-legislation-explanatory-letter-for-proposed-statutory-instruments>

⁸ See for example, [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(legislation.gov.uk\)](#) and [The Electricity and Gas \(Internal Markets and Network Codes\) \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(legislation.gov.uk\)](#)

- Gas Interconnector Licence (Annex 6)
- Gas Supply Licence (Annex 7)
- Gas Transporter Licence (Annex 8)

We have kept the annex numbering consistent with that in our January 2019 consultation. There is no Annex 5 in this consultation as we do not propose any further modifications are required to the Smart Meter Communication Licence other than those included within our January 2019 statutory consultation and July 2019 minded-to decision letter.

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

- Statutory consultation notice;
- Modification table containing the current wording, proposed change and reason for the change to each provision we intend to modify; and
- Change marked version of the relevant licence provisions.

Proposed changes

The effect of the proposed modifications is to ensure that the licences accurately reflect retained EU law and will continue to function effectively after the transition period ends, and that licences take into account the provisions of the SIs 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.

January 2019 consultation

In our January 2019 Statutory consultation, our approach to the proposed modifications was 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; and
- Remove references where there is no longer a practical application to the UK or to reflect contingency arrangements introduced by the UK Government.

The broad majority of responses to this consultation were supportive of our proposed modifications and we published our minded-to decision letter⁹ in July 2019. We have indicated in the annexes to our November 2020 consultation where we have amended our approach as a result of stakeholder responses. We do not propose to consult again on these changes within this consultation letter.

July 2019 consultation - National Grid Electricity System Operator (NGESO)

On 1 April 2019, NGESO became the holder of its own, distinct Electricity Transmission Licence. This was after the original March 2019 Brexit date, meaning we published a separate consultation¹⁰ proposing consequential changes to the new NGESO licence. The modifications proposed to the NGESO licence adopted the same approach used in our January 2019 statutory consultation, except in minor instances where we intended to amend the modifications proposed in the January 2019 consultation to incorporate stakeholder feedback.

⁹ https://www.ofgem.gov.uk/system/files/docs/2019/07/eu_exit_minded_to_decision_letter.pdf

¹⁰ <https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-changes-national-grid-eso-electricity-transmission-licence>

November 2020 consultation

The January 2019 consultation was based on the licence changes coming into effect after Exit Day. The UK left the EU on 31 January 2020 (Exit Day) and entered into the transition period during which EU law still applies in the UK. We have proposed some further modifications to ensure our licences remain fit for purpose after the transition period ends at 11pm on 31 December 2020 and reflect the additional legislative changes made by the Department for Business, Energy & Industrial Strategy (BEIS).

For this consultation, our approach has been to:

- Replacing the “Exit Day” definition with “IP completion day”
- Update definitions for referring to European legislation, taking into account how it is retained or amended in the UK
- Update or add definitions relating to the Agency for the Cooperation of European Regulators”

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 Thursday 24 December 2020. We expect to issue our final modification direction in January 2021.

Given the current timelines, an interregnum period – a period between IP completion day and the licence changes taking effect – will be unavoidable. However, we expect that the modification direction made at the start of this period, alongside the clarity provided by the EU Exit legislation made by BEIS, will provide the certainty and clarity needed to licensees as to their obligations under the licence during the standstill period. Additionally, there will be a period between IP completion day and when we issue our modification direction and during that period we would expect licensees to conduct their operations and business in a lawful manner and in accordance with national legislation. Licence conditions arising from requirements under EU law will continue to have effect¹¹ unless specifically excluded by the EU Exit legislation and any breach will continue to be subject to enforcement proceedings. If required we may issue further guidance during the interregnum.

Yours sincerely,

Kristian Marr
Interim Head of European Wholesale Markets

¹¹ 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 Thursday 24 December 2020. Please send your response to EUExit@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.