

Consultation

Modifications to the special licence conditions in the electricity transmission licences - Early Competition in Onshore Electricity Transmission: Statutory Consultation

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This statutory consultation sets out proposed modifications to the special conditions of the three Transmission Owners' (TOs) electricity transmission licences to implement onshore electricity transmission Early Competition policy. Specifically, we are consulting on TO conflict mitigation and information sharing arrangements related to the TOs' role supporting and entering an Onshore Transmission Tender Exercise. We would like views from the TOs and stakeholders with an interest in the development of competition in onshore electricity transmission network. We would also welcome responses from other stakeholders and the public.

This document outlines the scope, purpose and questions of the consultation and how you can get involved. Once the consultation is closed, we will consider all responses and publish a decision on the licence modifications.

We want to be transparent in our consultations. We will publish the non-confidential responses we receive alongside a decision on next steps on our website at [ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations). If you want your response – in whole or in part – to be considered confidential, please tell us in your response and explain why. Please clearly mark the parts of your response that you consider to be confidential, and if possible, put the confidential material in separate appendices to your response.

Consultation – Modifications to the special licence conditions in the electricity transmission licences - Early Competition in Onshore Electricity Transmission: Statutory Consultation

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1. Introduction

- 1.1 Competition in the delivery of onshore electricity transmission network reinforcements has an important role to play in driving innovative solutions and cost efficiencies while also providing opportunities for new investment in our onshore networks. It has the potential to play a key role in the efficient delivery of our decarbonisation and Net Zero targets at the lowest cost to consumers. 'Early competition for onshore transmission' is one of the stated objectives in our [2024-25 Forward Work Programme](#).
- 1.2 In July 2024, we published our policy decisions on the National Electricity System Operator's (NESO) proposed amendments contained within the Early Competition Implementation Update (EC-I).¹ This included our decision on the role of the incumbent TOs within Early Competition and conflict mitigation arrangements that would be required to ensure incumbent TOs that choose to enter a tender do not have an unfair advantage over other bidders.
- 1.3 We created a licence drafting working group in September 2024 consisting of Ofgem and TO representatives. This group has met on a regular basis to review and develop the licence conditions. We also established a TO Licence Modifications Issues Log where the TOs were able to provide detailed feedback on the proposed licence conditions as they developed through multiple iterations of drafting.
- 1.4 This licence consultation invites views on our proposed new special conditions and associated documents in the TOs' electricity transmission licences. We will consider the responses to this consultation before reaching our decision in early 2025.

What are we consulting on

- 1.5 We are consulting on our proposed modifications to the special conditions (SpCs) in the TOs' electricity transmission licences required to establish information sharing and conflict mitigation arrangements in respect of onshore Early Competition.
- 1.6 We are consulting on introducing two new SpCs:
- SpC 9.20 Tender Support Activities in onshore electricity transmission

¹ [Decision on Early Competition in onshore electricity transmission networks: policy update | Ofgem](#)

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- SpC 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise

- 1.7 We are also consulting on modifications to Special Condition 1.1 Interpretation and definitions in each of the TOs' electricity transmission licences to introduce new definitions proposed under draft SpC 9.20 and 9.21 and a modification to Special Condition 9.14 Restriction on the use of certain information, which currently applies to the electricity transmission licences of Scottish Hydro Electric Transmission Plc and SP Transmission Plc.
- 1.8 Defined terms are capitalised in the electricity transmission licences to make it clear to the reader when they should refer to SpC 1.1 for further information.
- 1.9 In addition, as part of this consultation we are consulting on the introduction of the Onshore Information Exchange Guidance, Conflict Mitigation Methodology and Conflict Management Audit Terms of Reference. We welcome stakeholder feedback on the content of these documents.
- 1.10 Within this document we set out the reasons why we propose to make the above licence modifications and their intended effect.
- 1.11 We are proposing changes to the following electricity transmission licences:

Licensee	Licence	Acronym
National Grid Electricity Transmission Plc	Electricity transmission licence – Special Conditions	NGET
Scottish Hydro Electric Transmission Plc	Electricity transmission licence – Special Conditions	SHET
Scottish Power Transmission Plc	Electricity transmission licence – Special Conditions	SPT

- 1.12 SpCs are conditions that apply to a particular licensee. The wording is often the same for all licensees of a particular type, however in this case there is minor licensee-specific information which differs between special licenses. On this basis, we have decided to present only one draft condition, although it will be added to the special condition of each licensee. Any minor licensee-specific information will be included as a drafting note.

Section 2: Special Condition 9.20 Tender Support Activities in Onshore Electricity Transmission

- 1.13 This section includes our proposed special licence condition for placing obligations on the TOs to provide information to the delivery body in an Onshore Transmission Tender Exercise.

Section 3: Special Condition 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise

- 1.14 This section includes our proposed special licence condition for conflict mitigation arrangements in an Onshore Transmission Tender Exercise to manage potential conflicts of interest.

Section 4: Special Condition 9.14: Restriction on the use of certain information

- 1.15 This section includes our proposed modification to SpC 9.14 in the electricity transmission licences of SHET and SPT to add additional circumstances under which the licensee can disclose Confidential Information where that disclosure is for the purposes of proposed SpC 9.20: Tender Support Activities in Onshore Electricity Transmission or proposed SpC 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise.

Section 5: Special Condition 1.1 Interpretations and definitions

- 1.16 This section includes proposed new defined terms in accordance with proposed SpC 9.20 Tender Support Activities in Onshore Electricity Transmission and proposed SpC 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise.

Related Publications

- Ofgem, [Decision on early competition in onshore electricity transmission networks](#), March 2022
- Ofgem, [Consultation on the onshore electricity transmission Early Competition commercial framework | Ofgem](#), October 2024
- Ofgem, [Decision on Early Competition in onshore electricity transmission networks: policy update](#), July 2024
- Ofgem, [Consultation on Draft Electricity \(Early-Model Competitive Tenders for Onshore Transmission Licences\) Regulations 2024](#), September 2024

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- Department for Energy Security and Net Zero, [Transmission Acceleration Action Plan](#), November 2023
- [Energy Act 2023](#), October 2023
- [Electricity Act 1989](#), July 1989
- [The Electricity \(Criteria for Relevant Electricity Projects\) \(Transmission\) Regulations 2024](#), March 2024
- National Energy System Operator, [Early Competition Plan](#), April 2021
- National Energy System Operator, [Early Competition - Implementation \(EC-I Update\)](#), February 2024

Consultation stages

- 1.17 The consultation will be open from 10 December 2024 until 13 January 2025.
- 1.18 We will then consider the stakeholder responses to this consultation before publishing a decision on the licence modifications contained within this document as per section 11A of the Electricity Act 1986.

How to respond

- 1.19 We want to hear from anyone interested in this consultation. Please send your response to OnshoreCompetitionsPolicy@ofgem.gov.uk.
- 1.20 We've asked for your feedback in each of the questions throughout. Please respond to each one as fully as you can.
- 1.21 We will publish non-confidential responses on our website at www.ofgem.gov.uk/consultations.

Your response, your data and confidentiality

- 1.22 You can ask us to keep your response, or parts of your response, confidential. We'll 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.
- 1.23 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.

- 1.24 If the information you give in your response contains personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) as retained in domestic law following the UK's withdrawal from the European Union ("UK GDPR"), 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. Please refer to our Privacy Notice on consultations, see Appendix 4.
- 1.25 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.

General feedback

- 1.26 We believe that consultation is at the heart of good policy development. We welcome any comments about how we've run this consultation. We'd also like to get your answers to these questions:
1. Do you have any comments about the overall process of this consultation?
 2. Do you have any comments about its tone and content?
 3. Was it easy to read and understand? Or could it have been better written?
 4. Were its conclusions balanced?
 5. Did it make reasoned recommendations for improvement?
 6. Any further comments?

Please send any general feedback comments to stakeholders@ofgem.gov.uk

How to track the progress of the consultation

You can track the progress of a consultation from upcoming to decision status using the 'notify me' function on a consultation page when published on our website. Choose the notify me button and enter your email address into the pop-up window and submit.

[ofgem.gov.uk/consultations](https://www.ofgem.gov.uk/consultations)

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Upcoming > **Open** > **Closed** (awaiting decision) > **Closed** (with decision)

2. Special Condition 9.20 Tender Support Activities in Onshore Electricity Transmission

Questions

- Q1. Do you agree with our proposed drafting for the Tender Support Activities in Onshore Electricity Transmission licence condition?
- Q2. Do you agree with the proposed Onshore Information Exchange Guidance?

Introduction

- 2.1 Alongside TOs existing role in network planning and project development, we have set out across various decision documents our expectation that TOs support the Delivery Body² in an Onshore Transmission Tender Exercise.
- 2.2 In paragraphs 5.30 and 5.31 of our March 2022 decision on the development of early competition in onshore electricity transmission networks³ we set out the ESO's (now known as NESO) proposal in the Early Competition Plan⁴ recommending TOs to work alongside the ESO in its Network Planning role. We agreed with the ESO's proposal and in our July 2024 decision on policy updates to Early Competition,⁵ paragraph 2.13 discussed the need for TOs to provide interface details following the selection of a project(s) at the start of the pre-tender stage.
- 2.3 The reason for introducing this condition is to give effect to our decision for TOs to support the Delivery Body through the provision of information in support of an Onshore Transmission Tender Exercise.⁶
- 2.4 The effect of introducing this condition is to:
- oblige TOs to provide necessary network information to the Delivery Body (and indirectly to qualifying Bidders) during an Onshore Transmission Tender Exercise;

²Delivery Body means the body designated by Regulation 3 of the Electricity (Designation of Delivery Bodies) (Transmission) Regulations 2023(a)

³ [Decision on the development of early competition in onshore electricity transmission networks](#) March 2022

⁴ ESO's [Early Competition Plan](#)

⁵ [Decision on policy updates to Early Competition in onshore electricity transmission networks](#) July 2024

⁶Onshore Transmission Tender Exercise has the meaning given in Regulation 2 of the [Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2024]

- specify the role of the TOs when facilitating site visits for the Delivery Body and Bidders;
- make provisions for the treatment of confidential information; and
- explain the nature of the Onshore Information Exchange Guidance document and the process the Authority will follow when directing changes to that guidance;

Associated documents

2.5 Part B of this SpC introduces the Onshore Information Exchange Guidance as an associated document to the licence. This document sets out:

- the process and timings to request and submit information in support of an Onshore Transmission Tender Exercise
- the format information requests must be made and information provided
- the arrangements to facilitate site visits for the Delivery Body and bidders in respect to an Onshore Transmission Tender Exercise

2.6 The proposed Onshore Information Exchange Guidance is published as a separate annex to this consultation document.

TO cost recovery

2.7 We recognise that TOs will incur costs undertaking Tender Support Activities in accordance with this proposed SpC. We are not proposing to include a cost recovery provision within this SpC and instead propose that efficient costs incurred during the RIIO-ET2 price control are recovered through RIIO-ET2 Closeout, and funding arrangements for the RIIO-ET3 price control are made in accordance with our RIIO-ET3 Final Determinations decision next year. We welcome TO views on this in response to this consultation.

Obligations on NESO as the Delivery Body

2.8 We recognise that the obligations on TOs included in this SpC also require reciprocal obligations on NESO in its role as Delivery Body for an Onshore Transmission Tender Exercise. We intend to consult on NESO licence modifications in early 2025 and intend for NESO's licence to obligate adherence to the Onshore Competition Exchange Guidance in the same way that we are proposing for the TOs.

2.9 We do not expect the NESO licence modifications in support of onshore competition to necessitate modifications to the Onshore Competition Exchange

Guidance, however if this is the case we will formally consult on these changes in accordance with the proposed Part B of this condition.

Proposed new Special Condition

Special Condition 9.20 Tender Support Activities in Onshore Electricity Transmission

Introduction

- 9.20.1 The purpose of this condition is to place an obligation on the licensee to provide such information and assistance as is reasonably required to the Delivery Body in relation to an Onshore Transmission Tender Exercise.
- 9.20.2 Part A sets out obligations on the licensee in respect of supporting the Delivery Body in an Onshore Transmission Tender Exercise. Part B sets out the scope, contents, and governance arrangements for the Onshore Competition Information Exchange Guidance.

Part A: Provision of information and assistance to the Delivery Body

- 9.20.3 The licensee must support the Delivery Body through participation in the Onshore Competition Information Exchange Process in accordance with the Onshore Competition Information Exchange Guidance.
- 9.20.4 Subject to paragraph 9.20.6, in the Onshore Competition Information Exchange Process and upon request from the Delivery Body, in accordance with the Onshore Competition Information Exchange Guidance, the licensee must:
- (a) provide such information relating to the licensee's Transmission Area as is reasonably required by the Delivery Body to prepare the tender documentation for an Onshore Transmission Tender Exercise;
 - (b) respond to formal requests for information from the Delivery Body during the Invitation to Tender Stage; and
 - (c) respond to reasonable requests for information from the Delivery Body outside of those requested in 9.20.4(a) and (b).
- 9.20.5 For the avoidance of doubt, nothing in this condition requires, the licensee to:
- (a) respond to any query it receives directly from a Bidder during an Onshore Transmission Tender Exercise;
 - (b) disclose any information directly to any Bidder; or
 - (c) produce any documents or give any information which it could not be compelled to produce or give in evidence in civil proceedings before a court.

- 9.20.6 If the licensee wishes to dispute a request for information from the Delivery Body under paragraph 9.20.4 the licensee must follow the dispute process as set out in the Onshore Competition Information Exchange Guidance.
- 9.20.7 The licensee shall assist the Delivery Body, where appropriate, through the facilitation of a site visit for Bidders in accordance with the Onshore Competition Information Exchange Guidance.
- 9.20.8 If the licensee determines that the requested site visits by the Delivery Body cannot be fulfilled, the licensee must as soon as reasonably practicable notify the Delivery Body and the Authority.

Part B: Onshore Competition Information Exchange Guidance

- 9.20.9 The licensee must comply with the Onshore Competition Information Exchange Guidance.
- 9.20.10 The Authority will issue and amend the Onshore Competition Information Exchange Guidance by direction.
- 9.20.11 The Authority will publish the Onshore Competition Information Exchange Guidance on the Authority's Website.
- 9.20.12 The Onshore Competition Information Exchange Guidance will include, or make provision for, the following matters:
- (a) details of information related to the licensees' Transmission Area required to be provided in accordance with paragraph 9.20.4(a);
 - (b) the format (including templates) for responding to requests for information in accordance with paragraphs 9.20.4(a) and 9.20.4(b);
 - (c) timescales for responding to formal information requests from the Delivery Body in accordance with paragraph 9.20.4(b);
 - (d) the frequency with which and the expected timescales in an Onshore Transmission Tender Exercise within which the licensee is required to carry out the activities specified in part A of this condition;
 - (e) the process for managing additional information requests from the Delivery Body in accordance with paragraph 9.20.4(c);
 - (f) the process for managing information request disputes in accordance with paragraph 9.20.6;
 - (g) the process for facilitating site visits in accordance with paragraph 9.20.7; and
 - (h) processes in respect to the protection of Confidential Information .
- 9.20.13 Before issuing the Onshore Competition Information Exchange Guidance by direction, the Authority will publish on the Authority's Website:
- (a) the text of the proposed direction;
 - (b) the reasons for the proposed direction; and

(c) a period during which representations on the proposed direction may be made, which will not be less than 28 days.

9.20.14 Before directing an amendment to the Onshore Competition Information Exchange Guidance by direction, the Authority will publish on the Authority's Website:

- (a) the text of the amended Onshore Competition Exchange Guidance;
- (b) the date on which the Authority intends the amended Onshore Competition Information Exchange Guidance will take effect;
- (c) the reasons for the amendments to the Onshore Competition Information Exchange Guidance; and
- (d) a period during which representations on the amendments to the Onshore Competition Information Exchange Guidance may be made, which will not be less than 28 days.

3. Special Condition 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise

Questions

- Q3. Do you agree with our proposed drafting for the Conflict Mitigation Arrangements condition?
- Q4. Do you agree with our Conflict Mitigation Methodology and Conflict Management Audit Terms of Reference associated documents?

Introduction

- 3.1 Chapter 3 of our July 2024 early competition decision document⁷ set out the conflict mitigation arrangements that would be required to manage and mitigate potential competitive advantages TOs would have in an Onshore Transmission Tender Exercise, should a TO decide to submit a bid.
- 3.2 The necessary conflict mitigation requirements our decision set out were:
- Business separation measures
 - Employee transfer restrictions
 - Managerial separation
 - Information sharing framework
 - Financial separation
 - Additional scrutiny requirements
- 3.3 The reason for introducing this condition is to incorporate the conflict mitigation arrangements from our July 2024 early competition decision into the TOs' licences.
- 3.4 The effect of introducing this condition is to:
- establish the overarching obligations of the conduct of the licensee when undertaking its Tender Support Activities in onshore competition;
 - establish the employee transfer restrictions and business separation requirements between the TO and the respective Bidding Unit;
 - establish the obligations on the licensee to restrict the use of information that the licensee has access to through its Tender Support Activities;

⁷ [Decision on policy updates to Early Competition in onshore electricity transmission networks](#) July 2024

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- explain the process for the Compliance Methodology Statement the licensee must publish to describe how it proposes to meet the obligations outlined in the condition; and
- set out requirements on the licensee to participate in an external independent audit during the tender process.

Associated documents

- 3.5 Alongside this proposed SpC we are proposing to include the Conflict Mitigation Methodology and Conflict Management Audit Terms of Reference documents as associated documents to the licence.
- 3.6 The Conflict Mitigation Methodology sets out the actions TOs need to undertake before being able to bid into an onshore competition, while the External Audit Terms of Reference set out the process that must be followed when independently assuring the TOs' Conflict Methodology Statements. Both of these documents are included as separate annexes to this consultation.

Proposed new Special Condition

Special Condition 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise

Introduction

- 9.21.1 The purpose of this condition is to require the licensee to put in place arrangements to manage, and where applicable, mitigate potential conflicts of interest in respect of an Onshore Transmission Tender Exercise.
- 9.21.2 Part A sets out the overarching obligations on the licensee when undertaking Tender Support Activities. Part B sets out the employee restrictions and business separation requirements between the licensee and any Bidding Unit that will apply when a licensee has established a Bidding Unit. Part C sets out the obligations on the licensee to restrict the use of information that the licensee has access to through its Tender Support Activities. Part D sets out the Conflict Mitigation Statement the licensee must publish if it has established a Bidding Unit, which (amongst other things) must comply with the Conflict Mitigation Methodology issued by the Authority. Part E sets out requirements on the licensee to conduct an external independent audit.

Part A: Conduct of the licensee when undertaking its Tender Support Activities

- 9.21.3 In performing its Tender Support Activities and at all times when the licensee has established a Bidding Unit, the licensee must act in a manner intended to ensure that neither the Bidding Unit, nor any Bidder, obtains an unfair

commercial advantage, including any advantage from a preferential or discriminatory arrangement.

Part B: Separation of the licensee and any Bidding Unit

- 9.21.4 Without prejudice to the licensee's obligations under Standard Conditions B5 (Prohibition of cross-subsidies) and B6 (Restriction on Activity and Financial Ring Fencing) and *[Drafting note, NGET only: Special Conditions 9.17 (Prohibited Activities and Conduct of the Transmission Business) and 9.18 (Business separation requirements and compliance obligations)] [Drafting note, SHET and SPT only: Special Conditions 9.15 (Appointment of a Compliance Officer) and 9.16 (Independence of and appointment of managing director of the Transmission Business)]*, the licensee must conduct its Tender Support Activities separately from any Bidding Unit in accordance with the requirements set out in Part B of this condition.
- 9.21.5 The licensee must ensure the separation of management structures between the licensee and any Bidding Unit up to, but not necessarily including, the board of directors of an immediate parent company of the licensee.
- 9.21.6 The licensee must ensure that arrangements are in place which are effective in restricting the access of:
- (a) persons engaged in the management or operation of any Bidding Unit to any parts of premises occupied by the network planning or project development operations of the licensee; and
 - (b) persons engaged in the network planning or project development operations of the licensee to any parts of premises occupied by any Bidding Unit.
- 9.21.7 The licensee must ensure that the systems used for the recording, processing and storage of information relating to, or derived from, the licensee performing its Tender Support Activities, to which persons engaged in the management or operation of the licensee have access, cannot be accessed by persons engaged in the management or operation of any Bidding Unit.
- 9.21.8 The licensee must ensure that during the initial 14 weeks of the Invitation to Tender Stage of an Onshore Transmission Tender Exercise:
- (a) all persons involved in the activities within any Bidding Unit are prohibited from transferring to the licensee; and
 - (b) all persons involved in the network planning or project development operations of the licensee are prohibited from transferring to any Bidding Unit.
- 9.21.9 With respect to Standard Conditions B5 (prohibition of cross-subsidies) and B6 (Restriction on Activity and Financial Ring Fencing), the licensee must ensure

that any assets related to an Onshore Transmission Tender Exercise are separable from any other asset of the licensee.

9.21.10 The licensee must not use any Allowed Revenue to establish any Bidding Unit or for any Bidding Unit activities in respect of an Onshore Transmission Tender Exercise.

Part C: Restrictions on the use of information in connection with Tender Support Activities

9.21.11 Any information held by the licensee relating to or deriving from its Tender Support Activities is to be treated as Confidential Information for the purpose of this condition and Special Condition 9.20 Tender Support Activities in onshore electricity transmission.

9.21.12 The licensee must not disclose, authorise access to, or authorise use of any Confidential Information except as provided for in paragraph 9.21.14.

9.21.13 For the avoidance of doubt, for the purposes of paragraph 9.21.12 and subject to paragraph 9.21.14, the licensee must not disclose, authorise access to, or authorise use of Confidential Information to:

- (a) any Bidder; and
- (b) any Bidding Unit, including any employees, agents, contractors, consultants, and advisers of the Bidding Unit.

9.21.14 The licensee may disclose or authorise access to or authorise the use of Confidential Information as far as is necessary or appropriate in the circumstances where:

- (a) the disclosure of, access to or use of the Confidential Information is required or permitted by:
 - i. any requirement of a Competent Authority;
 - ii. the conditions of any licence granted or taking effect as if granted under the Act or any document referred to in such a licence with which the licensee is required by virtue of the Act or that licence to comply;
 - iii. paragraph 9.20.4 of Special Condition 9.20 Tender Support Activities in onshore electricity transmission;
 - iv. the [Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2024];
 - v. any court or tribunal order;
 - vi. the performance of a statutory function;
 - vii. under the rules of the Electricity Arbitration Association or another arbitral body; or
- (b) the disclosure of, access to or use of the Confidential Information is to persons engaged in the provision of Shared Services, but only to the extent

necessary to allow those persons to perform their functions to support the licensee in performing its Tender Support Activities.

Part D: Conflict Mitigation Statement

- 9.21.15 Where the licensee intends to participate in an Onshore Transmission Tender Exercise as a Bidder through a Bidding Unit, before the PQ Stage commences, the licensee must:
- (a) notify the Authority of its intention to bid; and
 - (b) submit a Conflict Mitigation Statement to the Authority for approval.
- 9.21.16 A Conflict Mitigation Statement must:
- (a) comply with the Conflict Mitigation Methodology published under paragraph 9.21.18; and
 - (b) address the following matters as described in the Conflict Mitigation Methodology:
 - i. separation of the licensee and the Bidding Unit;
 - ii. employee transfer restrictions;
 - iii. managerial separation;
 - iv. information sharing restrictions;
 - v. financial separation; and
 - vi. monitoring and reporting compliance including a Conflicts Management Officer; and
 - (c) be approved by the licensee's board of directors.
- 9.21.17 The Authority will issue and amend the Conflict Mitigation Methodology by direction.
- 9.21.18 The Authority will publish the Conflict Mitigation Methodology on the Authority's Website.
- 9.21.19 The Conflict Mitigation Methodology will make provision about the requirements and reporting framework of the Conflict Mitigation Statement.
- 9.21.20 Before directing that the Conflict Mitigation Methodology comes into effect, the Authority will publish on the Authority's Website:
- (a) the text of the proposed Conflict Mitigation Methodology;
 - (b) the reasons for the proposed date on which the Authority intends the Conflict Mitigation Methodology to come into effect; and
 - (c) a period during which representations on the text of the proposed Conflict Mitigation Methodology may be made, which will not be less than 28 days.
- 9.21.21 Before directing an amendment to the Conflict Mitigation Methodology, the Authority will publish on the Authority's Website:
- (a) the text of the amended Conflict Mitigation Methodology;
-

- (b) the date on which the Authority intends the amended Conflict Mitigation Methodology to come into effect;
 - (c) the reasons for the amendments to the Conflict Mitigation Methodology; and
 - (d) a period during which representations on the amendments to the Conflict Mitigation Methodology may be made, which will not be less than 28 days.
- 9.21.22 Following receipt of a Conflict Mitigation Statement, or an updated Conflict Mitigation Statement in accordance with paragraph 9.21.23(c), the Authority will either:
- (a) approve the Conflict Mitigation Statement and notify the licensee of its approval; or
 - (b) give a direction to the licensee on any parts of the Conflict Mitigation Statement that require further development and provide a date by which the licensee is required to submit a revision to the Authority for approval.
- 9.21.23 Following the Authority's approval of the Conflict Mitigation Statement under paragraph 9.21.22(a), the licensee must:
- (a) unless the Authority otherwise consents or directs, comply with the approved Conflict Mitigation Statement at all times during the Onshore Transmission Tender Exercise;
 - (b) keep the Conflict Mitigation Statement under review and update it as necessary, including when circumstances change such that the document no longer secures compliance with this condition or when the Authority directs, to ensure that it continues to be complete and accurate in all material respects;
 - (c) where the licensee has updated the approved Conflict Mitigation Statement, submit the updated Conflict Mitigation Statement to the Authority for approval; and
 - (d) where the licensee notifies the Authority under paragraph 9.21.15(b) that it intends to participate in an Onshore Transmission Tender Exercise as a Bidder, implement the procedures and systems by which the licensee will secure compliance with Part B of this condition, according to the timescales set out in the approved Conflict Mitigation Statement.
- 9.21.24 The licensee must publish a copy of the approved Conflict Mitigation Statement and if applicable, each revision of it within 15 working days of the date of approval by the Authority,

Part E: External Audit

- 9.21.25 The licensee must procure an external audit as defined in the Conflict Management Audit Terms of Reference of a Conflict Mitigation Statement

approved under paragraph 9.21.22 to assess the licensee's level of compliance with the requirements in paragraph 9.21.16.

- 9.21.26 The licensee must ensure that the external audit is conducted by an independent party which is not affiliated with the Bidding Unit or the licensee as defined in the Conflict Management Audit Terms of Reference.
- 9.21.27 The licensee must ensure the external audit complies with the Conflict Management Audit Terms of Reference.
- 9.21.28 The Authority will issue and amend the Conflict Management Audit Terms of Reference by direction.
- 9.21.29 The Authority will publish the Conflict Management Audit Terms of Reference on the Authority's Website.
- 9.21.30 The Conflict Management Audit Terms of Reference will include:
- (a) the scope, objective and methodology of the audit;
 - (b) findings, evidence to support findings, and impact of findings
 - (c) conclusions, recommendations, and actionable suggestions
- 9.21.31 Before directing that the Conflict Management Audit Terms of Reference come into effect, the Authority will publish on the Authority's Website:
- (a) the text of the proposed Conflict Management Audit Terms of Reference;
 - (b) the date on which the Authority intends the Conflict Management Audit Terms of Reference to come into effect; and
 - (c) a period during which representations on the text of the proposed Conflict Management Audit Terms of Reference may be made, which will not be less than 28 days.
- 9.21.32 Before directing an amendment to the Conflict Management Audit Terms of Reference, the Authority will publish on the Authority's Website:
- (a) the text of the amended Conflict Management Audit Terms of Reference;
 - (b) the date on which the Authority intends the amended Conflict Management Audit Terms of Reference to come into effect;
 - (c) the reasons for the amendments to the Conflict Management Audit Terms of Reference; and
 - (d) a period during which representations on the amendments to the Conflict Management Audit Terms of Reference may be made on the proposed direction, which will not be less than 28 days.

4. Special Condition 9.14 Restriction on the use of certain information

Questions

- Q5. Do you agree with our proposed modifications to SpC 9.14 Restriction of the use of certain information?
- Q6. Do you propose any modifications to the proposed licence drafting?

Introduction

- 4.1 To avoid conflict with the provision of information under the proposed Special Condition 9.20 Tender Support Activities in Onshore Electricity Transmission and Special Condition 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise we are proposing to modify SpC 9.14 Restriction of the use of certain information to allow for the disclosure of Confidential Information in respect of an Onshore Transmission Tender Exercise.
- 4.2 The proposed modification would only apply for SHET and SPT.⁸
- 4.3 The reason for modifying this condition is to include reference to the new SpC 9.20 Tender Support Activities in Onshore Electricity Transmission and SpC 9.21 Conflict Mitigation Arrangements for Competitive Tenders in Onshore Electricity Transmission within this condition.
- 4.4 The effect is to allow for the provision of Confidential Information whilst undertaking information provision activity carried out under paragraph 9.20.4 of SpC 9.20.

Proposed licence modification

Special Condition 9.14 Restriction on the use of certain information

Introduction

9.14.1 This condition sets out restrictions on the use of Confidential Information.

Part A: Requirements for treatment of Confidential Information

9.14.2 The licensee (including its Affiliates and Related Undertakings) must not disclose or authorise access to Confidential Information except as provided for in Part B.

⁸ SpC 9.14 Restriction of the use of certain information only applies to the electricity transmission licences of SHET and SPT.

Part B: Circumstances under which the licensee can disclose Confidential Information

9.14.3 The licensee (including its Affiliates and Related Undertakings) may disclose or authorise access to Confidential Information insofar as is necessary or appropriate in the circumstances where:

- (a) paragraphs 9.16.9 to 9.16.12 of Special Condition 9.16 (Independence of and appointment of managing director of the Transmission Business) apply;
- (b) the information is only used for the purpose of the Transmission Business or any External Transmission Activities of the licensees, and effective arrangements are in place at all times for ensuring no further disclosure occurs;
- (c) disclosure of the information is required or permitted by:
 - i. any requirement of a Competent Authority;
 - ii. the standard conditions of any licence granted or taking effect as if granted under the Act or any document referred to in such a licence with which the licensee is required by virtue of the Act or that licence to comply;
 - iii. any court or tribunal order;
 - iv. the performance of a statutory function; or
 - v. under the rules of the Electricity Arbitration Association or another arbitral body;
- (d) the licensee has been notified by the person who provided the information or by all persons to whom it relates that the information need not be treated as confidential;
- (e) the licensee makes public information which:
 - i. is not provided by another person;
 - ii. does not relate to another person;
- (f) [disclosure or use of, or access to, the information is required or permitted by Special Condition 9.20 \(Tender Support Activities in Onshore Electricity Transmission\) or Special Condition 9.21 \(Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise\).](#)

5. Special Conditions 1.1 Interpretations and definitions

Questions

Q7. Do you agree with our proposed modifications to SpC 1.1 Interpretations and definitions?

- 5.1 The reason for the proposed modifications to SpC 1.1 is that there are a number of new defined terms in proposed SpC 9.20 Tender Support Activities in Onshore Electricity Transmission and SpC 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise that will need to be included in SpC 1.1.
- 5.2 The effect of these modifications is to provide greater clarity to the interpretation and application of the licence conditions in question.
- 5.3 The table below shows the modifications to SpC 1.1 that we are proposing to make.

Table 1: New Defined terms

Term	Definition
New terms	
Bidder	has the meaning given in Regulation 2 of the [Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2024] ⁹
Bidding Unit	means any part of the licensee’s Transmission Business (or an Associate of the licensee) that intends to participate, or is participating in, an Onshore Transmission Tender Exercise as a Bidder.
Conflict Management Audit Terms of Reference	means the document of that name published on the Authority’s Web site in accordance with Part E of Special Condition 9.21 [Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise]
Conflict Mitigation Methodology	means the document of that name published on the Authority’s Website in accordance with Part D of Special Condition 9.21 [Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise]
Conflict Mitigation Statement	means the document of that name required to be prepared by the licensee in accordance with Part D of Special Condition 9.21 Conflict Mitigation Arrangements for Onshore Transmission Tender Exercise

⁹ The draft Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2024 [Draft Electricity \(Early-Model Competitive Tenders for Onshore Transmission Licences\) Regulations 2024 for consultation](#) have been consulted on and, if made by the Authority and approved by the Secretary of State, will come into force before the proposed licence modifications are implemented.

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Conflicts Management Officer	has the meaning given to that term in the Conflict Mitigation Methodology
Delivery Body	means the body designated by Regulation 3 of the Electricity (Designation of Delivery Bodies) (Transmission) Regulations 2023(a)
Invitation to Tender (ITT) Stage	means the stage for the Delivery Body to determine which qualifying bidders are to be selected to become the provisional preferred bidder or provisional reserve bidder in respect of an Onshore Transmission Tender Exercise
Onshore Competition Information Exchange Guidance	means the document of that name issued by the Authority in accordance with Part B of Special Condition 9.20 [Tender Support Activities in onshore electricity transmission].
Onshore Competition Information Exchange Process	means the process of the licensee providing information to the Delivery Body in respect of an Onshore Transmission Tender Exercise.
Onshore Transmission Tender Exercise	has the meaning given in Regulation 2 of the [Electricity (Early-Model Competitive Tenders for Onshore Transmission Licences) Regulations 2024]
PQ Stage	means the stage to determine which bidders are to become qualifying bidders in respect of an Onshore Transmission Tender Exercise.
Tender Support Activities	means any activity undertaken by the Licensee under or pursuant to Special Condition (9.20) [Tender Support Activities in onshore electricity transmission]

Appendix 1 - Privacy notice on consultations

Personal data

The following explains your rights and gives you the information you are entitled to under the General Data Protection Regulation (GDPR).

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the consultation.

1. The identity of the controller and contact details of our Data Protection Officer

The Gas and Electricity Markets Authority is the controller, (for ease of reference, "Ofgem"). The Data Protection Officer can be contacted at dpo@ofgem.gov.uk

2. Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

3. Our legal basis for processing your personal data

As a public authority, the GDPR makes provision for Ofgem to process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

4. With whom we will be sharing your personal data

We will not be sharing your personal data.

5. For how long we will keep your personal data, or criteria used to determine the retention period.

Your personal data will be held for 12 months.

6. Your rights

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right to:

- know how we use your personal data
- access your personal data
- have personal data corrected if it is inaccurate or incomplete
- ask us to delete personal data when we no longer need it
- ask us to restrict how we process your data

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- get your data from us and re-use it across other services
- object to certain ways we use your data
- be safeguarded against risks where decisions based on your data are taken entirely automatically
- tell us if we can share your information with 3rd parties
- tell us your preferred frequency, content and format of our communications with you
- to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

7. Your personal data will not be sent overseas

8. Your personal data will not be used for any automated decision making.

9. Your personal data will be stored in a secure government IT system.

10. More information

For more information on how Ofgem processes your data, click on the link to our "[ofgem privacy promise](#)".