

# Consultation on the Transmission Constraint Licence Condition (TCLC)



Department of Energy and Climate Change  
3 Whitehall Place  
London  
SW1A 2AW

Telephone: 0300 068 4000  
Website: [www.decc.gov.uk](http://www.decc.gov.uk)

© Crown copyright 2011

Copyright in the typographical arrangement and design rests with the Crown. This publication (excluding logos) may be re-used free of charge in any format or medium provided that it is re-used accurately and not used in a misleading context. The material must be acknowledged as crown copyright and the title of the publication specified.

For further information on this consultation, contact:  
Energy Market Design  
Department of Energy and Climate Change  
3 Whitehall Place  
London  
SW1A 2AW  
Telephone: 0300 068 5016  
Email: [amy.sinclair@decc.gsi.gov.uk](mailto:amy.sinclair@decc.gsi.gov.uk)

Published by the Department of Energy and Climate Change

# Foreword

- This publication seeks views on the introduction of a proposed licence condition under s.18 of the Energy Act 2010, which gave the Secretary of State a power to modify electricity generation licences in order to prevent generators from exploiting periods of transmission constraint. Generators have the opportunity to charge National Grid (NG) excessively high amounts to increase or decrease their generation when transmission constraints mean that NG have limited options to balance the system.
- The proposed licence condition seeks to prohibit electricity generators from behaviour that allows them to profit unfairly at the expense of consumers during periods of transmission constraint (when system limitations mean that electricity cannot be transmitted from the location where it is generated to the location where the demand exists)
- The licence condition targets three particular behaviours by generators, outlined in this consultation document. It is estimated that the proposed licence condition could save consumers between £115 and £300m (present value) over 5 years.
- The licence condition is due to expire after 5 years (with the option to extend it for 2 years following review).

# Contents

<b>Introduction.....</b>	<b>8</b>
<b>Background.....</b>	<b>10</b>
<b>The Transmission Constraint Licence Condition.....</b>	<b>13</b>
<b>Ofgem’s Consultation.....</b>	<b>19</b>
<b>Enforcement procedure .....</b>	<b>19</b>
<b>The Appeal Process.....</b>	<b>19</b>
<b>Duration of the TCLC.....</b>	<b>20</b>

# General information

## Purpose of this consultation

This consultation sets out the proposal to use powers conferred to the Secretary of State by the Energy Act 2010 to introduce a new licence condition to prohibit exploitative behaviour by electricity generators during periods of transmission constraint. DECC invites interested parties to submit comments and evidence in response to the proposal. The consultation is particularly relevant to electricity generators, suppliers, network operators, energy consumers and their representatives, Ofgem and other stakeholders with an interest in the electricity transmission sector.

**Issued:** 8<sup>th</sup> December

**Respond by:** 1<sup>st</sup> March

### Enquiries to:

Energy Market Design

Department of Energy & Climate Change,

Floor 4, Area C,

3 Whitehall Place,

London, SW1A 2AW

Tel: 0300 068 5016

Email: [amy.sinclair@decc.gsi.gov.uk](mailto:amy.sinclair@decc.gsi.gov.uk)

Consultation reference: URN 11D/916 – Consultation on the Transmission Constraint Licence Condition (TCLC)

### Territorial extent:

Great Britain

### How to respond:

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Please send electronic responses to [consultation.TCLC@decc.gsi.gov.uk](mailto:consultation.TCLC@decc.gsi.gov.uk).

Please send hardcopy responses to:

Energy Market Design

Department of Energy & Climate Change,

Floor 4, Area C,

3 Whitehall Place,

London, SW1A 2AW

### Additional copies:

You may make copies of this document without seeking permission.



**Confidentiality and data protection:**

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on our website at [www.decc.gov.uk/en/content/cms/consultations/](http://www.decc.gov.uk/en/content/cms/consultations/). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

**Quality assurance:**

This consultation has been carried out in accordance with the Government's Code of Practice on consultation, which can be found here:

<http://www.bis.gov.uk/files/file47158.pdf>

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

DECC Consultation Co-ordinator  
3 Whitehall Place  
London SW1A 2AW  
Email: [consultation.coordinator@decc.gsi.gov.uk](mailto:consultation.coordinator@decc.gsi.gov.uk)

# Introduction

1. S.18 Energy Act 2010 introduced a power for the Secretary of State for Energy and Climate Change to modify the standard conditions of electricity generation licences to prohibit certain behaviour by generators that can significantly increase the costs of balancing the GB electricity system during periods of transmission constraint.
2. When a transmission constraint occurs the options available to the System Operator (SO) to balance the system can be very limited. This can provide the opportunity to generators to offer balancing services at prices higher than under usual market conditions, exposing the consumer to greater costs.
3. Existing competition law makes it difficult, in many circumstances, to tackle such behaviour given the specific characteristics and complexities of the energy market. Ofgem estimated that the potential costs of exploitation during periods of transmission constraint could be as high as £125m<sup>1</sup> for one year (2008/2009), and that the cost is likely to rise in coming years for reasons set out below.
4. In the long-term, upgrades currently planned for the transmission network will increase the capacity for electricity to flow between regions, reducing the frequency of transmission constraints and therefore the occasions when the SO has limited options to balance the system. However, while these upgrades are taking place the frequency of periods when transmission is constrained is likely to increase as transmission routes are taken offline for these works to be carried out. The Government therefore judges that a new licence condition is essential while the transmission network is being upgraded to protect consumers from the unnecessarily high costs that can result from exploitative behaviour in providing system balancing services.
5. The licence condition is intended to make the balancing market fairer for all its participants, and the expected decrease in Balancing System Use of Service (BSUoS) charges<sup>2</sup>, as a result of the introduction of the TCLC, should benefit most participants in the Balancing Mechanism (BM). It is not the intention of the TCLC to discourage bidding by generators into the BM or the offering of inter-trip services, and the TCLC should allow firms to recover costs and make reasonable profits from providing balancing services. However, the TCLC should help to ensure that firms don't make excessive benefits, and that the SO faces reasonable costs when balancing the system during transmission constraints. In its guidance to the TCLC, Ofgem will set out what behaviour that is likely to lead to excessive benefits .
6. The European Commission has also recently recognised that the nature of electricity markets may mean that they could be susceptible to some form of market manipulation. The Regulation on Energy Market Integrity and Transparency (REMIT) proposals, presently at first reading stage, contain text that prohibits, among other things, withholding of output. The Government and Ofgem believe, however, that a specific and targeted licence condition gives greater clarity to generators as to what is acceptable behaviour in the particular situations covered by the licence condition compared to the more general definitions currently contained in the REMIT text. We will ensure that the TCLC will be implemented in a manner consistent with REMIT.
7. This document seeks views on the design of the licence condition. In parallel, Ofgem is consulting on its Guidance that accompanies this licence condition and sets out its proposed

---

<sup>1</sup> Market Power Concerns Initial Policy Proposals (Ofgem 2009) p.13

<sup>2</sup> The costs that National Grid incurs from managing constraints on the network are subsequently charged to generators and suppliers in proportion to their share of the market across Great Britain (via Balancing Services Use of System, or "BSUoS", charges).



approach to enforcement. The two consultations should be read together to enable full understanding of the licence condition's aims and its application.

8. The arguments for the existence of the licence condition were established prior to the inclusion of the power for its introduction in the Energy Act 2010. We have not seen evidence that this problem has been resolved in the interim, and therefore we propose to go ahead with the introduction of the licence condition. Whilst we invite views about this, the principal focus of this consultation is on ensuring the best design of the licence condition within the bounds set out in the primary legislation of the Energy Act 2010. The Impact Assessment accompanying this consultation document explains the rationale for the introduction of the licence condition in more detail, as well as examining the costs and benefits of various design options.

# Background

## Balancing and settlement

9. The electricity market in Great Britain is a competitive market with generators competing to sell electricity to supply companies and in some cases direct to large businesses. Most electricity is supplied through an integrated transmission network operated by National Grid. National Grid is responsible for operating the electricity high voltage transmission system across Great Britain and, because electricity cannot be stored economically, for ensuring that the system is kept in balance, i.e. that demand for electricity matches supply in real time.
10. Under the current GB electricity trading arrangements electricity generators contract with purchasers (either electricity suppliers who buy electricity in order to sell it to domestic and business customers, National Grid (for residual balancing purposes), or large business users who may buy electricity directly on the wholesale market) for the supply of electricity, on a bilateral basis or through organised exchanges. They must notify Elexon, the Balancing and Settlement Code Company, of these contracts. Trading more than 24 hours in advance of the start of the period to which it relates is termed “forward trading”, and trading between one and 24 hours in advance of the start of that period is termed “within-day trading”.
11. Although the generation, transportation, delivery and usage of electricity is continuous, for the purposes of trading electricity is considered to be generated, transported, delivered and used in half-hour chunks called settlement periods. Generators and suppliers can trade up until one hour in advance of the settlement period. The end of trading for a settlement period is known as gate closure.
12. Importantly, the contracts for the supply of electricity in the wholesale market do not specify where in GB the electricity needs to be generated. Thus, generators’ decisions regarding which plant to “dispatch” electricity from to meet their contracts are not dependent on the ability of the network to transmit that electricity to the location of demand. Generators are generally expected to choose to generate from the most profitable of their plants at that point in time when meeting their contracted positions. The profitability and feasibility of dispatching from their different plants is influenced by factors such as market conditions, technology, fuel availability and other limiting factors such as environmental regulation.
13. After gate closure, electricity generators and purchasers may not trade any further with each other, but may trade with National Grid. At gate closure, generating companies’ most up-to-date submissions of their generating plans for the relevant 30 minute period to National Grid – this is known as the Final Physical Notification (FPN) - together with other information, such as prices for the increase or decrease of generation output, become fixed. Using this, along with the maximum output available from each plant and forecasts of demand from suppliers, National Grid must decide what action, if any, it may need to take to keep the system in balance for the 30 minute period.

14. In order to do this National Grid uses the Balancing Mechanism (BM), which operates through generators submitting monetary “offers” to increase or “bids” to decrease the amount of electricity they produce from a particular plant. Other commercial tools are also available to National Grid, including previously arranged bilateral deals, such as inter-trip contracts<sup>3</sup>.
15. An offer is the price a generator charges National Grid in order to increase its generation. A bid is the amount a generator will pay to National Grid if it is instructed to reduce its generation; the generator will still profit from this action, as savings are made on avoided fuel and other costs of not running. In certain circumstances negative bids can be made i.e. the generator can require National Grid to pay it in order not to run; this would generally only be the case for low or zero marginal fuel cost generation, such as nuclear or wind, for which fuel savings do not apply.
16. Importantly, the costs that National Grid incurs from managing constraints on the network, through the BM and contracts for other Balancing Actions, are subsequently charged to generators and suppliers in proportion to their share of the market across Great Britain (via Balancing Services Use of System, or “BSUoS”, charges). This effectively results in a “socialised” charge which is ultimately paid by all consumers. These charges cover the range of actions required to maintain energy balance and system security. Costs incurred in the management of transmission system congestion are known as “constraint costs”, and were £170m<sup>4</sup> in 2010/11.

## Transmission constraints

17. Electricity is transported from the point of generation to the point of use through a national transmission network and local or regional distribution networks. The transmission network has a finite capacity to transmit electricity between any two locations. If flows on the system are too high, parts of the network can overload leading to system insecurity. Where the capacity of the network between two locations is insufficient to transmit electricity from where it is produced to where the demand for it is situated, that is termed a ‘transmission constraint’<sup>5</sup>. Transmission constraints can arise due to thermal limitations on the system; the need to ensure pre- and post-fault voltage levels remain within prescribed limits, or to ensure the electrical ‘stability’ of the transmission system.
18. Constraints are likely to arise for a number of reasons, which may include:

---

<sup>3</sup> An inter-trip is a device installed on generating plants that allows them to “trip-off” the transmission network under certain conditions, for example if a transmission line becomes overloaded following a fault. This allows the network to be run at a higher thermal loading than would otherwise be possible. Plants installed with inter-trips must be “armed” in order for the inter-trip to be available for use. The charge for this is known as an “arming fee”.

<sup>4</sup> A more general representation of the costs incurred by National Grid over recent years can be seen at: [http://www.nationalgrid.com/NR/rdonlyres/1B6B81A0-7583-4ECO-B16D-A814E2100546/46801/BSIS\\_Outturn\\_Web\\_16May2011\\_Final.pdf](http://www.nationalgrid.com/NR/rdonlyres/1B6B81A0-7583-4ECO-B16D-A814E2100546/46801/BSIS_Outturn_Web_16May2011_Final.pdf)

<sup>5</sup> A full definition of transmission constraint can be found at the end of the attached licence condition.

- (a) planned events, such as the closure of generating plant or transmission lines for maintenance;
  - (b) other intermittent events, such as:
    - (i) loss of generating or transmission capacity due to faults or breakdowns; and
    - (ii) the impact of varying levels of generation from renewable generation due to the weather conditions;
  - (c) unexpected variations in the pattern of demand for electricity; and
  - (d) long term limits on the transmission capacity between two locations, due to limitations of the infrastructure which would require major investment to rectify.
19. The transmission network in Great Britain is divided into 17 zones, which have strong internal electrical connections, but may have weaker connection to the rest of the transmission network. The weaker connections between zones are known as 'Critical Boundaries'. Most (although not all) constraints arise along these boundaries rather than within a zone, as a result of limits on the capacity to transmit electricity from one zone to another.
20. A situation in which there is excess generation in a zone, and a limit on the capacity to export the excess electricity out of it, is known as an "export constraint". The reverse, i.e. a situation in which there is not enough generation to meet demand in a zone, and there is a limitation on capacity to import electricity into the region, is known as an "import constraint".
21. The most notable example of a critical boundary is between England and Scotland. If the amount of electricity which generators produce in Scotland is significantly greater or less than demand in Scotland, there are limits on the extent to which the surplus can be utilised or the shortfall can be met by transmitting electricity to or from England and Wales. Typically, market activity gives rise to an excess of generation scheduled for production in Scotland and there is not enough capacity on the network to fully transmit this excess electricity to England and Wales.

# The Transmission Constraint Licence Condition

22. A generator behind a constraint may have the ability to exacerbate or create a transmission constraint, by notifying National Grid that it intends to dispatch its plant in ways that would not normally be economic. The generator may know, or be able to predict, that National Grid will need to call on that plant in order to balance the system, given limited options available to it.
23. For example, this could take the form of a generator (a) submitting an intention to produce electricity from a plant in an export constrained region, despite negative GB market spreads, (b) submitting an intention not to produce electricity from a plant in an import constrained region, despite positive market spreads, or (c) generally not dispatching its most economic plant, in each case creating or exacerbating a transmission constraint.
24. The licence condition provided for in the Energy Act 2010 has been named the Transmission Constraint Licence Condition (TCLC) as its proposed application is limited to arrangements which relate to actual or potential periods of transmission constraints.
25. The TCLC is not intended to displace the application of competition law where appropriate. However, as noted above, the TCLC is targeted particularly at behaviour which may often fall outside the scope of existing competition law.
20. The licence condition is designed to prevent behaviours that result in a generator obtaining excessive benefit from electricity generation through its transactions with the SO (National Grid), during, or in preparation for, a period of transmission constraint. These transactions must either be within the BM or in the form of bilateral inter-trip contracts between the SO and generator.
21. In addition, in order for the licence condition to be applicable one of three circumstances must occur, as set out below.

## Circumstance 1

22. The first behaviour prohibited by the licence condition is the creation or exacerbation of transmission constraints by generators making uneconomic dispatch decisions. It is considered that a generator has created or exacerbated the constraint because it has chosen to generate with one plant, when it had more profitable plant available that would not have created, or exacerbated a constraint. A generator is then able to gain an excessive benefit by having a bid or offer accepted in the BM, when this would not have been the case had there not been a constraint.

23. An example of this behaviour would be if a generator, in the knowledge that maintenance was taking place on a critical boundary that reduced the capacity to import electricity into the region, chose to generate on the other side of that boundary even though market conditions indicated that their plants within the region would be the most profitable to dispatch at the time.

### The problem

24. A generator behind a constraint may have the ability to exacerbate or create a transmission constraint, by notifying National Grid that it intends to dispatch its plant in ways that would not normally be economic. The generator may know, or be able to predict, that National Grid will need to call on that plant in order to balance the system, given limited options available to it.

25. For example, this could take the form of a generator (a) submitting an intention to produce electricity from a plant in an export constrained region, despite negative GB market spreads<sup>6</sup>, (b) submitting an intention not to produce electricity from a plant in an import constrained region, despite positive market spreads, or (c) generally not dispatching its most economic plant<sup>7</sup>, in each case creating or exacerbating a transmission constraint.

26. When this occurs the SO may be forced to call on these generators to either reduce or increase their generation from particular plants through actions in the BM.

27. Where there are a limited number of flexible generating plants in the transmission constraint region, the generators responsible for causing or exacerbating the transmission constraint are often able to set excessively low prices for their bids or excessively high prices for their offers to National Grid without regard to effective competition. In this situation the SO has little choice but to accept the proposed charges. The associated TCLC guidance document, drafted by Ofgem, sets out how a bid will be determined to lead to an excessive benefit.

28. If a transmission constraint is caused or exacerbated by a generator as a result of a dispatch decision that reflects the most profitable option available to them pre-gate closure, i.e. outside of actions within the BM, this is considered normal market behaviour and is not prohibited by the proposed licence condition.

29. The causing or exacerbating of transmission constraints is prohibited where the generator has not taken the most economic option available to it pre-gate closure.

### The licence condition

30. Circumstance one prevents generators from making dispatch decisions that do not reflect the most economic option available to them outside of the BM, and then deriving excessive benefit from arrangements made with the SO within the BM, in relation to an increase or decrease in generation (as compared to the generator's FPN).

---

<sup>6</sup> In this context, "spreads" refer to the (short-run) profitability of generation for all types of generator. Spreads represent the difference between the short-run variable costs of generation (which typically include fuel costs, other short-run variable costs and the costs of CO<sub>2</sub> allowances) and the wholesale price of electricity. Common parlance in the industry refers to "clean spark" spreads as the difference between wholesale electricity prices and fuel/carbon costs for CCGT generators, and "clean dark" spreads as the difference between wholesale electricity prices and fuel/carbon costs for coal generators.

<sup>7</sup> I.e. most profitable plant.



31. For the full text relating to circumstance one see paragraph 3 of the licence condition, attached at annex 1.

**Q#. Does the prohibition set out under circumstance 1 of the licence condition adequately address the problem of generators profiting from actions in the BM as a result of their exacerbation or creation of transmission constraints?**

**Q#. Is this approach likely to have any unintended consequences on behaviour in the electricity market?**

## Circumstance 2

32. The second behaviour prohibited by the licence condition is the placing of excessively low bids in a period of an export transmission constraint.

### The problem

33. In a situation of export constraint, the SO will accept bids submitted to it by generators willing to reduce their generation.

34. A bid is generally the amount that a company will pay to the SO in order *not* to generate, although it is also possible for “negative” bids to be made, which require the SO to pay the generator for this. Generating plants that run on fuel will still realise a net financial benefit from this, because of the savings made on avoided fuel and other costs by not running, while still having received payment from the original contract to produce electricity. In theory the bids submitted to the SO should roughly reflect the marginal costs associated with production; the evidence from the last few years suggests that this is generally the case. However, there have been instances when the SO has had no choice but to accept bids that appear to be below marginal costs; these have been at times of transmission constraint.

35. Different generation technologies will have varying marginal costs that should be reflected in their bid prices. In certain circumstances bids can be negative i.e. the SO will pay the generator to reduce its output. This is often the case for wind generators, which have zero marginal costs for fuel, and will expect to recover other costs including the lost financial support that they would otherwise have received under the ‘Renewables Obligation’<sup>8</sup>.

36. There have also been instances during transmission constraints when bids from some thermal plants appear to be well below marginal costs, and even occasionally negative. This may suggest that these generators are deriving excessive benefits during transmission constraints, creating significant costs to the SO, which are then passed back to generators and subsequently onto the consumer.

---

<sup>8</sup> The Renewables Obligation is the current main mechanism for supporting large-scale generation of renewable electricity.

37. Over the past year there have been some circumstances in which the SO has had no choice but to accept highly negative bids that do not appear to relate to costs and seem to provide these generators with very large profits for not generating electricity. These bids have come from wind generators, and although this bidding behaviour is not ostensibly linked to transmission constraint periods, it is generally during these periods that the SO is forced to accept such bids.
38. Whilst the instances of the SO having to accept highly negative bids from wind generators have been rare in the past, it is likely that in the absence of the proposed licence condition such instances would increase in future as significant amounts of additional wind generation join the GB system.
39. In response to the increasing role wind is called on to play in balancing the system, National Grid recently issued a consultation on “Managing Intermittent and Inflexible Generation in the Balancing Mechanism”. This is part of ongoing work to identify ways in which trading arrangements can evolve to allow new forms of generation to participate more effectively.
40. A transmission constraint limits the number of generating plants that the SO can call on to reduce generation. This means the SO is often faced with only costly options to balance the system. Circumstance 2 of the TCLC is aimed at reducing the potential for generators to gain excessive benefits from such situations. The TCLC will prohibit generators from making bids that are wholly unreflective of the costs faced by generator, whilst still allowing for an incentive for generators to submit bids.
41. In its parallel consultation on its draft guidance, Ofgem sets out, in more detail, some of the factors it will consider in determining whether a generator has benefitted excessively from its action.

### The licence condition

Circumstance two of the TCLC prohibits excessively low or negative bids during a period of transmission constraint. The objective of this condition is not to discourage generators from submitting bids into the BM or to prevent them from making profits, but to ensure that generators do not derive unreasonable benefits when the SO has limited options available to it.

42. For the full text relating to circumstance two see paragraph 3 of the licence condition, attached at annex 1.

**Q#. Does circumstance 2 adequately address the issue of excessively low or negative bids during periods of transmission constraints?**

**Q#. Is this approach likely to have any unintended consequences on behaviour in the electricity market?**

## Circumstance 3

43. The third behaviour prohibited by the Licence Condition is charging excessive amounts for the arming of inter-trips (see paragraph 14).

### The problem

44. The suitability of generating plants for the installation of inter-trips can vary depending on a range of technical and commercial considerations, potentially limiting the number available for use<sup>9</sup> in each region. It can be the case that during a constraint period the constrained region might not contain many plants fitted with inter-trips. This reduces competition and allows generators to charge higher prices for the arming of their inter-trips than they are able to do when in competition with other generators to provide this service. As a result the SO can be forced to pay arming fees that are unduly high for this service.

### The licence condition

45. The draft licence seeks to prevent licensees from charging the SO excessive amounts for the arming of inter-trips.
46. For the full text relating to circumstance one see paragraph 3 of the licence condition, attached at annex 1.

**Q#. Do respondents consider that since the passing of the Energy Act 2010 the market has developed in a way that may mean the proposed prohibition is no longer appropriate?**

**Q#. Does circumstance 3 adequately address the issue of excessively high arming fees for inter-trips?**

**Q#. Is this approach likely to have any unintended consequences on behaviour in the electricity market?**

---

<sup>9</sup> Note that the overall level of generation that can be selected to inter-trip at any time cannot exceed the 'Infrequent Infeed Loss Risk' criteria set out in the National Electricity Transmission System Security and Quality of Supply Standards (NETS SQSS) – currently set at 1320 MW.

## Other circumstances

47. The Energy Act 2010, which confers the power to the Secretary of State to introduce this licence condition, allows for the licence condition to address a wider range of circumstances than those set out above. We are not currently proposing to make use of this ability, but will consider consultation responses in arriving at our final decision..

**Q#. Are there any other circumstances in which generators can derive excessive profits during a period of transmission constraint that should be addressed in the licence condition? Please provide evidence to back up your response.**

48. For example, the licence condition does not currently address a circumstance in which excessive offers are accepted during an import constraint period, where a generator has not exacerbated or created a transmission constraint. Our current view is that opportunities arising from the BM can provide important investment signals and the acceptance of large offers may provide signals for further investment in generation in the import-constrained area, which might lead to reductions in constraint costs associated with import constraints on an ongoing basis. Therefore the removal of this signal might be problematic. In contrast, further investment in generation in export-constrained areas would tend to exacerbate constraint costs associated with periods of export constraints.

**Q#. Should the licence condition also cover excessive benefits from offers in the BM beyond the prohibition in circumstance 1? Please provide evidence to back up your response.**

**Q#. What are your views on the evidence presented in the attached impact assessment? Do you have any additional evidence or arguments that could inform our view of the costs and benefits of different options for implementing this licence condition?**

## Ofgem's Consultation

49. Details of how the licence condition will be interpreted and enforced are set out in Ofgem's draft guidance to accompany the licence condition, on which it is consulting in parallel with DECC's consultation. In the guidance Ofgem explains how it intends to interpret each condition as well as giving some examples of what could be considered objective justification. The draft guidance document explains what types of behaviour constitute a breach of the licence condition.

## Enforcement procedure

50. The licence condition will be enforced in line with Ofgem's usual practice. More details of this can be found in Ofgem's draft guidance on the TCLC.

## The Appeal Process

51. The framework for appeals to the TCLC has already been set out in primary legislation. Details are therefore included in this consultation for information only.
52. Licensees can appeal against orders and penalties imposed by Ofgem under the Electricity Act 1989 to enforce the TCLC - including the making of an order for securing compliance with the licence condition or the imposition of a penalty and the amount or the date by which it must be paid - to the Competition Appeal Tribunal (CAT).
53. The CAT will be able to redetermine the appealed matter or remit it to the Authority. In redetermining the matter the CAT will be able to uphold, set aside, or substitute the order, part of the order, or the penalty, as well as being able to vary the date on which the penalty must be paid.
54. Pending the outcome of an appeal against an order for securing compliance, the licensee must comply with the order unless the CAT orders otherwise. The payment of a penalty is suspended pending the outcome of an appeal; however, during this period the penalty will accrue interest.
55. Any decision taken by the CAT in an appeal has the same effect as, and may be enforced in the same manner as, a decision of Ofgem.
56. Procedure for appeals will follow the CAT Tribunal Rules<sup>10</sup>.

---

<sup>10</sup> [http://www.catribunal.org.uk/files/The\\_CAT\\_Rules\\_2003\\_SI\\_2003\\_No\\_1372.pdf](http://www.catribunal.org.uk/files/The_CAT_Rules_2003_SI_2003_No_1372.pdf)

## Duration of the TCLC

57. The Energy Act 2010 placed a five year sunset clause on the TCLC, with the possibility of a two year extension following an order of the Secretary of State.
58. The Secretary of State must first consult before making an order to extend the duration of the licence condition.
59. The five year period for the duration of the TCLC will be counted from the day on which section 18 of the Energy Act 2010 comes into force.



# Annex 1

## Transmission Constraint Licence Condition

1. The licensee must not obtain an excessive benefit from electricity generation in relation to a Transmission Constraint Period.
2. For the purposes of paragraph 1, the licensee shall be considered to have obtained an excessive benefit from electricity generation in relation to a Transmission Constraint Period if:
  - a. the licensee and the system operator enter into, or have entered into, Relevant Arrangements which relate to an actual or potential Transmission Constraint Period; and
  - b. one or more of the circumstances set out in paragraph 3 occurs.
3. The circumstances referred to in paragraph 2(b) are as follows:
  - a. Circumstance 1 is that:
    - (i) the licensee creates or exacerbates a Transmission Constraint by dispatching or withholding one or more Generation Units in circumstances when it had more economic options available to it; and
    - (ii) under the Relevant Arrangements, either:
      - a. the licensee is paid, or seeks to be paid, an excessive amount by the system operator in connection with an increase in electricity generation during the Transmission Constraint Period; or
      - b. the licensee is paid, or seeks to be paid, an excessive amount by the system operator, or the licensee pays, or seeks to pay, an excessively low amount to the system operator, in connection with a reduction in electricity generation during the Transmission Constraint Period;
  - b. Circumstance 2 is that, under the Relevant Arrangements and in connection with a reduction in electricity generation in the Transmission Constraint Period, either:
    - i. the licensee pays, or seeks to pay, the system operator an excessively low amount, or
    - ii. the licensee is paid, or seeks to be paid, an excessive amount by the system operator;
  - c. Circumstance 3 is that, under the Relevant Arrangements, the licensee is to be paid an excessive amount by the system operator in connection with the licensee preparing

for the possible cessation of generation of electricity by particular generating plant in a Transmission Constraint Period.

4. For the purposes of paragraph 3 any reference to an increase or reduction in generation by the licensee in a Transmission Constraint Period means:
  - a. an increase or reduction in comparison to the licensee’s Notified Electricity Generation for that Transmission Constraint Period; and
  - b. includes an increase or reduction in generation of electricity by particular generating plant, whether or not there is an overall increase or reduction in electricity generation in that Transmission Constraint Period.
5. This licence condition shall be interpreted and enforced in accordance with guidance issued by the Authority in accordance with section 19 of the Energy Act 2010.
6. The Authority may from time to time revise the guidance referred to in paragraph 5 and before issuing any such revised guidance the Authority shall consult:
  - a. the holder of any licence under section 6(1)(a) of the Act;
  - b. the Secretary of State; and
  - c. such other persons as the Authority thinks it appropriate to consult

setting out the text of, and the reasons for, the proposed revisions.
7. The licensee shall provide to the Authority, in such manner and at such times as the Authority may reasonably require, such information as the Authority may require or deem necessary or appropriate to enable the Authority to monitor the licensee’s compliance with this condition.
8. This condition will cease to have effect on the Expiry Date unless the Secretary of State makes an order extending the Expiry Date pursuant to section 23(2) of the Energy Act 2010.
9. In this condition:

“Balancing Mechanism”	means the mechanism for the making and acceptance of offers and bids to increase or decrease the quantities of electricity to be delivered to, or taken off, the total system at any time or during any period so as to assist the system operator in coordinating and directing the flow of electricity onto and over the national electricity system and balancing the national electricity system pursuant to the arrangements contained in the BSC ;
-----------------------	--

“BSC”	has the meaning given in standard condition 9;
“Expiry Date”	means [ <i>insert date 5 years from Commencement Date</i> ];
“Generation Unit”	means any apparatus which produces electricity;
“National Electricity Transmission System”	means the system consisting (wholly or mainly) of high voltage electric lines owned or operated by transmission licensees within Great Britain, in the territorial sea adjacent to Great Britain and in any Renewable Energy Zone and used for the transmission of electricity from one generating station to a sub-station or to another generation station or between sub-stations or to or from any interconnector and includes any electrical plant or meters owned or operated by any transmission licensee within Great Britain, in the territorial sea adjacent to Great Britain and in any Renewable Energy Zone in connection with the transmission of electricity;
“Notified Electricity Generation”	means the intended level of generation notified by the licensee to the system operator for a period pursuant to the notification arrangements established by BETTA and the BSC;
“Relevant Arrangements”	means arrangements entered into by the licensee and the system operator either:  (a) within the Balancing Mechanism; or  (b) in the form of bilateral contracts outside the scope of the Balancing Mechanism whereby the licensee agrees with the system operator that in certain circumstances the system operator can automatically shut down generation at a specified plant;
“Renewable Energy Zone”	means any area designated by Order in Council under section 84(4) of the Energy Act 2004;
“Transmission Constraint”	means any limit on the ability of the

	<p>National Electricity Transmission System, or any part of it, to transmit the power supplied onto the National Electricity Transmission System to the location where the demand for that power is situated, such limit arising as a result of any one or more of:</p> <p>(a) the need not to exceed the thermal rating of any asset forming part of the National Electricity Transmission System;</p> <p>(b) the need to maintain voltage on the National Electricity Transmission System; and</p> <p>(c) the need to maintain the transient and dynamic stability of electricity plant, equipment and systems directly or indirectly connected to the National Electricity Transmission System;</p> <p>and used by the system operator to operate the National Electricity Transmission System in accordance with the National Electricity Transmission System Security and Quality of Supply Standard referred to in standard condition C17 (Transmission systems security standard and quality of service) of the standard conditions for electricity transmission licences or any other provision of the transmission licence, the Act or any other requirement of law;</p>
"Transmission Constraint Period"	means any period of time, regardless of the duration, when a Transmission Constraint occurs.

© Crown copyright 2011

Department of Energy & Climate Change  
3 Whitehall Place  
London SW1A 2HD  
[www.decc.gov.uk](http://www.decc.gov.uk)

URN: 11D/916