



Department  
of Energy &  
Climate Change

# Government response: EMR consultation on industry code and licence modifications

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The consultation can be found on DECC's website:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/271407/EMR -  
\\_Consultation on Industry code and licence changes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271407/EMR_-_Consultation_on_Industry_code_and_licence_changes.pdf)

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# Introduction

## Consultation Overview

1. In January 2014, the Government ran a four week consultation<sup>1</sup> which sought views on consequential changes to industry code, licences, industry agreements and other documents required as a result of the implementation of Electricity Market Reform (EMR).
2. The consultation period closed on 13 February 2014. Prior to the consultation, DECC held an education day to present the draft code modifications.
3. This document outlines the Government's response to the consultation and these modifications will be made in addition to the rules and regulations which have been laid before Parliament.

## Powers to modify industry codes, agreements and licences

4. Sections 26 and 37 of the Energy Act 2013<sup>2</sup> include provisions for the Secretary of State to modify licence conditions, documents maintained in accordance with licence conditions, and agreements that give effect to a document so maintained, for the purpose of giving effect to the EMR mechanisms.
5. The Government worked with its delivery partners Ofgem, National Grid and ELEXON, along with relevant code administrators, to assess which existing industry documents may need consequential amendments.

## Components of EMR

6. EMR will create two key mechanisms – Contracts for Difference (CfDs) and the Capacity Market (CM). These mechanisms will ensure that low carbon and reliable electricity generation is an attractive investment opportunity. The CfD will provide long-

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/271407/EMR\\_-\\_Consultation\\_on\\_Industry\\_code\\_and\\_licence\\_changes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271407/EMR_-_Consultation_on_Industry_code_and_licence_changes.pdf)

<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2013/32/contents/enacted>

term revenue stabilisation to incentivise cost-effective investment in low-carbon generation. The CM will provide a steady payment to reliable forms of capacity (both demand and supply) to ensure there is enough to meet demand, while minimising costs.

7. The Energy Act 2013 also provides for the introduction of a scheme to support independent renewable generators secure a route-to-market under the CFD. In February 2014 we consulted on the Offtaker of Last Resort (OLR)<sup>3</sup>. This will ensure that eligible renewable generators have access to a 'Backstop' Power Purchase Agreement on specified terms with a credit worthy offtaker. By ensuring a route-to-market for the generator's power, the OLR has the potential to make lenders more comfortable accepting alternative routes-to-market for independent renewable generator projects, such as shorter-term contracting strategies. This should reduce the cost of investment in renewable electricity, boosting competition amongst both generators and offtakers, and lowering costs to consumers.
8. Ofgem is also taking measures to improve wholesale market liquidity<sup>4</sup> which will facilitate market entry by offering a reliable route to market, enabling increased competition.
9. We have also announced measures to aid the reduction of electricity demand and £20 million will be made available to pilot Electricity Demand Reduction<sup>5</sup>, which will begin shortly.
10. To maintain investor confidence as these reforms are taken forward – the Government has put in place arrangements to support the transition from the current Renewables Obligation to the Contracts for Difference, and to allow for early investment decisions to be made under the FID Enabling for Renewables process<sup>6</sup>. These reforms are already starting to deliver investment in electricity infrastructure. The support provided through the FID Enabling for Renewables process, will provide private sector investment in renewable electricity generation of up to £12 billion by 2020.
11. EMR is on track to be implemented in 2014. In April 2014 the Government published the *Contracts for Difference Implementation Plan*<sup>7</sup>, and in December last year the

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<sup>3</sup> <https://www.gov.uk/government/groups/electricity-market-reform-off-taker-of-last-resort-advisory-group>

<sup>4</sup> <https://www.ofgem.gov.uk/electricity/wholesale-market/liquidity>

<sup>5</sup> <https://www.gov.uk/government/policies/reducing-demand-for-energy-from-industry-businesses-and-the-public-sector--2>

<sup>6</sup> <https://www.gov.uk/government/publications/increasing-certainty-for-investors-in-renewable-electricity-final-investment-decision-enabling-for-renewables>

<sup>7</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/301464/cfd\\_implementation\\_plan.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301464/cfd_implementation_plan.pdf)

Government published the *Capacity Market Implementation Plan*<sup>8</sup>. These documents provide potential participants with details of the key implementation activities and milestones and their indicative dates. The first CfDs are expected to be allocated this year. It is also expected that the first Capacity Market capacity auction will be run in December 2014.

12. Finally, for further details on EMR see the document *Implementing Electricity Market Reform (EMR.)*

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/268629/Capacity\\_Market\\_Implementation\\_Plan\\_FINAL.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268629/Capacity_Market_Implementation_Plan_FINAL.pdf)

# Consultation Responses

## Transmission Licence

| Consultation Question |   | 6 responses |
|-----------------------|---|-------------|
| 1                     | Do you agree with the proposed changes to the Transmission Licence? If not, why, and what alternatives would you suggest? |             |

### Summary of responses:

13. Respondents broadly agreed with the proposed changes to the Transmission Licence. Minor typographical changes were suggested to the drafting of the changes. It was also suggested that the use of the term 'regulatory arrangements' in the Transmission Licence Standard Conditions was too broad.

### Decisions taken since consultation:

14. The changes proposed in the consultation will be made to the Transmission Licence to allow the BSC to be modified so that subsidiaries of ELEXON can take on the role of CfD Settlement Services Provider and CM Settlement Services Provider, and to allow the BSC to contain provisions to support the operation of CfDs, Supplier Obligation, and the Capacity Market. We agree with the typographical changes suggested in the response and have also decided to change the term 'regulatory arrangements' to 'rules' which is more appropriate and consistent with the Energy Act 2013.

| Consultation Question |  | 8 responses |
|-----------------------|--|-------------|
| 2                     | Do you agree with the proposed approach to identifying and modifying the BSC requirements as set out in the consultation document? If not, would you suggest an alternative model? |             |

### Summary of responses:

15. The majority of respondents agreed with the proposed approach. One respondent disagreed with what they saw as the approach to identifying and modifying the BSC requirements, believing they should be identified, drafted and implemented on the 'go-



live' date with the release of a new version of the BSC. The same respondent raised concerns over the power Ofgem will have to identify changes to the Code. Other points raised by respondents included expecting consequential change requests to proceed through normal BSC modification processes and that any new code modifications should have equal weighting to those currently in force.

**Decisions taken since consultation:**

- 16. The process by which relevant parties may raise changes to the BSC is not affected by the Transmission Licence or BSC changes. Any change raised by relevant parties will go through the normal BSC modification procedures. The BSC objectives are not currently 'weighted', that is to say no single objective takes precedence over any other. The addition of a new EMR objective does not alter this, and in the modification process, where relevant, the EMR objective will be considered in the round alongside the other objectives.
  
- 17. The Government will, therefore, implement the changes proposed to the licence conditions relating to the BSC as set out in the consultation.

| Consultation Question |   | 7 responses |
|-----------------------|---|-------------|
| <b>3</b>              | <ul style="list-style-type: none"> <li>a. Do you agree that the proposed changes go far enough to achieve the desired intention (e.g. to ensure ELEXON subsidiaries can perform the role envisaged)?</li> <li>b. Are there any further amendments which you have identified?</li> <li>c. Are there any unintended consequences of the proposed drafting?</li> </ul> |             |

**Summary of responses:**

- 18. Of the seven responses to this question, three did not express a strong opinion, the remaining four raised the following concerns:

**Question 3(a)**

- 19. Three agreed that the proposed changes go far enough to achieve the desired outcome, with one agreeing outright. Two of those who agreed questioned the need to create subsidiaries to perform EMR activities and suggest the proposed modification to allow EMR activities should be tight enough to preserve the existing intent of the code with regard to the BSCCo's powers. The third respondent disagreed with the approach taken to identifying and modifying BSC requirements, as set out in Question 2.

**Question 3(b)**

- 20. No specific amendments were suggested by respondents to this question.

### **Question 3(c)**

21. One respondent was concerned a hierarchy is implied in the proposals and that the Capacity Market Rules take precedence. This leads to concerns over costs, BSC arrangements and compliance with the European Network Code. Another respondent suggested it may be appropriate to establish a permanent advisory body across various code governance arrangements.

### **Decisions taken since consultation:**

22. The decision to create a subsidiary of ELEXON to deliver EMR settlement is one that has been taken by the ELEXON Board in order to create a legal ring-fence. This corporate structure helps ensure that the costs and risks of EMR settlement are not passed on to BSC Parties. Annex C-3 to the BSC only permits the EMR Settlement Services Provider role to be performed by a subsidiary company. The language in the Transmission Licence relating to the ability of the BSC to include provisions in relation to EMR mirrors the approach taken in respect of the Warm Homes reconciliation function. The BSC changes do not allow ELEXON to perform the EMR Settlement role or any other non-BSC role.
23. There is no hierarchy between the BSC and other industry codes. Changes to the Grid Code can lead to changes to the BSC (and vice versa). The BSC contains change co-ordination provisions that help facilitate cross-code changes.
24. The BSC contains provisions that set out a process for resolving conflicts between the BSC and (i) the Master Registration Agreement and (ii) the Grid Code.
25. The European Network Code on Electricity Balancing will have an impact on the BSC but the extent of that impact is evolving and is currently unclear. Once the impacts are known, modifications will need to be made to the BSC which are put in place within the European Network Code on Electricity Balancing implementation timescales. It is not possible at this stage to anticipate what that impact will be.
26. The Government does not intend to create a permanent advisory body to oversee all code documents. We believe that the code documents should be administered by their respective owners.

| Consultation Question |  | 4 responses |
|-----------------------|--|-------------|
| 4                     | Do you agree that no changes are required to the Generation; Supply; Distribution and Interconnection licences? If not, why, and what changes would you suggest? |             |

**Summary of responses:**

27. Of the four respondents to this question, three agreed no changes were required. One respondent disagreed with the approach as laid out in Question 3 above.

**Decisions taken since consultation:**

28. In line with the responses, no changes will be made to these licences.

**National Grid Special Conditions**

| Consultation Question |   | 5 responses |
|-----------------------|---|-------------|
| 5                     | Do you agree with the proposed changes to the National Grid Special Conditions? If not, why, and what alternatives would you suggest? |             |

**Summary of responses:**

29. Of the five responses received to this question the majority agree with the proposed changes. However, two stakeholders questioned the drafting of Standard Condition B1 and B6 of the NGET Special Conditions which increases the cap on National Grid’s *de-minimis* activities as a consequence of amendments to National Grid’s licence so that EMR functions are part of the transmission business for the purpose of this condition. Stakeholders stated that they thought the cap should be reduced rather than increased in these circumstances. Other minor typographical changes were suggested by respondents.

**Decisions taken since consultation:**

30. The reason the cap on *de-minimis* activities is being increased is explained by the way the cap is calculated. *De-minimis* activities may not exceed 2.5% of the regulated revenue aggregate turnover of the transmission business, as shown by the most recent audited regulatory accounts of the licensee (National Grid) produced under paragraph 3(b) of standard condition B1 (Regulatory Accounts). Given that the transmission business, for the purpose of this provision, includes EMR functions increasing the

transmission business (i.e. including EMR functions) would increase the nominal cap on *de-minimis* activities. The cap would remain at 2.5%, but the nominal figure of the cap would have risen. The typographical changes suggested have been accepted and the policy will remain as set out in the consultation.

## Grid Code

| Consultation Question |  | 8 responses |
|-----------------------|--|-------------|
| 6                     | Do you agree with the proposed changes to the Grid Code? If not, why, and what alternatives would you suggest? |             |

### Summary of responses:

31. Respondents mostly agreed with the proposed changes to the Grid Code. Of the respondents who expressed concerns, they mainly related to confidentiality. Three respondents wanted more stringent requirements. One respondent contended that the proposed change to the Secretary of State and Ofgem's powers to allow them to facilitate the identification, coordination, making and implementation of code modifications in addition to the Capacity Market Rules and Allocation Framework Rules seemed excessive.

### Decisions taken since consultation:

32. Arrangements to ensure the confidentiality of EMR information supplied to the Delivery Body are set out in a new Modification to National Grid's Transmission Licence, Special Condition 2N which is also being laid before Parliament. Therefore, in this respect, the policy will remain as set out in the consultation.
33. The Government has also decided to enhance the change coordination process to address concerns that were raised in response to Question 13 about the Secretary of State's power to prevent code modifications progressing that may have a material impact on EMR. Consequently, the change coordination process has been enhanced to give EMR bodies an opportunity to express any concerns before the Final Modification Report is sent to Ofgem. The change coordination process will include provisions that deal with potential inconsistencies between a proposed code change and the EMR legislation and rules. We believe this mitigates the risk of impacts on market stakeholders' views not being taken into account in the modification process.
34. This best reflects the hierarchical status of the suite of EMR legislation and rules whilst keeping it involved in the change coordination process.
35. The other proposed changes relating to Data Flows will be made as set out in the consultation document.

## Connection and Use of System

| Consultation Question |  | 8 responses |
|-----------------------|--|-------------|
| 7                     | Do you agree with the proposed changes to the Connection and Use of System Code? If not, why, and what alternatives would you suggest? |             |

### Summary of responses:

36. Respondents mostly agreed with the approach as set out in the consultation. Three respondents raised further concerns about confidentiality. These concerns are similar to those raised in response to Question 6.

### Decisions taken since consultation:

37. Arrangements to ensure the confidentiality of EMR information supplied to the Delivery Body are set out in a new Modification to National Grid's Transmission Licence, Special Condition 2N which is also being laid before Parliament. As laid out above, the change coordination proposals are being enhanced, but otherwise the policy relating to Data Flows and Dispute Coordination will remain as set out in the consultation.

## System Operator / Transmission Owner Code (STC)

| Consultation Question |  | 6 responses |
|-----------------------|--|-------------|
| 8                     | Do you agree with the proposed changes to the System Operator / Transmission Owner Code? If not, why, and what alternatives would you suggest? |             |

### Summary of responses:

38. The majority of the respondents to this question agreed with the proposed changes. One respondent noted that further changes may be required at a later date. One respondent disagreed with the approach, considering the change to the Secretary of State and Ofgem's powers to be excessive.

### Decisions taken since consultation:

39. As set out in the response to Question 6, the Government has decided to enhance the change coordination process in response to respondents' concerns to this question,

and questions 6, 7 and 13. The change coordination process has been modified to give EMR bodies an opportunity to express any concerns before the Final Modification Report is sent to Ofgem. The changes relating to balancing services, metering, confidentiality and disputes will remain as set out in the consultation.

### Balancing Services Agreements (BSA)

| Consultation Question |  | 7 responses |
|-----------------------|--|-------------|
| 9                     | Do you agree with the proposed changes to the Balancing Services Agreements? If not, why, and what alternatives would you suggest? |             |

#### Summary of responses:

40. The majority of respondents agreed with the proposals. Concerns relating to confidentiality were raised by the three respondents that disagree, and two of those that agree.

#### Decisions taken since consultation:

41. As set out in the response to Question 6, arrangements to ensure the confidentiality of EMR information supplied to the Delivery Body are set out in a new Modification to National Grid's Transmission Licence, Special Condition 2N which is also being laid before Parliament. The changes relating to data flows and dispute coordination will remain as outlined in the consultation.

### Dcode and DCUSA

| Consultation Question |  | 4 responses |
|-----------------------|--|-------------|
| 10                    | Do you agree that no changes are required to the DCode or the DCUSA? If not, why, and what change would you suggest? |             |

#### Summary of responses:

42. All respondents agreed that no modifications are required to the DCode or the DCUSA.

**Decisions taken since consultation:**

43. The Government will not make any changes to the DCode or the DCUSA.

**Balancing and Settlement Code (BSC)**

| Consultation Question |  | 11 responses |
|-----------------------|--|--------------|
| 11                    | Do you agree with the proposed changes to the Balancing and Settlement Code? If not, why, and what alternatives would you suggest? |              |

**Summary of responses:**

44. The majority of respondents did not agree with the proposed changes to the Balancing and Settlement Code (BSC). Several respondents thought that BSC governance arrangements could be undermined and concerns were expressed over confidentiality. Respondents also suggested that adequate justification for creating multiple subsidiaries has not been given. There was also concern over ‘mission creep’ in the drafting and that the BSCCo, and/or any affiliate, should not be allowed to undertake further unrelated activities for commercial gain or otherwise. One respondent thought that EMR arrangements should be specified in additional chapters of the BSC.

**Decisions taken since consultation:**

45. The Government has decided to remove ‘on a commercial basis’ from paragraph 10.2.1 of the BSC.

46. As explained in answer to Question 3, the decision to create a subsidiary of ELEXON to deliver EMR settlement is one that has been taken by the ELEXON Board in order to ensure that the costs and risks of EMR settlement are not passed on to BSC Parties.

47. The Transmission Licence sets out the scope of the matters to be included in the BSC, which are: balancing and settlement activities, Warm Homes and (will include) EMR settlement. It is explicit in the BSC that the BSCCo can only perform the functions that are set out in the BSC so Government does not believe that any of the proposed BSC changes to allow ELEXON to perform any non-BSC functions. The only permitted activities set out in the BSC changes are those that allow an ELEXON subsidiary to undertake EMR settlement functions. Furthermore, we have replicated the Warm Homes Discount drafting in Section C of the BSC to protect BSC Parties against any liabilities incurred as a result of the new arrangements. This addresses the concerns raised by respondents about the subsidiary undertaking unrelated activities.

48. In addition, under the arrangements being put in place by the ELEXON Board, the chairman of the EMR Settlement Services Provider will be the chairman of BSCCo who is appointed on a fixed term contract by the BSC Panel (and also chairs the BSC Panel). The Permitted Affiliate's Articles of Association includes a list of 'reserved matters' that require BSCCo consent which should provide comfort to BSC Parties. The Articles of Association will be publicly available.

49. The function of the Permitted Affiliate is EMR settlement which forms part of a government scheme and is not a BSC function which requires accountability to BSC Parties.

| Consultation Question |  | 7 responses |
|-----------------------|--|-------------|
| 12                    | Should the CFD Counterparty and CM Settlement Body have the power to propose modifications to the BSC, where a change in either CfD or Capacity Market arrangements may have an impact on the BSC? |             |

**Summary of responses:**

50. Of the seven respondents to this question, the majority agree that it is appropriate for the CfD Counterparty and the Capacity Market Settlement Body to have the power to propose modifications to the BSC where a change in CfD or CM arrangements may have an impact on the BSC. Two respondents suggested this power should be extended to other participants, such as CfD holders, while others argued it should only be Government owned bodies that can raise modifications. One respondent disagreed with the proposal.

**Decisions taken since consultation:**

51. The Government will make the changes laid out in the consultation. The Counterparty and Settlement bodies will have the power to propose BSC modifications.



| Consultation Question | 6 responses   |
|-----------------------|---|
| 13                    | Do you agree that the proposed wording in the BSC sufficiently provides the Secretary of State with the ability to stop the BSC being modified in any way which would prevent the CFD Counterparty, the Capacity Market Settlement Body, the CFD Settlement Services Provider or the CM Settlement Services Provider from performing their functions or would have a material impact on the EMR arrangements? If not, what is your reasoning? |

**Summary of responses:**

52. The majority of those who responded to this question agree that the proposed wording provides the Secretary of State with the desired ability. Four respondents questioned the approach, expressing concerns that the Secretary of State may be given unnecessary powers.

**Decisions taken since consultation:**

53. In line with concerns raised, the Government has decided not to proceed with the proposal to require the Secretary of State’s consent to any modification to the BSC which would prevent the CfD Counterparty, the Capacity Market Settlement Body or the EMR Settlement Service Provider from performing their functions or would have a material impact on the EMR arrangements.

54. Following discussions with delivery partners, the Government has decided to include provisions in the change coordination process which allows for a consistent approach across all codes (see response to Question 6). As a result, the change coordination process will give EMR bodies an opportunity to express any concerns before the Final Modification Report is sent to Ofgem. We believe this mitigates the risk of impacts on market stakeholders’ views not being taken into account in the modification process and ensures that impacts on the CM and CfDs are understood and considered by industry and Ofgem. Therefore we no longer consider the power proposed in the consultation to be necessary.

| Consultation Question |  | 6 responses |
|-----------------------|--|-------------|
| 14                    | Do you agree that BSCCo should be able to provide support services to the CFD Settlement Services Provider and the CM Settlement Services Provider provided that those support services are incidental to helping the CFD Settlement Services Provider or the CM Settlement Services Provider perform their EMR functions? |             |

**Summary of responses:**

55. All respondents agreed with the principle of the proposal. One respondent suggested that ring-fencing and cost-allocation processes need to be in place.

**Decisions taken since consultation:**

56. The BSC drafting already includes ring-fencing and cost allocation to protect BSC parties. The use of a subsidiary provides a legal ring-fence and the provisions of Section C10.2 include further restrictions which deal with ring-fencing. Both C10.2 and D7 also deal with cost allocation. The policy will remain as set out in the consultation.

**System Security and Quality of Supply Standards (SQSS)**

| Consultation Question |  | 6 responses |
|-----------------------|--|-------------|
| 15                    | Do you agree that no changes to the System Security and Quality of Supply Standards are required? If not, why, and what changes would you suggest? |             |

**Summary of responses:**

57. All respondents to this question agreed that no changes are required to the System Security and Quality of Supply Standards.

**Decisions taken since consultation:**

58. The policy will remain as set out in the consultation and no changes will be made to the System Security and Quality of Supply Standards.

## LC 16 Statements

| Consultation Question |  | 6 responses |
|-----------------------|--|-------------|
| 16                    | Do you agree that no changes to the Licence Condition C16 Statements are necessary? If not, why, and what changes would you suggest? |             |

### Summary of responses:

59. All respondents to this question agreed that no changes are required to Licence Condition C16.

### Decisions taken since consultation:

60. The policy will remain as set out in the consultation document and no changes will be made to the Licence Condition C16 Statements.

## Fuel Security Code and Uniform Network Code

| Consultation Question |   | 7 responses |
|-----------------------|---|-------------|
| 17                    | Do you agree that no changes to the Fuel Security Code and Uniform Network Code are necessary? If not, why, and what changes would you suggest? |             |

### Summary of responses:

61. Of the seven responses to this question, three agreed that no changes are required to the Fuel Security Code and Uniform Network Code (UNC). No respondents suggested specific changes to either code. One respondent, who did not express a strong opinion on the changes, did suggest for the Fuel Security Code changes will be required to the EMR contractual arrangements to reflect a 'force majeure' event. Two respondents did also raise questions about modifications 452 and 465 to the UNC.

### Decisions taken since consultation:

62. The policy will remain as set out in the consultation and the obligations laid out in the Capacity Market's Regulations and Rules apply regardless of any assertion of force majeure.

63. The Government understands that Ofgem is considering the proposals for modifications 452V and 465V of the UNC which are part of a wider package of changes which would match the process to release incremental gas capacity to enhanced consenting activities required by the Planning Act 2008.
  
64. The Government understands that Ofgem is considering the proposals and that if Ofgem approves the proposals then they would not be implemented until quarter four of 2014 at the earliest.

## Annex A: List of Respondents

DONG Energy

Drax

EDF

Energy Policy Group, University of Exeter

Energy UK

EON

Flexitricity

IMServ/Schneider Electric/Invensys

National Grid Electricity Transmission

RWE NPower

Scottish Power

SSE

TMA Data Management

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