

EMR Stakeholder Consultation Notice

Notification of proposed amendments to National Grid's Electricity Transmission Licence Modification Special Condition 2N Electricity Market Reform

Background

When National Grid was designated as the EMR Delivery Body, it was acknowledged that, as well as synergies between the performance of its existing functions as the System Operator and the new EMR delivery body functions, there was the potential for conflicts of interest to arise between National Grid's existing activities and its new EMR role. We announced in the EMR Technical Update¹ that the Government and Ofgem would work together to assess these potential conflicts of interest and propose mitigating measures, if these were shown to be necessary.

The project reported in April 2013², following two consultations held jointly by Government and Ofgem, extensive stakeholder engagement and informed by independent analysis by KPMG. The project concluded that the risk of conflicts of interest being acted upon by National Grid was relatively low. If they were to be acted upon, however, the potential effect in cost terms and the importance of maintaining stakeholder confidence in EMR meant that some proportionate mitigation measures were justified.

The mitigations proposed in the project report were as follows:

- To minimise, through the design of EMR, the risks of conflicts of interest arising, through transparency, scrutiny and limits on the SO's discretion;
- The proportionate ring-fencing of some of the EMR functions within NGET and from other National Grid businesses to further mitigate the risk of conflicts of interest in a way that allows key synergies to be realised whilst providing protection for commercially sensitive information;
- Additional protection for commercially sensitive information submitted to the SO for the delivery plan analysis, through creation of a data handling team and associated non-disclosure rules; and
- To ensure that regulation provides for appropriate managerial, information, physical, employee and legal separation of certain National Grid 'competitive businesses' from NGET which present potential conflicts of interest with the EMR delivery role.

In October 2013 Government consulted on its proposals³ for implementing mitigation measures and subsequently published its final proposals in June 2014⁴ with a modification to National Grid's

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/48253/3884-planning-electric-future-technical-update.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191731/EMR_Conflicts_of_interest_consultation_final_report_FINAL_P_.pdf

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255254/emr_consultation_implementation_proposals.pdf

Transmission Licence, Special Condition 2N⁵ which was laid in Parliament and came into force on 1 August 2014. The main elements were as follows.

- An overarching requirement that National Grid carry out the EMR functions conferred on it having regard to specified objectives. In summary, these are:
 - the efficient and effective carrying on of EMR functions;
 - compliance with the principles of best regulatory practice; and
 - to act to ensure that none of National Grid’s businesses or associated businesses are either unfairly advantaged or allowed to unduly influence the exercise of EMR functions.
- A requirement to establish a physically separate data handling team to handle, anonymise and aggregate certain delivery plan data when received.
- A requirement to establish and maintain a physically separate team to carry out EMR administrative functions.
- Non-disclosure agreements to be signed by all staff working in both teams above.
- Restrictions on sensitive EMR information being passed outside of the System Operator business or to one of National Grid’s competitive businesses (such as offshore or interconnection).
- Restrictions on movements of staff in and out of the EMR data handling and EMR administration teams.
- A compliance officer to be appointed to be responsible for providing and overseeing a compliance statement approved by Ofgem.
- A requirement for a single responsible director who reports to the board to sign an annual declaration of compliance; and for an independent audit to be able to be commissioned at Ofgem’s direction to review the practices, procedures and systems implemented to comply with this licence condition, assess their appropriateness and report on National Grid’s compliance with its requirements.
- An obligation to establish and maintain legal, managerial, employee, physical and information separation between National Grid and relevant competitive businesses (with limited exceptions to allow certain staff to carry out shared services and “de minimis” services).
- A prohibition on National Grid employees engaged in EMR functions from engaging in “de minimis” services provided to certain National Grid owned competitive businesses.

Why we need to make changes to Special Licence Condition 2N

Since coming into force, Special Licence Condition 2N has been relied on to deal with the transfer of information received by National Grid. Whilst doing so we have become aware of some potential ambiguity which may frustrate the proper working of the Special Licence Condition. To correct this we are now proposing some minor amendments to ensure the condition works as originally

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324170/Government_Response_to_EMR_implementation_consultation.pdf

⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325088/EMR_-_Conflicts_of_Interest_-_NGET_licence_modifications_.pdf

intended. In addition since EMR has come into operation, it has become apparent that in order for National Grid to carry out certain EMR functions as required by regulation, some minor changes will be required to the licence condition to enable them to comply.

In the context of this consultation, it should be noted that Special Condition 2N requires that Confidential EMR Information (CEMRI) as defined in Special Condition 2N.32 is to be held by and used only by the EMR Administration team or as appropriate the EMR Data Handling Team unless a specific exception applies.

Confidential EMR Administrative Information (CEMRI) is information provided by applicants in accordance with the CFD and Capacity Market implementing legislation (including the Allocation Framework and the Capacity Market Rules). Confidential EMR Delivery Plan Information (CEMRDPI) is information provided by industry for the compilation of the EMR Delivery Plans which set out the Government's objectives, key decisions on the new mechanisms (such as CFD strike prices for renewables and the volume to contract under CFD auctions, and how much capacity to contract for in any capacity auction) and the impacts of those decisions on the objectives⁶. Both CEMRI and CEMRDPI are subsets of CEMRI to which specific additional provisions of Condition 2N apply.

Notification of proposed changes to clarify Special Condition 2N ("SC2N") for information only

Consultees should note that we are not seeking views on the changes listed at 1, 2 and 3 as they merely clarify original policy intent.

All of the changes which are now being proposed below relate to licence condition 2N.13. This condition sets out the circumstances about how and when CEMRI, CEMRI and CEMRDPI may be shared with third parties outside of the EMR Administration Team or EMR Data Handling Team. A brief explanation of why we believe these proposed changes are required is set out below.

Disclosure of Confidential EMR Information to Third Parties

1. The EMR regulations require National Grid as the EMR Delivery Body to disclose CEMRI and CEMRI, in a non-anonymised or aggregated form, to third parties such as the Secretary of State or the Low Carbon Contracts Company, if either party needs it to carry out their own EMR functions. For example, regulation 65(3) of the Capacity Market Regulations⁷ enables information relating to an individual or a particular business to be disclosed to the Secretary of State where the Secretary of State needs that information for the purpose of exercising any of his EMR functions. Regulation 65(3) also allows information to be disclosed to the Authority on similar grounds or where National Grid's licence otherwise allows disclosure. Similarly, regulation 65(2) allows National Grid to disclose such information if the person to whom the information relates consents to its disclosure. Thus, the regulations set out a set of circumstances in which disclosure is permissible. SpC2N.13(a) allows the types of EMR information referred to above to be disclosed, i.e. is consistent with the Capacity Market

⁶ <https://www.gov.uk/government/publications/electricity-market-reform-delivery-plan>

⁷ The Capacity Market Regulations 2014 (S.I. 2014/2043)

Regulations which allow information to be disclosed in specified circumstances⁸. However, as currently drafted, Proviso B of SpC2N.13 might be construed to apply to SpC2N.13(a). The effect of this would be for the information which SpC2N.13(a) allows to be disclosed only if it is first anonymised or aggregated. This would mean National Grid would be unable to pass information to, for example, the LCCC to draft a CfD contract and thus cause practical problems. To avoid this sort of practical problem from occurring, the Secretary of State is proposing to make some changes to the drafting of SpC2N.13 to clarify that Proviso B would not apply to 2N.13(a) in the way described here.

Disclosure of Confidential EMR Information when permitted by the owner

2. National Grid may disclose CEMRI, CEMRAI and CEMRDPI where the person to whom the relevant information relates has consented in writing in advance.

Although Proviso C of 2N.13 permits disclosure of CEMRI with the consent of the person to whom the information relates, as currently drafted, the Provisos can be construed to be cumulative, so that Proviso B would still apply. The effect of this is that although the consent of the relevant person may be obtained, neither CEMRAI nor CMRDPI can be disclosed outside the EMR Administration Team or EMR Data Handling Team unless anonymised. Again, to avoid this sort of practical issue from arising, and frustrating the original policy objective, the Secretary of State is proposing to amend SpC2N.13 to clarify that Proviso B would not apply in such cases.

Use of Confidential EMR Information by NGET for certain other functions

3. SpC2n.12(c) allows NGET to use CEMRI (but only CEMRAI or CEMRDPI which has been aggregated and/or anonymised) to perform its EMR functions, carry out Balancing Services Activities, for purposes previously authorised by Ofgem (either by written consent or through the Compliance Statement) and as permitted by regulation 65 of the Electricity Capacity Regulations 2014.

In this this case, 2N.13 Proviso B will continue to apply so that the transfer of confidential EMR information, which has not first been aggregated or anonymised, from either the EMR Administration Team or the EMR Data Handling Team to other parts of NGET, is prohibited. This ensures that only aggregated and anonymised EMR information can be used by NGET when carrying out functions as specified and agreed with Ofgem in the annual compliance statement as allowed in SpC2N.12(c). We reiterate that no CEMRI is allowed to pass to any other part of National Grid. It is therefore proposed that when making changes to the drafting of SpC2N.13 Secretary of State will ensure that Proviso B would continue to apply to 2N.12(c).

⁸ Equally, SpC2N13(a) is consistent with regulation 3 of the Electricity Market (General) Regulations 2014 (S.I. 2014/2013) which allows National Grid to provide the Secretary of State with information which he has requested under this provision.

Other Proposed Changes to SpC2N.

Consultees views are sought on the changes listed at 4, 5, 6 and 7 below as they represent a minor change to the original intent of Special Licence Condition 2N.

Disclosure of Confidential EMR Administration Information and Delivery Plan Information to Agents, Contractors and Advisors of National Grid.

4. Agents, contractors and advisors, each of which each are subject to non-disclosure agreements, are employed by National Grid to work exclusively within the EMR Administration Team or the EMR Data Handling Team and require access to CEMRI, CEMRAI or CEMRDPI, where such access is necessary to enable National Grid to carry out its EMR functions. For example, contractors supporting applicant helplines and access for the panel of technical experts to check delivery plan analysis. This is overseen by Ofgem as part of the provisions of National Grid's annual EMR Compliance Statement.

At present SpC2N.13(d) does not enable agents, contractors and advisors to access CEMRAI and CEMRDPI. Accordingly, the Secretary of State intends to amend SpC2N.13(d) to make a specific requirement that disclosure of CEMRI, CEMRAI and CEMRDPI to agents contractors and advisors engaged in carrying out EMR functions should be referenced in the annual compliance statement overseen by Ofgem. Also information shall be held by those to whom it has been provided only until any such issue is confirmed to have been resolved.

Disclosure of Confidential EMR Administration Information and Delivery Plan Information to National Grid shared services

5. National Grid needs to disclose CEMRI, CEMRAI and CEMRDPI to National Grid Shared Services (as specified in the Compliance Statement) where such disclosure is necessary to enable Shared Services to carry out their functions (such as IT support during the application process or legal support during an appeals process).

At present SpC2N.13(e) is not clear that disclosure of CEMRAI and CEMRDPI can be disclosed to shared services where necessary. Accordingly, the Secretary of State intends to amend SpC2N.13(e) to make a specific requirement that disclosure of CEMRI, CEMRAI and CEMRDPI to shared services should be referenced in the annual compliance statement and overseen by Ofgem. Also information shall be held by those to whom it has been provided only until any such issue is confirmed to have been resolved.

Sharing of Confidential EMR Administration Information and Delivery Plan Information between the EMR Administration Team and the EMR Data Handling Team

6. Since EMR has come into operation it has become clear that in order for National Grid to comply with the requirements placed on it, some limited information must be shared between the EMR Administration team and the EMR Data Handling Team so that National Grid, as the Delivery Body, can provide the Secretary of State with robust analysis and advice on possible adjustments to the demand curve as well as for the purpose of providing an annual Capacity Report.

As sharing of information between the two EMR teams was not envisaged as part of our original policy intent when setting up the Licence Condition, we have given careful thought to any potential conflicts of interest that might arise from allowing such information transfer. The work will be contained within the EMR Data Handling Team with a limited liaison role for a senior member of the EMR Administration Team. Both teams are located separately from the rest of NGET with area access controls in place, both are required to adhere to strict information handling controls, and both teams are subject to an annual compliance reporting process where all staff with sight of EMR material are required to be listed and are subject to non-disclosure agreements. We have considered the balance of risk of leakage of information with the efficiencies to be gained from allowing a limited transfer of information and required liaison between the two teams for the purpose of providing a robust capacity report and advice on the demand curve to Secretary of State. We believe that sufficient safeguards are in place to allow this work to proceed as required in the regulations.

The Secretary of State is therefore proposing to amend SpC2N to allow a limited exemption to share sufficient EMRAI and EMRDPI information between the EMR Administration Team and the EMR Data Handling Team only for the purpose of fulfilling their obligations to carry out their EMR functions.

Participation in limited “de minimis” activity by National Grid EMR Administration Team members

7. National Grid EMR team members should be able to participate in discussions impacting on their role as EMR delivery body when considering the possible inclusion of Northern Ireland into the EMR CfD programme. As such early development activity is not included as part of their licenced EMR activity, the only basis on which NG can participate under the terms of their licence would be to include that development as “de minimis” activity.

However, SpC2N.4(c)(ii) currently prohibits any member of the EMR Administrative Team from being involved in any “de minimis” activities. This was included to ensure that EMR team members are excluded from carrying out any work for any of National Grid’s Relevant Competitive Businesses. To resolve this problem we propose to add a consenting mechanism to SpC2N.4(c)(ii) to give Ofgem the power to allow specific consents for National Grid EMR Administration Team members to participate in limited “de minimis” activity under Ofgem’s oversight.

Change of definition

8. Finally we propose to amend the definition in Part H of “Relevant Other Competitive Business” (d) to include all early development of interconnection and not only that which is covered by an interconnector licence to ensure that any early development work carried out on an interconnector would also be covered.

We are seeking views in this consultation on the implementation of amendments 4,5,6 and 7 only. Our policy aim in making these amendments is to ensure that transparent measures are in place to allow the transfer of information as necessary for all those with EMR functions (the Secretary of

State, the Delivery Body and the LCCC) to carry out those functions as smoothly and efficiently as possible whilst being alive to, and managing, any potential conflicts of interest which may arise by maintaining effective safeguards to ensure the safekeeping of Confidential EMR Information. We would be grateful for your views on each of the proposed changes which are described in this consultation notice. When providing views, please provide reasons and include any evidence where possible.

Further detail on the project undertaken by Government and Ofgem to look into the potential conflicts of interest and subsequent consultations and decisions can be found at:

- Joint Report by DECC and Ofgem Synergies and Conflicts of Interest arising from the Great Britain System Operator delivering Electricity Market Reform
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191731/EMR_Conflicts_of_interest_consultation_final_report_FINAL_P.pdf
- Electricity Market Reform: Consultation on Proposals for Implementation
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255254/emr_consultation_implementation_proposals.pdf
- Electricity Market Reform: Consultation on proposals for implementation Government Response
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324170/Government_Response_to_EMR_implementation_consultation.pdf
- Modifications to the Special Conditions of National Grid Electricity Transmission PLC'S Transmission Licence(EMR No. 1 of 2014)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325088/EMR_-_Conflicts_of_Interest_-_NGET_licence_modifications_.pdf
- Electricity Market Reform Delivery Plan
<https://www.gov.uk/government/publications/electricity-market-reform-delivery-plan>
- The Capacity Market Regulations 2014 (S.I. 2014/2043).
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249564/electricity_capacity_regulations_2014_si.pdf
- Electricity Market (General) Regulations 2014 (S.I. 2014/2013)
<http://www.legislation.gov.uk/uksi/2014/2013/contents/made>

These may be useful references when considering your response to the questions below.

Consultation Questions
<ol style="list-style-type: none">1. How effectively will the proposed amendments to the licence modifications shown at 4, 5, 6 and 7 above achieve the policy aims? Please explain your answer providing evidence where you can.2. Are there any unintended consequences you can foresee from these amendments?3. Do you have any other comments on these proposed changes?

Please address your responses to Barbara.Green@decc.gsi.gov.uk by the closing date of 8 January 2015.