



Department for
Business, Energy
& Industrial Strategy

ELECTRICITY (CONNECTION CHARGES) REGULATIONS 2017 (ECCR)

Informal consultation on extending the
scope of the ECCR: Government Response

March 2017

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The consultation and Impact Assessment] can be found on the BEIS website:
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Contents

Background	1
Next steps	2
Analysis of responses	3
Introduction	3
Applicability to wider network reinforcement and investment in anticipation of need	3
Requirement to be owner/ occupier	4
Interaction with the 'voltage rule'	5
Second Comer and subsequent connectees	6
Requirement to take 'reasonable steps' and maintain records	6
Obligations on independent connection providers (ICPs)	7
Timing of demand and payment of second comer payments	8
Notifying an eligible person of potential payment	9
Waiving the right to second comer payments	10
Extension of time limit	10
Applicability to transmission costs	11

Background

1. Timely and affordable connections to the electricity distribution network help us to meet our energy and growth objectives by ensuring industrial and commercial demand, and distributed generation can connect to the network. Connections are, however, an area where we hear concerns from stakeholders, in particular around the cost and time it takes to connect.
2. The Electricity (Connection Charges) Regulations 2002 (ECCR), also known as the 'Second Comer Regime', provide that where a person connects to and benefits from electricity infrastructure that was paid for by an initial connectee, the earlier connectee can be reimbursed for a share of the costs by the subsequent connecting customer.
3. The Regulations apply to sole-use assets paid for by a customer and wider network reinforcement where costs may have been shared between connecting customers and existing users of the network¹. In some instances, new connections will prompt wider network reinforcement beyond the sole use connection. Customers will generally only be asked to pick-up their proportionate share of the cost. If, due to the nature of the upgrade (e.g. standardised equipment size), capacity is installed beyond that needed specifically for the new connection, the DNO will pay for the work and the costs will be passed through in network charges to consumer bills.
4. These Regulations help ensure a sharing of costs between different connecting parties and give the initial connecting customer greater confidence that they may subsequently recover an element of their costs. They also help protect consumers by ensuring a greater share of network costs are recovered from subsequent connectees. Second comers can also benefit from being able to connect to infrastructure already in place if, as a result of the ECCR provisions, a first comer has proceeded with a connection where they otherwise wouldn't have done.
5. As set out in the open letter from the Department of Energy and Climate Change published on 22 October 2015 - [Informal Consultation regarding potential changes to the Electricity \(Connection Charges\) Regulations 2002 – 'Second Comer' Rules](#) – a number of limitations had been identified with the current regime. The Government intends to address these by making new regulations, the Electricity (Connection Charges) Regulations 2017, which (when laid) will apply where a first connection is made on or after 6th April 2017. The Government alongside the open letter published a draft of the new regulations for comment and an outline of the assumptions that would be used to inform the associated impact assessment. The key changes included:

¹ Distribution Use of System (DUoS) charges are levied by distribution network operators (DNOs) to recover costs of installing, operating and managing the regional distribution networks.

- Extending the scope of the ECCR to bring connections made by independent connections providers (ICPs) explicitly within scope;
 - Extending the time limit within which second comer payments are due to ten years;
 - Clarifying the application of the scheme to ensure wider network reinforcement work paid for by the DNO (and subsequently passed through to consumers via networks charges) is covered;
 - Extending the scope to include section 22 connection agreements²; and
 - Extending the scope to include connections between distribution systems.
6. The informal consultation ran from 22 October until 20 November 2015. In total, 14 responses were received from distribution network operators, developers and other stakeholders. In the next chapter, Government sets out the key issues raised during consultation with stakeholders, the Government's view and any proposed changes in response.

Next steps

7. The Government will lay the new regulations, which incorporate the changes outlined within this document, before Parliament. The revised regulations will commence on 6 April 2017 and will apply where a first connection is made on or after that date. The 2002 Regulations will continue to apply where the first connection is made before that date.
8. An impact assessment outlining the economic impact of the changes being made within these new Regulations is published alongside this document.
9. Ofgem, as the network regulator responsible for ensuring compliance with the Electricity (Connection Charges) Regulations, is planning to issue guidance stating its interpretation of the obligation and operation of the regime.

² The connection regime includes provisions that enable connecting customers to agree terms with a DNO for connecting, outside of the standard connections regime (known as a Section 22 agreement). This allows developers and DNOs more flexibility to strike commercial terms.

Analysis of responses

Introduction

10. This chapter sets out the issues raised by respondents, Government's view in response and any changes made to the draft regulations as a result. Given the very detailed nature of some of the specific legal drafting queries raised by respondents, not all points are covered in detail here. Instead, Government has noted the key issues raised. However, Government confirms that all the issues raised by respondents during consultation have been considered.

Applicability to wider network reinforcement and investment in anticipation of need

Issue

11. In the majority of cases DNOs already apply the ECCR in respect to wider network reinforcement, prompted by an initial connection, which has been funded by the distribution network operator (DNO) and in turn recovered through network charges. During earlier consultation, some respondents requested that the regulations be revised to clarify that the rules can be applied in this scenario. Government supports the use of the ECCR in this scenario as it helps ensure a fair sharing of costs and helps ensure consumers are not picking up the cost of a benefit which accrues to someone else.
12. A number of respondents questioned whether the draft regulations were sufficiently explicit that wider network reinforcement was covered and that the drafting would not cover scenarios where an ICP had provided the first connection.
13. A number of respondents also referenced Ofgem's [*Quicker and More Efficient Connections*](#) consultation, which considered options for enabling greater investment in the network in anticipation of need, and questioned whether Government intended the ECCR to be allowed to be used to recover the costs of more general anticipatory investment where there had been no initial first connection.

Government View

14. As stated above, Government supports the use of the ECCR respect to wider network reinforcement as it helps ensure a fair sharing of costs and helps ensure consumers are not picking up the cost of a benefit which accrues to someone else.
15. Following its *Quicker and More Efficient Connections* consultation, Ofgem is working with stakeholders to consider pilot cases for enabling greater investment ahead of need, whilst protecting consumers from additional costs. Government supports this work, including any consideration as to whether the ECCR may help DNOs (or other investors) to recover costs from those that subsequently benefit

from infrastructure already being in place. Government is clear that for the ECCR to apply, there must be an initial connection.

16. Government believes the definitions of “first connection expenses” and “reimbursement payment”, in Schedule 5B to the Electricity Act 1989 (as inserted by the Infrastructure Act 2015) are broad enough to include wider network reinforcement where the work carried out related to the initial connection. The draft regulations were designed to reflect this interpretation of the Act by including reference to DNOs in the definition of “eligible person”.
17. Government accepts the definition of eligible person needed to be amended to adequately capture DNOs where they had not completed the initial connection.

What has changed

18. Government has amended the definition of an eligible person so that a DNO can be eligible for a second comer payment where it has incurred first connection expenses, regardless of whether it completed the initial connection.
19. Government has added a broader category of eligible person, which includes those that may have made a payment towards first connection expenses, but not obtained the connection itself, this could, for example, include a development corporation type body.
20. Ofgem, as the network regulator responsible for ensuring compliance with ECCR, is planning to issue guidance stating its interpretation of the new regulations including what type of reinforcement is covered by the regulations.

Requirement to be owner/ occupier

Issue

21. A number of stakeholders noted that the draft regulations, in contrast to the 2002 Regulations currently in force, did not include a requirement that the eligible person, in order to qualify for a second comer payment, had to own or occupy the premises to which the initial connection had been made.

Government View

22. Government has decided that, in order to qualify for a second comer payment, a person should own or occupy the premises or distribution system to which the first connection was made, except in cases where the eligible person is an electricity distributor or another person who did not apply for, but contributed to the cost of, the first connection (see paragraph 19) – in these two instances, the distributor or other person is unlikely to own or occupy the premises.

What has changed

23. Government has amended the draft regulations to include a requirement that, in order to qualify as an eligible person, a person must own or occupy the premises or distribution system to which the connection has been made, except in cases where the person is the distributor or another person who has contributed to the

cost of the first connection but was not the initial contributor. In making this change, the Government has also added a reference to 'relevant time' (i.e. when the subsequent connection is made), to state the time period to which the ownership/occupation requirement applies for a person to be eligible for a payment.

Interaction with the 'voltage rule'

Issue

24. When connecting to the network, a customer will pay for their sole-use (dedicated) connection assets and will generally only be expected to contribute towards any wider network reinforcement required (if any) up to one voltage level above their point of connection. For example, if the customer connects at the Low Voltage network and reinforcement is required on the High Voltage network to cope with the increased capacity, they will be expected to pay for these costs. However, if there is also a need for reinforcement on the Extra High Voltage network to deal with the extra capacity, these costs will be socialised across all customers.
25. This is often referred to as the 'voltage rule' and was introduced in recognition that reinforcement of the network at higher voltages is more likely to create capacity that other customers may benefit from, and that it is therefore more appropriate that the cost of this additional capacity is spread across a wider base of customers. DNOs are obliged to comply with this through their licence and this is also reflected in the Common Connection Charging Methodology (CCCM).
26. A number of respondents noted that the revised wording in the regulations would mean that the voltage rule would not apply to a second comer and that DNOs would be obliged to recover second comer costs in relation to reinforcement at the higher voltage levels. A number of respondents called for the regulations to exclude costs that would not be charged under the voltage rule.

Government View

27. Government does not believe second comers should be asked to cover costs that they would not have been charged under the voltage rule, as a first comer. The objective of the amendments to the regulations is to ensure a level playing field for all those connecting to the network and a fair sharing of costs between different parties, not to increase the proportion of costs that a second comer pays.

What has changed

28. Government has revised the regulations so that they now reference '*net first connection*' expenses, which exclude such expenses which were incurred at more than one voltage point above the point of connection. In introducing this definition, it has also been necessary to define reinforcement works as works that add capacity to an existing distribution system.

Second Comer and subsequent connectees

Issue

29. A number of respondents queried, given the references to a 'second connection' within the draft regulations, whether second comer payments could be required from subsequent connectees (e.g. a third and fourth comer) that also benefit from connecting to infrastructure paid for by an earlier connectee.

Government View

30. The Government believes that any connectee who subsequently connects to and benefits from infrastructure paid for by an earlier connectee should pay for its share of the costs and therefore be liable for a second comer payment.
31. The draft regulations use the term "second connection" to correspond with the language of Schedule 5B to the Electricity Act 1989, and the term is to be interpreted in accordance with that Schedule. Paragraph 1(4) of Schedule 5B provides that a second connection is made where any electric line or electric plant used for the purpose of making a first connection is used for the purpose of making another connection between premises and a distribution system, or between two distribution systems. The Government believes that definition is sufficiently broad to cover all subsequent connections.

What has changed

32. Government has not made any changes to the regulations in relation to this point. Ofgem agrees with this view and will confirm its interpretation in the guidance it is preparing.

Requirement to take 'reasonable steps' and maintain records

Issue

33. Some DNO respondents were concerned that the obligation for DNOs to take 'reasonable steps' to ascertain whether there are any eligible persons and their name and address was too open and that it was unclear as to what steps DNOs would be required to take. Another respondent was concerned that the obligation to maintain records to comply with its duties under the draft regulations was unduly onerous and would require DNOs to actively seek out information.

Government View

34. Government believes DNOs should be proactive in seeking out information in order to comply with the ECCR, such as requesting and storing contact details of an initial connectee and making contact with them should a second comer payment fall due. Given the inclusion of the word 'reasonable', Government does not agree that the requirement is unduly onerous. It is not practical or desirable to set out in more detail what may constitute 'reasonable steps', as this risks unnecessarily restricting a course of action a DNO may take.

What has changed

35. Government has not made any changes to the regulations in relation to this point. Ofgem has agreed to set out in guidance its expectations as to what action DNOs should take. Government notes that the final regulations reference DNOs taking steps to ascertain whether there will be any eligible person. The reference to 'will be' has been added as, in practice, the DNO will issue notice of the payment to be made in advance of the 'relevant time' (see paragraph 23), and therefore strictly speaking there cannot be an eligible person until the second connection is made.

Obligations on independent connection providers (ICPs)

Issue

36. A number of respondents called for an obligation to be included within the regulations that requires independent connection providers to provide relevant information (e.g. customer contact details) to the DNO, to help ensure they have the necessary information to comply with the ECCR.

Government View

37. Government expects ICPs to provide all relevant information to the DNO to enable it to apply second comer payments where they are due. This will be in the interest of the ICP's customer as it will mean they could receive a second comer payment at a later date. Failure to provide adequate information may mean that the DNO is unable to process a payment as it is unable to contact the first connecting customer.
38. Government does not, however, believe that an obligation can be placed upon ICPs to provide this information. While ICPs are accredited, they are not regulated or licensed in the same way as a DNO. Government therefore believes that any obligation to provide information would be difficult to enforce.
39. Instead, Government expects ICPs and DNOs to work together to establish standardised practice to share the appropriate information, most likely through the existing adoption process where DNOs already take ownership of the asset.
40. Where information is incomplete, Government expects DNOs to take 'reasonable steps' to ascertain whether there is a first comer eligible to receive payment. Having taken reasonable steps, if the DNO has still been unable to establish whether there is an eligible person, the DNO will not have to apply a second comer payment.

What has changed

41. Government has not made any changes to the regulations in relation to this point. Ofgem has agreed to set out in guidance its expectations of what steps DNOs should take to seek information from ICPs and their customers.

Timing of demand and payment of second comer payments

Issue

42. Respondents queried the deadlines included within the draft regulations in relation to demanding and paying a second comer payment. One respondent was concerned that the requirement to demand a second comer payment no later than the time at which the second connection was made was too late, and that any demand should be made (with details provided) at the time a connection offer is issued to a customer.
43. Another respondent argued that there should be no deadline at all, arguing there could be instances where it emerges at a later date (for reasons outside of the control of the DNO, such as an illegal connection to the network) that a second comer payment was due.
44. One respondent noted that while they recognised the need for DNOs to make reasonable information available to those receiving a charge for a second comer, they were concerned that the requirement to do so could result in non-payment of a second comer payment if a customer made repeated requests for information.
45. One respondent questioned whether the obligation to pay a second comer payment 'as soon as practicable' after receiving the payment from the second comer should be included given that in some instances a connection may be cancelled and monies reimbursed to the second comer connectee, and that in this instance the DNO would have to recover the second comer payment from the first comer.

Government View

46. Government believes that customers should be given fair notice of the full cost of connecting to the network, including the cost of any second comer payment that may be due. Government included an obligation within the draft regulations to issue a demand for a second comer payment no later than the connection was made so as to ensure that DNOs did not issue demands for payments long after a connection has been made.
47. On further consideration, Government believes there is merit in distinguishing between a requirement on DNOs to notify a customer that they will be liable to pay a second comer payment and a demand for that payment once the connection has been made. This better aligns with the primary legislation, which specifies that a customer is only due to make a payment once the Conditions A to D of Schedule 5B of the Infrastructure Act, which can only be met once the second connection has been made.
48. The Government believes that customers should be allowed to request information from a DNO on the basis upon which a second comer payment has been calculated. This should help ensure costs are robust and transparent. It does not accept that the requirement as included in the draft regulations is unduly onerous, but agrees there is merit in including a provision that enables DNOs to inform the customer that no more information is held. Ultimately, if a customer remains

unhappy and believes the charge is unfair, they can take their case to Ofgem as the network regulator.

What has changed

49. Government has revised the obligations in the regulations to require that DNOs issue a notice to customers as soon as reasonably practicable, informing them that they will be liable to make a second comer payment. In practice Government would expect that in most instances this would be issued as part of a connection offer.
50. Government has also amended the obligation on DNOs to issue a demand for payment, to make clear this can only be issued once the second connection has been made and necessary conditions met.
51. Government has revised the obligation on timing when DNOs must make reimbursement payments so that these will now need to be paid as soon as reasonably practicable after receiving the second comer payment.
52. The Government has amended the requirement on DNOs to provide information to state that DNOs must provide such information as has been reasonably requested or notify the subsequent contributor that it does not hold the information.

Notifying an eligible person of potential payment

Issue

53. The draft regulations included a provision that required distributors to inform an initial contributor that a demand had been issued to a subsequent comer for a second comer payment. During consultation a number of stakeholders noted that in many instances connection quotes (including a second comer cost) are not accepted and the connection does not go ahead, and that therefore many notifications would be issued that would ultimately result in no payment being made.

Government View

54. Government accepts the concern and acknowledges that the requirement could raise expectations of a payment where there is a possibility that none will materialise and that the requirement imposes an administrative burden on the distributor.

What has changed

55. The requirement to inform an initial contributor has been removed from the revised regulations. However, as noted above, distributors will be obliged to make the payment as soon as reasonably practicable after a second connection has been made and they have received payment from the person obtaining that connection.

Waiving the right to second comer payments

Issue

56. Where a customer or group of customers wish to secure a more innovative approach to connecting to the network (for example, as a consortium) they may wish to connect through an agreement under section 22 of the Electricity Act 1989 (a 'Section 22 agreement'), which allows a DNO to operate with a greater degree of freedom from the usual constraints and agree a connection on commercial terms. The existing ECCR does not currently make provision for connections made under Section 22 agreements so Government is extending the scope to ensure they are covered.
57. A number of respondents noted that there may be instances where an obligation to apply a second comer payment could impact negatively on the commercial arrangements agreed by the parties, for example, where the original customer wants to sell a development with serviced utilities. Respondents proposed that customers be allowed to waive their right to a payment.

Government View

58. The Government recognises that Section 22 agreements provide for a more innovative and flexible approach to be agreed between connecting customers and the DNOs and does not wish to restrict this. It accepts that there is merit in enabling a customer to waive their right to a future second comer payment if they wish. Beyond this there may be other cases where for some reason an initial connectee wishes to waive their right.

What has changed

59. The Government has amended the regulations to include a provision which enables an eligible person to notify a DNO in writing that it does not wish to receive a payment.

Extension of time limit

Issue

60. One respondent proposed that, while supporting the extension of second comer payments to 10 years, Government should consider going further. Specifically, they proposed that payments should be due for the lifetime of an asset unless the administration costs, depreciation of the asset, and other associated costs outweigh the payment being made to the 'first comer', or if the first comer developer has decommissioned.

Government View

61. The Government believes the second comer principle of cost sharing is sound and customers should not be allowed to 'free-ride' on infrastructure paid for by others. However, it is of the view a time-limit is needed as administering the regime over an indefinite time period would become very complex and is likely to be impractical.

What has changed

62. The Government has kept the extension of the time-limit at 10 years.

Applicability to transmission costs

Issue

63. In some instances, when a new connection is made on the distribution network, reinforcement of the transmission network may also be required in order to accommodate the additional load or supply. A number of respondents have questioned whether the ECCR applies to transmission network related costs or whether it is restricted to distribution network costs only.

Government View

64. The draft regulations provided for reimbursement of first connection expenses. 'First connection expenses' are defined in paragraph 1(6) of Schedule 5B to the Electricity Act 1989 as any expenses reasonably incurred by a person in providing any electric line or electric plant for the purpose of making the first connection'. Government considers that transmission reinforcement costs incurred as a result of a new connection are within this definition, and that reimbursement payments may therefore include an amount in respect of such costs.

What has changed

65. Government has not made any changes to the regulations in relation to this point. Ofgem has agreed to clarify in guidance its interpretation of the application of the scheme.

