

Energy Market Investigation (Electricity Transmission Losses) Order 2016 Variation Order 2024

1. On 24 June 2016, the Competition and Markets Authority (CMA) published a [final report](#) following its investigation of the energy market in the UK. The CMA found that there was a detrimental effect on customers resulting from various adverse effects on competition and it set out a remedy package intended to address those adverse effects.
2. The CMA's remedy package included enforcement orders made under section 161 of the Enterprise Act 2002 (the Act). The Energy Market Investigation (Electricity Transmission Losses) Order 2016 (the Order) came into force on 14 December 2016.
3. Under section 162 of the Act, the CMA has a duty to keep its orders under review and to consider whether, by reason of any change of circumstances, an enforcement order made under section 161 of the Act is no longer appropriate and needs to be varied or revoked.
4. On 23 July 2024, the CMA consulted on its Provisional Decision that:
 - a relevant change of circumstances had taken place as a result of the amendments made to the Electricity Act 1989 by Part 5 of the Energy Act 2023, and the establishment of a new Electricity System Operator (ESO); and consequently
 - Part 1 (Article 2.1) and Part 4 of the Order were no longer appropriate and should be varied.

It also gave formal Notice of Intention to vary the Order, in accordance with Schedule 10 to the Act, as applied by section 165 of the Act.

5. On 13 November 2024, the CMA published its [final decision and formal Notice of Variation](#).
6. The CMA hereby publishes this order.

The Order

The CMA makes this order in exercise of its powers in section 161(4) of the Enterprise Act 2002, for the purpose of varying the Energy Market Investigation (Electricity Transmission Losses) Order 2016 as, by reason of a change of circumstances, certain provisions in that order are no longer appropriate and need to be varied.

The Energy Market Investigation (Electricity Transmission Losses) Order 2016 was made to remedy, mitigate or prevent certain adverse effects on competition and any detrimental effects on customers so far as they have resulted, or may be expected to result, from certain adverse effects on competition specified in the report of the CMA entitled *Energy Market Investigation Final Report, 24 June 2016*.

1. Citation, Commencement and Purpose

1.1 This order may be cited as the 'Energy Market Investigation (Electricity Transmission Losses) Order 2016 Variation Order 2024'.

1.2 This order shall come into force on 13 November 2024, which is the date the order was signed.

1.3 The purpose of this order is to vary the Energy Market Investigation (Electricity Transmission Losses) Order 2016.

2. Interpretation

2.1 The definitions, interpretations and meanings ascribed to words and expressions in the Energy Market Investigation (Electricity Transmission Losses) Order 2016 apply to this order except where words and expressions are expressly defined.

3. Variations to the Energy Market Investigation (Electricity Transmission Losses) Order 2016

3.1 In Part 1, Article 2.1 (Definitions)

- a) Add – “**ESO Licence** means an electricity system operator licence within the meaning of section 6(1)(da) of the Electricity Act 1989.”

- b) Add – “**Relevant Direction** means a direction given by the Secretary of State under section 167 of the Energy Act 2023.”
- c) Omit the defined term and definition “**Transmission Company** means ...”.
- d) Add the defined term and definition “**System Operator Company** means if the Secretary of State gives a Relevant Direction, from the time when the Relevant Direction takes effect, the holder of an ESO licence.”

3.2 Each instance of the defined term ‘Transmission Company’ is to be read as the new defined term ‘System Operator Company’.

3.3 In Part 4, Article 6.1

- a) Replace “on” with “from”.
- b) Add – “, until: a) the Secretary of State gives a Relevant Direction which contains provisions that, having regard to the effect of the Relevant Direction, are of equivalent effect to those set out in Schedule 3; and b) that Relevant Direction takes effect.”

Kirstin Baker

Chair of the Group

Competition and Markets Authority

13 November 2024

Explanatory Note

(This Note is not part of the Order)

1. The purpose of the Energy Market Investigation (Electricity Transmission Losses) Order 2016 Variation Order 2024 is to vary the Energy Market Investigation (Electricity Transmission Losses) Order 2016 (the Order).
2. On 13 November 2024 the CMA published its final decision that Part 1 (Article 2.1) and Part 4 are no longer appropriate by reason of the relevant changes of circumstances identified in paragraphs 3.7 to 3.13 of its Final Decision document. The CMA decided that the appropriate outcome was to vary those provisions of the Order by means of a variation order. The provisional decision, published on 23 July 2024 was accompanied by a Notice of Intention to vary the Order and proposed variations, on which the CMA consulted.
3. The variation amends the Order to take account of the amendments made to the Electricity Act 1989 by Part 5 of EA23 and the establishment of the ESO.
4. Section 167 of the Enterprise Act 2002 (the Act) places a duty on any person to whom this order applies to comply with it. Subject to the defences in the section, any person who suffers loss or damage due to a breach of this duty may bring an action. Section 167 of the Act also provides that the CMA can seek to enforce this order by civil proceedings for an injunction or for any other appropriate relief of remedy.
5. The CMA has a general duty to monitor the operation of a CMA enforcement order under section 162 of the Act. This includes the duty to consider, from time to time, whether an enforcement order should be varied or revoked in the light of a change of circumstances.
6. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and the provisions of this variation order or the Order, the variation order and the Order shall prevail.