



Commission for Energy Regulation

An Coimisiún um Rialáil Fuinnimh

Generation Licence Compliance

Guidance Notes for Licence Holders

Version 1
August 2012

Generation Licence- Guidance Notes for Licence Holders

Who are these guidance notes aimed at?

1. These guidance notes have been produced for the attention of generation licence holders. The guidance for units above 10MW is detailed first. The notes relating to units under 1MW and between 1MW and 10MW are then detailed in Section B of these guidance notes. A checklist is provided at Appendix A and Appendix B to assist you in complying with your licence conditions.

They aim to provide a useful resource for assisting you as a licence holder to fulfil your generation licence obligations on an annual basis as well as outlining those occasions where action on your part may be required. Please note that these notes should always be read in conjunction with the generation licence issued to you.

A. The role of the Commission for Energy Regulation

2. The Electricity Regulation Act, 1999 provided for the establishment of the Commission for Energy Regulation (CER), and the necessary powers to licence and regulate the generation, distribution, transmission and supply of electricity in Ireland. One of the functions of the CER is to grant licences to generate electricity and to monitor ongoing compliance on an annual basis.

B. Background

3. All electricity generators must hold generation licences under the 1999 Act. As a licence holder compliance requirements as detailed in your licence must be complied with and reported to the CER as required.
4. These guidance notes are to assist you with ongoing compliance and to answer common questions that may arise from time to time. Full details of your licence conditions are contained in your licence, which was issued to you. For licence holders licensed by Order, SI No 384 of 2008 contains your licence conditions.
5. A checklist to help you comply with licensing requirements is attached to these notes at Appendix A and Appendix B (Licensed by order). These outline the compliance information which we will request from you. A number of these requirements require obligatory reporting and others require notification when a change in circumstances occurs. If you have any questions regarding licence compliance please contact us on +353 14000 800. We answer calls between 9am and 5.30PM, Monday to Friday. Alternatively, you can email your questions to us at info@cer.ie or directly with the licensing team member that processed your original application.

6. We may amend these notes from time to time to include changes and improve clarity. These guidance notes are available on our website at www.cer.ie. Although every effort has been made to ensure the accuracy of the material contained in this document complete accuracy cannot be guaranteed. The CER cannot accept responsibility for failure to comply with licence conditions.
7. Note that non-compliance with licence conditions and reporting requirements may result in a review, and if necessary a revocation of your licence. The CER will request compliance documents to be sent within an established timeframe. To allow efficient monitoring please ensure that all documents are sent collectively where requested.
8. This guidance document will outline the licence conditions that require submission to the CER on an annual basis. These apply to those units with an issued generation licence. Additionally there are a number of licence conditions which requires notification where a change in circumstances has occurred. Such notifications may be required prior to the change or may require formal notification to the CER after the change has occurred. In certain circumstances changes must be approved by the CER. In such situations the CER reserves the right to reject a change where the resulting change may result in a licence holder being unable to comply with the generation licence in its totality.

C. Licence validity and modifications

9. All licences are valid for a period of 15 years from the date of issue which is stated in your licence. The CER reserves the right to terminate the licence in writing with a notice period of 15 years. In effect this means that a licence will be valid for a minimum term of 30 years.
10. Licence conditions are subject to modification or amendment in accordance with their terms or with Sections 14(3), 14(6), (a) or 19 of the Electricity Regulation Act 1999. Schedule 2 of your licence also details the revocation terms that the CER may use if necessary. However please note that the CER will always endeavour to avoid a revocation where possible. Ensuring that annual compliance submissions as well as occasional requested submissions are complied with will help to minimise the possibility of review of your licence and revocation.
11. The generation licence issued to you is divided into three sections.
Section A details the conditions that apply prior to the Single Electricity Market (SEM) run-off. This section is no longer relevant.
Section B applies to SEM go-active. The SEM went live on 1st November 2007. This section is no longer relevant.

Section C details the Conditions that apply from SEM Go Live i.e. the current licence conditions that apply. The remainder of this section will detail the licence conditions that are obligatory and the licence conditions that require notification where a change occurs. The obligatory licence conditions which require annual submission are detailed first.

D. Licence Conditions that require submission

12. Condition 2: Separate Accounts for the Generation Business. This Condition imposes certain obligations on licence holders to hold financial accounts for the Generation Business. Condition 2.3 of this requires that accounting records are kept in accordance with the Companies Acts, in respect of the Generation Business as if it were carried on by a separate company. These accounting records include the revenues, costs, assets, liabilities, reserves and provisions that are reasonably attributable to the Generation Business.

13. There are specific accounting requirements which should be included in these accounting records.

These include;

- Accounting statements comprising profit & loss account,
- Balance sheet,
- Cash flow statement,
- Any transactions with a value of 100,000 euro that have been conducted with affiliates or related undertakings that are charged from or to any other business together with a description of the basis of that charge to or from any other business or the apportionment or allocation between the Generation Business and any other business. A description of any charges/apportionment/allocation should also be included,
- For the first 6 months of the second financial year i.e. the second year from licence issue and the first 6 months of each subsequent financial year, an interim profit and loss account.

14. For the purposes of licence compliance a report by your Auditors addressed to the Commission is required which states whether the statements have been properly prepared and give a true and fair view of the finances of the Generation Business. Additionally the interim profit and loss account and those records stated in 12 above should be submitted. These should have the same format and content as the annual accounts.

15. Please note that the bases of charge, apportionment or allocation cannot be changed without prior written approval by CER. If you have changed your bases without prior approval then the CER may request accounting statements to be prepared on the bases of the immediately preceding year. Therefore to minimise delay please ensure that prior written approval is sought where a change in bases of charge is proposed.

- 16.** Condition 6 refers to Security Arrangements in place regarding fuel stocks and procedures under the Grid Code. For example this may refer to Secondary Fuel Obligations for generators (where applicable). Please be advised that where a Security of Supply event occurs you may be required to co-operate with the CER in strategic contingency planning. Security of Supply events are rare. However your full cooperation is requested were such an event to occur.
- 17.** Condition 16 of your licence requires an annual submission to ensure compliance with environmental laws. As part of your application an Environmental Impact Statement (EIS) was submitted. The reporting requirements of Condition 16 help us to continue to monitor the environmental impact of generation from year to year. To ensure licence compliance your current environmental policy should be submitted when requested. This document may be prepared in a format of your choice that clearly indicates the applicable environmental legislation and the steps taken to ensure compliance. The CER will request this statement at a time that will be notified to you by the CER. Additional details to help with this licence condition are available in the Decision Paper CER/02/31. This provides additional details to help licensees comply with the reporting requirement. For licensees of 50MW or more an Integrated Pollution Prevention Control (IPPC) licence is required. This requires annual reporting to the EPA. For the purposes of Condition 16 this report may be submitted to the CER. Where a licensee is in compliance with the terms of an IPPC licence the CER will consider this in determining compliance with Condition 16. For those licensees who are not licensed by the EPA a simplified reporting requirement is established in Decision Paper, CER/02/31. This requires the completion of a questionnaire detailing the monitoring steps taken to ensure ongoing compliance.

E. Licence conditions that require notification where a change occurs

- 18.** The above licence conditions require periodic reporting from all generation licence holders. To assist ongoing compliance CER strongly recommends that the relevant protocols and documents are kept up to date to allow for prompt compliance submission when requested.
- 19.** In addition to those licence conditions which require obligatory annual submission your licence also contains conditions which require notification where a change of circumstances has occurred. In certain circumstances there is a requirement for prior notification to the CER. In such instances this allows the CER to analyse how the change in circumstances may affect the ability of the licence holder to fulfil the licence conditions.

- 20.** Section 9 of your licence requires the Operator of each generating station to be approved by the CER. As a licence holder you must ensure that where there is a proposed change of Operator that this is notified to the CER. We will not refuse a change of Operator where the proposed person is competent. An Operator for the purposes of this Condition refers to the person who is responsible for the day to day management of the generation unit.

Please note that should a person become incompetent then we reserve the right to revoke the approval. To ensure compliance with licence obligations we advise that you liaise with CER **as early as possible** where there is a proposed change of Operator. Where a change of operator is proposed we require a letter to be addressed to the Commission detailing the technical and managerial ability of the operator. This letter should be accompanied by a detailed Curriculum Vitae detailing the relevant managerial and technical experience of the proposed operator. CER will examine the capabilities of this new operator.

- 21.** Section 18 relates to the Assignment of your licence to another holder and the Transfer of your generation business. For the licence to be assigned the new licensee must have a generation business so as to fulfil the generation licence conditions. Condition 18 imposes an obligation on Licensees to notify the CER prior to an assignment/transfer. This allows the CER time to analyse the suitability of the proposed licence holder and ensure that the licence obligations will be fulfilled. The CER must approve the assignment and transfer for it to proceed. Where a licence is assigned there is a requirement that the new licence holder must have the capabilities to fulfil the generation licence conditions. For this to be realised the generation business that accompanies the licence must also be transferred.
- 22.** Prior to a licence assignment it is imperative that you contact the licensing team at CER to allow the capabilities of the proposed new licensee to be assessed. Information relating to the technical, legal and financial capabilities of the new licensee will be required. Please have these documents prepared prior to notification to CER.
- 23.** Condition 19 refers to situations where the licensee remains the same but there has been a change of control of the licensee i.e. the entity holding the licence.
- 24.** Condition 19 requires the change of control to be notified to the CER as soon as practicable. However please note that section 19 should be read in conjunction with Schedule 2 (f) of your licence. This allows the CER to revoke a licence where the change of control results in a new shareholder that does not have adequate technical, financial or managerial strength. We will consider the size of the new shareholding in such conclusions. Additionally the CER may request a further change of control of the licensee if applicable. Please note that in all situations where shares of the licensee are transferred to another company this will be considered a change of control.

25. CER strongly advises that any Change of Control is notified to the CER **PRIOR** to the change occurring. This allows CER to ensure that any Change of Control will not adversely affect the ability of the licence holder to comply with licence conditions.

26. Please note that as per Schedule 2 of your licence a failure to notify the CER of a change in control as soon as practicable may give rise to grounds for revoking your licence. Prior notification of a change in control will ensure that such occurrences are minimal.

F. When can the CER revoke a licence to generate?

27. Please note that in addition to the CER reserving the right to revoke a licence where there has been a failure to notify a change of control there are other factors that may result in a review and possible revocation of your licence. These are set out below.

28. If any amount payable under a Levy Order is unpaid after 30 days and remains unpaid for 14 days. The amounts payable will be invoiced to you quarterly by the CER. Please ensure that a Levy Order invoice is dealt with promptly.

29. If you fail to comply with a direction (Section 24), determination (Section 25), or an order (Section 26) issued by the CER or by the High Court under the Electricity Act 1999. Where such a failure lasts longer than **3 months**, or any time determined by the CER it may result in a review and/or revocation of your licence.

Additionally Section 39 & 40 of the Electricity Act 1999 details that a licence holder must comply with any order made by the Minister. The relevant Minister is the Minister for Communications, Energy & Natural Resources. A failure to comply with a Ministerial order may result in the Commission revoking your licence. The CER will always endeavour to ensure that appropriate notice and opportunities are given to allow full compliance.

30. Section (e) of Schedule 2 details the company financial conditions that may give rise to a revocation of a licence. These include if the licensee

- Is unable to pay its debts,
- Has a receiver/examiner appointed,
- Passes a winding up resolution,
- Becomes the subject of a winding up order or,
- is declared bankrupt or of unsound mind,

31. If you as licensee fail to carry out the generation business for 6 months or fail to begin generation within 6 months of the licence coming into force or passing commissioning tests, whichever is the latest.

32. The CER will always endeavour to be reasonable when considering these issues. Where the delay is due to a factor outside your control we will consider this in our assessment.

Section B: Licence holders that are licensed by Order under S.I. No.384 of 2008

G. Background

33. Statutory Instrument No. 384 of 2008 allows specified generating station units to be licensed by order. This SI applies to generation sites with either a related installed capacity greater than 1MW and not exceeding 10MW or those with a related installed capacity not exceeding 1MW. This SI is complemented by SI 383 of 2008 which relates to the authorisation to construct of specified classes of units within these generation sizes.
34. Under Section 5 of SI 384 of 2008 those persons will stand to be duly licensed to generate electricity pursuant to the Order. Those classes of persons stand obliged to comply with the terms and conditions which are stated in the Schedule to the Order. Those that may require submission and cooperation with CER are set out below.
35. Under SI 384 of 2008 there are no specific annual submissions pertaining to accounts of the generation business or environmental reporting. However to be licensed by order does obligate the licensee to cooperate with the CER on certain matters where necessary. These matters are set out below.

H. Compliance & submission duties under SI No. 384 of 2008

36. Condition 4 of the Schedule requires cooperation with the Commission in respect of fuel stocks where requested. This will only occur during security of supply events. As these events are rare the CER requests your full cooperation where these events occur.

- 37.** Please note that as per Condition 6 of the Order as a licence holder there is an obligation to enter into an agreement for connection and use of the system where the Commission will settle terms in dispute between the licensee and the person in question. Where the person wishes to proceed with an agreement that is settled by the Commission then you are obliged to enter into and implement the agreement that has been settled by the Commission. The Commission will also settle any dispute regarding variations to the settled agreement.
- 38.** Condition 7 of the Schedule requires the provision of information to the Commission. This may arise where the Commission considers it necessary to allow it to perform its functions, assigned or transferred to it under the Electricity Act.
- 39.** Condition 8 requires the payment of a levy due under the Levy Order. Where applicable the licensee shall pay such amounts as required under a Levy Order. Please ensure that your Levy Order is paid within 30 days of the invoice issuance.
- 40.** Please note that under Condition 9(8) there is a requirement to retain each set of Commercial Offer Data for a period of 4 years from the date of submission to the Single Market Operation Business. If the Commission so requests you are obligated to provide a reasoned explanation and supporting evidence in relation to the calculation of the Commercial Offer Data. We will contact you where such a request may arise.
- 41.** Condition 10(7) of the Order requires you as Licensee to comply with a direction that may be issued by the Commission. This relates specifically to any price components of Commercial Offer Data submitted to the Single Market Operation Business under the Single Electricity Market Trading and Settlement Code. Such directions may occur sporadically and you will be notified of the procedure where the Commission may make such a request.
- 42.** Condition 11 & 12 relate to the assignment of the licence, the transfer of the Generation Business and a change in control of the licensee. The references made in notes 21-25, inclusive are equally applicable to you as a licence holder licensed by order. In particular, note that prior consultation is a key imperative in ensuring that a possible review or revocation of your licence does not arise. Please ensure that you notify the Commission prior to the assignment, transfer or change of control. This allows the CER to assess the financial, technical and managerial abilities of the proposed licence holder, to ensure that licence conditions will continue to be complied with by the proposed new licence holder.

I. When can the CER revoke a licence under SI No 384 of 2008?

- 43.** Condition 13 refers to the incidents where your licence may be revoked. Please note that the CER will always endeavour to consult with a licensee to ensure that

the instances where a licence requires revocation are minimal. The following may result in a revocation of your licence:

44. If you agree in writing with the Commission to revoke your licence.
45. If a Levy order is unpaid for 30 days and remains unpaid for 14 days after the Commission has given notice that the payment is overdue. Notice will not be given until at least 16 days after the amount payable became due.
46. Under Section 24 and Section 25 the Electricity Regulation Act 1999 the Commission has specific powers to issue a direction or a determination. It is also empowered to seek an Order from the High Court under Section 26. Where you fail to correct the failure within 3 months then the Commission may revoke your licence. The Commission may decide on another time period for compliance. The Commission will ensure that it communicates with you as a licensee where such incidents may occur and where the compliance period is changed.
47. A licence may be revoked where a licence holder;
 - Is unable to pay its debts,
 - Has a receiver/examiner appointed,
 - Passes a winding up resolution,
 - Becomes the subject of a winding up order or,
 - is declared bankrupt or of unsound mind,

Section C: Submission periods and licence checklists

I. When should I submit to the CER?

48. Below is a checklist to assist you in ensuring that you are in compliance with your licence conditions. The full details of these Conditions can be found in your licence.
49. On a periodic basis CER will communicate with you by letter to request the submission of relevant documents that relate to your licence. We would ask that such requests are complied with in a prompt manner. **This does not apply to those licensed under SI No 384 of 2008.**
50. Set out below is a checklist of generation licence conditions that will require your attention periodically and where requested by CER. The full details of these conditions are found in the licence issued to you when your licence was granted. Refer to the full licence for additional details.

- 51.** Should you have any questions regarding licence compliance please feel free to contact the Generation & Licensing Team at CER at (01) 4000800. The contact details for the Generation & Licensing Team are also available on the CER website at www.cer.ie
- 52.** These guidance notes are issued without liability and are intended to be used as supplemental information with your issued generation licence. The CER cannot be held responsible for any failure to comply with licence conditions arising from the publication of these guidance notes.

53. Appendix A: Licence Compliance Checklist

Condition	Details	When to submit?
Section : Condition 2	Accounts & Auditors Reports	Annual
Section C: Condition 6	Security Arrangements <i>Ongoing compliance with fuel reserves</i>	Annual submission stating compliance.
Section C: Condition 8	Ancillary Services <i>Report detailing prices & factors of ancillary services.</i>	When requested by CER.
Section C: Condition 9	Appointment of an Operator <i>A proposed change of Operator</i>	Annual submission stating compliance.
Section C: Condition 12	Provision of information to the Commission	When requested by CER.
Section C: Condition 13	Payment of Levy	Within 30 days of invoice being issued.
Section C: Condition 15	Cost reflective bidding <i>Retention of Commercial Offer Data</i>	When requested by CER.
Section C: Condition 16	Environment <i>Written policy on compliance with European and Irish environmental law</i>	Annual
Section C: Condition 17	Direction etc by the Commission <i>Licensee to comply with direction, determinations or court order made under the Electricity Act 1999</i>	If required.
Section C: Condition 18	Assignment of licence and transfer of Generation Business	Prior to the assignment and transfer. Pre-approval is required.
Section C: Condition 19	Change in Control of the Licensee	Notified to CER as soon as practicable. Prior consultation advised to ensure the technical, managerial and financial ability of the new shareholder.

Appendix B: Licence Compliance Checklist
Holders licensed by Order under SI No. 384 of 2008 only

Condition	Details	When to submit?
Schedule: Condition 4	Security Arrangements <i>Cooperation in respect of fuel stocks and procedures</i>	When requested by CER
Schedule: Condition 6	Connection to and use of the system <i>Commission to determine terms</i>	If direction issued by CER
Schedule: Condition 7	Provision of information to the Commission	When requested by CER
Schedule: Condition 8	Payment of Levy	Within 30 days of invoice being issued.
Schedule: Condition 9(8)	Retention of Commercial Offer Data	When requested by CER
Schedule: Condition 10(7)	Direction by Commission	If direction issued by CER
Schedule: Condition 11	Assignment of licence and transfer of Generation Business	Prior to the assignment and transfer. Pre-approval is required.
Schedule: Condition 12	Change in Control of the Licensee	Notified to CER as soon as practicable. Prior consultation advised to ensure the technical, managerial and financial ability of the new shareholder.