

21 August 2024



Guidelines for managing trader default situations

Version 1.4

Version control

Version	Date amended	Comments
1.0	13 June 2014	Guideline approved by Authority
1.1	9 June 2015	Updated to reflect amended Code provisions, mainly defaulting 'retailer' to 'trader'
1.2	14 April 2020	Updated contact details Clarification that the Authority may, rather than will terminate a trader's right to trade.
1.3	7 May 2021	Updated contact details and Code clauses to reflect Code amendments made.
1.4	21 August 2024	Review and update of Guidelines as necessary.

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1 An effective process for managing a trader default situation is important

- 1.1 The supply of electricity requires a series of financial transactions: generators sell electricity to the clearing manager; the clearing manager sells electricity to traders; traders sell electricity to consumers. Traders also contract with electricity distribution businesses to transport electricity to consumers (or to allow use of a network in the case of a conveyance-only agreement). Generators (through the clearing manager) and distributors are exposed to credit risk if a trader does not, or cannot, meet its financial commitments (a trader default situation).
- 1.2 Electricity is a somewhat unique product because supply cannot easily be halted if a party in the contractual chain (other than the consumer) fails to meet financial commitments. This means that the on-going failure by a trader to pay for electricity or distribution services can lead to increasing financial losses by generators and distributors.
- 1.3 Consequently, the Electricity Industry Participation Code 2010 (Code) specifies a process, specific to the electricity market, for managing a default by a trader. The process is designed to:
- (a) maintain the confidence of consumers that an event of trader default will not interrupt their electricity supply
 - (b) facilitate, where feasible, a commercial solution to an event of trader default
 - (c) maintain the confidence of industry participants that an event of trader default will be resolved in a finite time, thereby limiting potential financial losses without requiring arbitrary or ad-hoc responses
 - (d) clarify whether and in what circumstances the customers of a defaulting trader might be assigned to other traders in the same network area.

2 Purpose of this guideline

- 2.1 The process for managing a trader default situation will apply when a trader commits an 'event of default'. An event of default is one of a specified list of events that includes failing to pay an invoiced amount to the clearing manager, failing to meet the required level of financial security, becoming insolvent, if a third party takes control of some of a trader's assets, having its use-of-system agreement with a distributor terminated for a serious financial breach, or if the clearing manager is prohibited from establishing or continuing a business relationship under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
- 2.2 This guideline explains the process the Authority will follow if a trader commits an event of default. The guideline:
- (a) describes the events that constitute an event of default by a trader under the Code
 - (b) describes how the trader default process is initiated and the actions that the Authority will take on becoming aware of an event of default
 - (c) describes the process that will be followed in the event of a trader default and the role of the Authority and the market participants.

3 What determines when the trader default process will start

3.1 An event of default occurs when a trader does not fulfil specific financial obligations, or when a third party has taken control of some of the trader's assets. Clause 14.41(1) of the Code defines the types of default as any of the following:

Default

14.41 Definition of an event of default

(1) Each of the following events constitutes an **event of default**:

- (a) failure of a **participant** to provide security for the minimum amount required in accordance with clause 14A.6:
- (b) a **settlement default**:
- (c) any action taken for, or with a view to, the declaration of a **participant** that is required to comply with Part 14A as a corporation at risk under the Corporations (Investigation and Management) Act 1989:
- (d) appointment of a statutory manager in respect of **participant** that is required to comply with Part 14A under the Corporations (Investigation and Management) Act 1989 (or a recommendation or submission is made by a person to the Financial Markets Authority supporting such an appointment):
- (e) appointment of a person under section 19 of the Corporations (Investigation and Management) Act 1989 to investigate the affairs or run the **business** of a **participant** that is required to comply with Part 14A:
- (f) if a **participant** that is required to comply with Part 14A is (or admits that it is or is deemed under any applicable law to be) unable to pay its debts as they fall due or is otherwise insolvent, or stops or suspends, or threatens to stop or suspend, or a moratorium is declared on, payment of its indebtedness generally, or makes or commences negotiations or takes any other steps with a view to making any assignment or composition with, or for the benefit of, its creditors, or any other arrangement for the rescheduling of its indebtedness or otherwise with a view to avoiding, or in expectation of its inability to pay, its debts:
- (g) a holder of a security interest or other encumbrancer taking possession of, or a receiver, manager, receiver and manager, liquidator, provisional liquidator, trustee, statutory or official manager or inspector, administrator or similar officer being appointed in respect of the whole or any part of the assets of a **participant** that is required to comply with Part 14A or if the **participant** requests that such an appointment be made:
- (h) termination of a **trader's use-of-system agreement** with a **distributor** because of a **serious financial breach** if—
 - (i) the **trader** continues to have a **customer** or **customers** on the **distributor's local network** or **embedded network**; and
 - (ii) there are no unresolved disputes between the **trader** and the **distributor** in relation to the termination; and
 - (iii) the **distributor** has not been able to remedy the situation in a reasonable time; and
 - (iv) the **distributor** gives notice to the **Authority** that this subclause applies.
- (i) if the **clearing manager** is prohibited from establishing or continuing a business

relationship with a **participant** under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

- 3.2 The process for managing a trader default situation begins when the trader commits one of the above events of default. There is an obligation to notify the Authority when an event occurs. This is usually done by the clearing manager but can be by a participant – see section 4 below.
- 3.3 Most traders purchase wholesale electricity from the clearing manager to sell to their customers. This means the trader has responsibility for these ICPs in the registry. To ensure customers have a relationship with a (non-defaulting) retailer, and to limit any further debt to the wholesale market, the Code has a process (the trader default process in Schedule 11.5), to ensure all ICPs are reassigned to another (non-defaulting) trader.
- 3.4 Not all types of default events trigger the process to allocate ICPs to other traders. When one of the below events of default occur, the Authority goes through the necessary steps to satisfy itself of the event of default, to initiate the trader default process under Schedule 11.5:
- (a) a trader fails to provide prudential security for the minimum amount required (clause 14.41(1)(a))
 - (b) a trader fails to pay the full amount payable when it becomes due under Part 14 (clause 14.41(1)(b))
 - (c) a trader is unable to pay its debts when they are due or is otherwise insolvent, suspends payments, or takes measures in the expectation of a future inability to pay its debts (clause 14.41(1)(f))
 - (d) the trader's use-of-system agreement with a distributor has been terminated because of a serious financial breach by the trader, and the following conditions are satisfied (clause 14.41(1)(h)):
 - (i) the trader has customers on the distributor's local network or embedded network
 - (ii) no unresolved disputes remain between the trader and the distributor in relation to the termination
 - (iii) the distributor has been unable to remedy the situation in a reasonable time
 - (iv) the distributor gives notice to the Authority that the conditions apply.
- 3.5 Clauses 14.41(1) (c), (d), (e) and (g), although types of default, will not trigger the trader default process under Schedule 11.5 and are not discussed further in this guideline.
- 3.6 If an event of default occurs, the Authority will give notice to the defaulting trader under clause 2(1) of Schedule 11.5:

2 Notice to trader who has committed event of default

- (1) If the **Authority** is satisfied that a trader ("defaulting trader") has committed an **event of default** under paragraph (a) or (b) or (f) or (h) of clause 14.41 the **Authority** must give notice to the defaulting **trader** that—
- (a) the defaulting **trader** must—
 - (i) remedy the **event of default**; or
 - (ii) assign its rights and obligations under every contract under which a **customer** of the defaulting **trader** purchases **electricity** from the defaulting **trader** to another **trader**, and assign to another **trader** all **ICPs** for which the defaulting **trader** is recorded in the **registry** as being responsible; and

- (b) if the defaulting **trader** does not comply with the requirements set out in paragraph (a) within 7 days of the notice, clause 4 will apply.

4 Initiating an event of default

4.1 As discussed in section 3, there are four separate events that may trigger a trader default situation. While a concerned participant or any other person may notify the Authority that a possible trader default situation is about to occur,¹ the Code specifies that the clearing manager must notify the Authority if the clearing manager becomes aware that a trader has not complied with a requirement of Part 14 of the Code (such as meeting a payment or providing security for the minimum amount required). The clearing manager must also advise the Authority if it has reasonable grounds to believe that an event of default is likely to occur.

4.2 The relevant clauses of the Code are clauses 14.42(1) and 14.43(1), (2), (3), and (4):

14.42 Clearing manager to advise Authority of anticipated event of default

- (1) If the **clearing manager** believes that an **event of default** is likely to occur, the **clearing manager** must advise the **Authority** so that the **Authority** can consider an appropriate course of action.

14.43 Procedure upon event of default

- (1) If an **event of default** occurs in relation to a **participant**, the **participant** must immediately advise the **clearing manager** and the **Authority** of the **event of default**.
- (2) Despite subclause (1), a **participant** is not required to advise the **clearing manager** or the **Authority** if the **participant** would breach section 36 of the Corporations (Investigation and Management) Act 1989 by advising the **clearing manager** or the **Authority**.
- (3) If subclause (2) applies, the **participant** must seek the consent of the Registrar of Companies or the Financial Markets Authority (as applicable) to disclose the matter to the **clearing manager** and the **Authority**.
- (4) If the **clearing manager** becomes aware that an **event of default** under paragraphs (a) to (g) of clause 14.41 has occurred and is continuing in relation to a **participant**, the **clearing manager** must—
- (a) advise the **Authority** that the **event of default** has occurred; and
- (b) if the **participant** has not advised the **clearing manager** of the **event of default**, advise the defaulting **participant** that the **event of default** has occurred.

4.3 The Code also provides that if a distributor has terminated its use-of-system agreement with a trader because of a serious financial breach by the trader, and the other conditions of clause 14.41(1)(h) are met, the distributor may advise the Authority. Doing so may determine that an event of default has occurred and act as a trigger for the Authority event of trader default process. A distributor may try to resolve the matter under its commercial relationship with the trader, rather than using the trader default process, if that is preferable in the circumstances.

4.4 Other market participants that become aware of a breach of the Code must advise the Authority. Regulation 8 of the Electricity Industry (Enforcement) Regulations 2010 (Regulations) provides that an industry participant that believes, on reasonable grounds, that another industry participant has breached the Code must report the breach or possible breach as soon as possible.

¹ A distributor may also notify the Authority that an event of default has occurred. Further details about this are in paragraph 4.3.

- 4.5 Any other person who becomes aware of a breach may advise the Authority, as provided for in regulation 9 of the Regulations.
- 4.6 All notifications to the Authority of an event of trader default should be made to the Authority at marketoperations@ea.govt.nz. Appendix B contains a list of further key contacts at the Authority.

5 Managing a trader event of default

- 5.1 The process for managing a trader default situation involves three phases:
- (a) Phase 1. The defaulting trader has seven days to resolve the default by meeting its financial obligations or by transferring its customer base (including inactive ICPs) to another trader
 - (b) Phase 2. After seven days, if the default is not resolved, the defaulting trader's customers will be notified by the Authority that they should switch to another trader within a further seven days. The Authority may suspend the trader and apply to the Rulings Panel for a termination order under the Electricity Industry Act 2010²
 - (c) Phase 3. The Authority has three days to ensure the registry has completed the switch of all customers who have transferred to another trader and to assign the remaining customers on day 18 of the process. The terms and conditions of the assigned contract will be those specified by the new trader.
- 5.2 Phase 1, and the timeline for the subsequent phases, commences when the Authority gives notice to the trader in default. The relevant clause of the Code is clause 2 of Schedule 11.5:

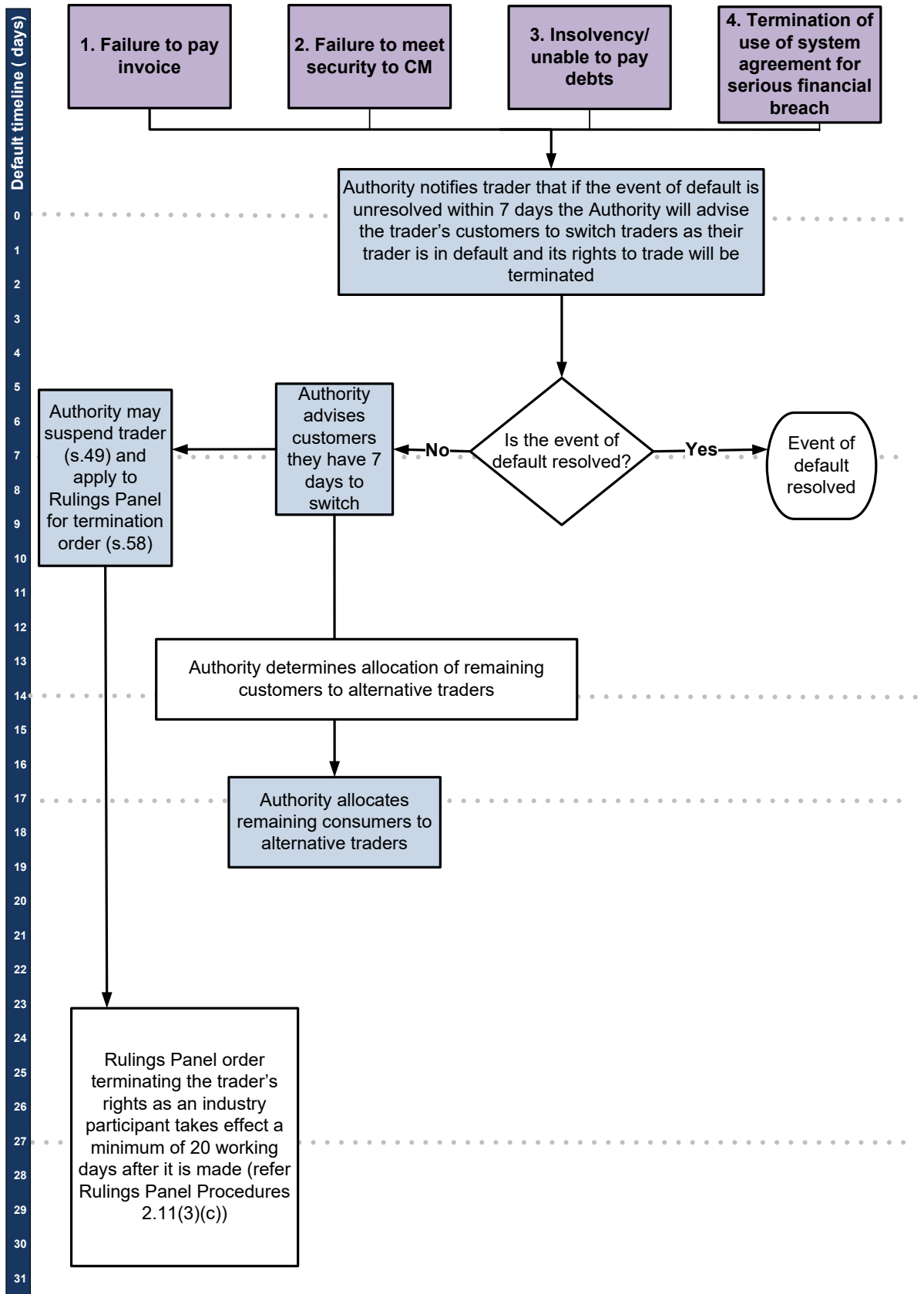
2 Notice to trader who has committed event of default

- (1) If the **Authority** is satisfied that a **trader** ("defaulting **trader**") has committed an **event of default** under paragraph (a) or (b) or (f) or (h) of clause 14.41 the **Authority** must give notice to the defaulting **trader** that—
 - (a) the defaulting **trader** must—
 - (i) remedy the **event of default**; or
 - (ii) assign its rights and obligations under every contract under which a **customer** of the defaulting **trader** purchases **electricity** from the defaulting **trader** to another **trader**, and assign to another **trader** all **ICPs** for which the defaulting **trader** is recorded in the **registry** as being responsible; and
 - (b) if the defaulting **trader** does not comply with the requirements set out in paragraph (a) within 7 days of the notice, clause 4 will apply.
- (2) The **Authority** may require the defaulting **trader** to provide to the **Authority**, within a time specified by the **Authority**, information about the defaulting **trader's customers**.
- (3) The defaulting **trader** must provide the information requested by the **Authority** under subclause (2) within the time specified by the **Authority**.

Figure 1 shows a high-level flowchart of the process that will be followed by the Authority in managing a trader default event. The left column of the chart marks the days provided for each phase in the process. The Code states these are elapsed days (and not working days).

² A termination order terminates all or specified rights under the Code of the industry participant against whom it is made but it does not affect any liability for payment of money under the Code before the date of the relevant order.

Figure 1: Managing events of trader default



6 Phase 1: prompting a commercial solution – day 0 to day 7

6.1 If the Authority is satisfied that a trader has committed an event of default under paragraph (a) or (b) or (f) or (h) of clause 14.41, the Authority and each participant must comply with the processes set out in Schedule 11.5 of the Code. The relevant clause of the Code is clause 11.15C(1) and (2):

11.15C Process for trader events of default

- (1) This clause applies if the **Authority** is satisfied that a **trader** has committed an **event of default** under paragraph (a) or (b) or (f) or (h) of clause 14.41.
- (2) The **Authority** and each **participant** must comply with Schedule 11.5.

6.2 The Authority will provide notice to the defaulting trader:

- (a) informing the defaulting trader that if the trader has not either resolved the default or transferred its customers to another trader within seven days, the Authority will publicly advise its customers that they should switch to a new trader, may suspend the trader's rights to trade, and may apply to the Rulings Panel for a termination order
- (b) requesting from the defaulting trader the information from its customer database needed to communicate with the customers in phase two, including, for example, information about medically dependant customers, customers with more than one ICP, and customers that are an electricity retailer at the ICP (i.e. are not the consumer at the ICP, known as a "type 2 retailer")
- (c) requesting that the trader report daily to the [designated person at the Authority] on its progress in resolving the event of default and/or in transferring its customer base to another trader.

6.3 If the event of default results in a reduction in payments to participants under Part 14, (i.e. the clearing manager's payments to generators), the Authority must publish information about the event of default, including the identity of the defaulting participant (see clause 14.53(2)).

6.4 Depending upon the significance of the event of default, the Authority may consider:

- (a) publicising information about the event of default, including the identity of the defaulting participant, if not already required under clause 14.53
- (b) advising the Rulings Panel of the event of default and that the Authority may be seeking suspension and termination of a market participant
- (c) advising the Office of the Minister of Energy of the event of default and the steps that the Authority will take to maintain the confidence of consumers that the event of default will not interrupt their electricity supply
- (d) advising the Ministry of Business, Innovation and Employment that an event of default exists and that the Authority has alerted the Office of the Minister of Energy.

6.5 Once the event of default has been established, the Authority will also:

- (a) contact the registry manager and request its assistance in identifying the ICPs of each of the trader's customers, if that information is not immediately provided by the trader in default

- (b) contact the distributors over whose networks the trader trades, advising them of the event of default,³ the ICPs of each customer, and requesting the distributor's assistance in establishing the contact details for each of the trader's customers on that network (if necessary)
- (c) start preparing a strategy to communicate with the customers of the defaulting trader
- (d) start compiling a database of customer contact details for each of the customers of the trader in default.

7 Phase 2: customers urged to switch trader – day 8 to day 14

7.1 If, after seven days have elapsed, the Authority considers that the event of default has not been resolved or not all of the trader's customers have been transferred to another trader, the Authority will commence the second phase of the process for managing the event of trader default. Before starting this phase, the Authority may seek updated information from:

- (a) the defaulting trader
- (b) the clearing manager
- (c) the registry manager
- (d) the affected distributors
- (e) any statutory manager, investigator or receiver appointed to the trader
- (f) any other person the Authority considers may have relevant information.

7.2 The Authority recognises that there is a potential for a default to be triggered due to technical reasons that may not be reversed immediately for system or process reasons. Consequently, the process allows for circumstances in which an acceptable resolution to an event of default has been agreed – for example, where a default arises because of an error in an invoice that cannot be corrected until the invoice is re-issued but the trader has paid the amount that is in fact due. The relevant clause of the Code is clause 4(1)(b) of Schedule 11.5

4 Failure by defaulting trader to remedy event of default

- (1) This clause applies if—
 - (a) 7 days have elapsed since the **Authority** gave notice to the defaulting **trader** under clause 2(1); and
 - (b) the **Authority** considers that—
 - (i) the defaulting **trader** has not remedied the **event of default** or, in the case of an **event of default** under clause 14.41(b) in respect of which there is an unresolved invoice dispute under clause 14.25, has not reached an agreement with the **Authority** to resolve the **event of default**; and
 - (ii) the defaulting **trader** still has 1 or more contracts under which a **customer** of the defaulting **trader** purchases **electricity** from the defaulting **trader** or is still recorded in the **registry** as being responsible for 1 or more **ICPs**.

³ The distributor must treat any request for information about a defaulting trader's customers confidential.

- 7.3 If the Authority determines that an event of default remains unresolved and that not all of the customers have been transferred to another trader, the Authority will give notice to the defaulting trader that the Authority is starting the second phase of the process.
- 7.4 The Authority will try to contact all customers remaining with the trader in default to:
- (a) explain that the customer's trader is in default, [and that the Authority may suspend the defaulting trader's right to trade and may apply to the Rulings Panel for a termination of its rights to trade]
 - (b) urge the customer to switch to another trader and provide practical information on how to switch traders, including contact details for competing traders
 - (c) explain that the customer has a period of seven days to switch traders
 - (d) reassure the customer that their electricity supply will not be disconnected as a result of the trader default process
 - (e) explain that if the customer has not switched traders within seven days, his or her contract with the defaulting trader will be assigned to another trader selected by the Authority and that the terms and conditions of the assigned contract will be those of the new trader and not those of the defaulting trader.
- 7.5 The relevant clause of the Code is clause 4(2) of Schedule 11.5:
- 4 Failure by defaulting trader to remedy event of default**
- (2) The **Authority** must—
- (a) give written notice to the defaulting **trader** that the **Authority** considers that this clause applies; and
 - (b) unless the **Authority** considers there is a good reason not to, attempt to advise customers of the defaulting **trader** that the defaulting **trader** has committed an **event of default** and one or more of the following:
 - (i) *[Revoked]*
 - (ii) the customer should enter into a contract for the purchase of **electricity** with another **trader** by the date that is 14 days after the day on which the **Authority** gave written notice to the defaulting **trader** under clause 2(1):
 - (iii) if the customer fails to enter into a contract with another **trader** by that date, the **Authority** may assign the defaulting **trader's** rights and obligations under the **customer's** contract with the defaulting **trader** to another **trader** under clause 5.
 - (iv) any other information the **Authority** considers appropriate
- 7.6 The Authority will decide what strategy to adopt in communicating with the customers of the trader in default, taking account of the circumstances. This strategy may involve some combination of: letter, website, call centre for outgoing and incoming calls, SMS-messages and national or local mass media such as television, newspaper, or radio.
- 7.7 The Authority will advise other traders that there is an event of default, that not all of the customers of the defaulting trader have been transferred to another trader, and that the Authority will contact the remaining customers of the trader and urge them to switch traders. This will allow other traders to brief their call centres to respond to inquiries from customers of the defaulting trader and their own customers. The Authority may also brief other parties, including the Office of

the Minister for Energy, and the Ministry of Business, Innovation and Employment, as it considers appropriate.

- 7.8 The Authority's Chief Executive may also initiate the process of terminating the rights of the defaulting trader to trade under the Code by:
- (a) recommending to the Authority Board that it suspend the trader's right to trade under section 49(3) of the Act, effective immediately. The effect of this suspension is that the trader is no longer allowed to make bids and offers in the wholesale market, but is still obliged to pay the invoices of the clearing manager for the electricity used by its customers.
 - (b) applying to the Rulings Panel to terminate the rights of the trader as an industry participant under section 58 of the Act. The procedures of the Rulings Panel are prescribed under the Act, the Code and the Electricity Industry (Enforcement) Regulations 2010. This procedure is likely to take at least 40 days.
- 7.9 After it provides notice to the customers of the defaulting trader that they should transfer to another trader, the Authority may also instruct the registry manager not to process any switches of customers to the defaulting trader or allow the defaulting trader to withdraw any switches. This is to ensure the defaulting trader cannot expand its customer base while it remains in default. The relevant clause of the Code is clause 4B of Schedule 11.5:

4B Authority may direct registry manager not to process certain ICP switching activities

- (1) If the **Authority** gives written notice to a **trader** under clause 4, the Authority may, by notice to the **registry**, direct the **registry** not to—
 - (a) process the initiation or completion of the switch of any **ICP** to the defaulting **trader**;
or
 - (b) process a switch withdrawal request under clauses 17 and 18 of Schedule 11.3 if processing the switch withdrawal request would mean the defaulting **trader** retained responsibility for the **ICP** to which the switch withdrawal request applies.
- (2) If the **Authority** gives notice under subclause (1), the **registry** must comply with the notice.

8 Phase 3: transfer of any remaining customers – day 15 to day 18

- 8.1 After advising the trader's customers to switch to another trader, the Authority will prepare to assign the contracts of any customers who do not switch to another trader. These preparations will include:
- (a) identifying the traders that may be required to take on customers
 - (b) requesting that the registry manager provide daily reports on the number of customers remaining with the trader in default
 - (c) notifying traders supplying customers over the same distribution networks as the trader in default that they may be assigned customers by the Authority, if the customers of the trader in default do not voluntarily switch or the Authority is unsuccessful in tendering the remaining customer base

- (d) preparing the tender documents that the Authority may use if any customers remain with the defaulting trader at day 14. The documents will be provided to potential recipient traders so that they may make their own preparations.

Authority may tender remaining customer base

8.2 If, after 14 days have elapsed, the Authority considers that the trader has not remedied the event of default or has not transferred responsibility for all of its customers to another trader, the Authority may invite other traders to tender for the remaining customer base. The tender would be on the following terms:

- (a) in order to bid, the trader must have entered into arrangements for use of the distribution network and for metering
- (b) bids would be due on day 15 of the process, that is, the day after the 7 day period for voluntary switches lapsed
- (c) all traders would be invited to submit a bid for all or some of the customers of the trader in default. The terms offered by the recipient trader must be that trader's standard tariff at the date the Authority was notified of the default (day 1) or a lower price
- (d) the Authority would allocate customers (including both active and inactive ICPs) randomly to the trader bidding the lowest price according to the quantity they bid; and then to the trader with the next lowest price, and so on
- (e) customers would be assigned on the terms and conditions established through the tender (including price), not the terms and conditions of the trader in default (that is, after the Authority had exercised the assignment rights outlined below)
- (f) the recipient traders would have the option to notify changes to their terms and conditions (including price) according to their standard process. Similarly, customers would have the option to switch to a different trader at any time.

8.3 The onus is on the recipient trader to ensure that it continues to comply with:

- (a) its obligations under the Code
- (b) the regulations in relation to vulnerable and medically dependent consumers
- (c) all other consumer protection regulations relating to the services that will be supplied by the recipient trader.

8.4 If not all customers are assigned to another trader from the first auction, the Authority may invite all traders to submit a bid on the basis of a fixed term offer:

- (a) the price would be either the trader's standard tariff at Day 1 of the process or a lower price, but would be for a fixed term; the fixed term is intended to provide the trader with certainty about recovering the economic costs of acquiring the customer
- (b) customers would be randomly allocated to the trader bidding the lowest price weighted by the length of the fixed term,⁴ and so on

⁴ That is, price multiplied by the length of the fixed term measured in days.

- (c) customers would have a two-week grace period to change traders, but after that period has lapsed they may be required to pay the economic costs of exiting if they terminate the fixed term contract early.⁵

Authority will assign remaining customers based on market share

8.5 If a tender process is run and does not result in all customers being allocated to a new trader, the Authority will assign the remaining customers of the trader in default to traders servicing customers in the same network area (or areas) as follows:

- (a) each trader serving customers with category 1 or 2 metering installations will be allocated customers with category 1 or 2 metering installations from the trader in default in proportion to the receiving trader's market share in that network area, with market share measured by the number of ICPs calculated prior to any tender⁶
- (b) each trader serving customers with category 3 or above metering installations will be allocated customers with category 3 or above metering installations from the trader in default in proportion to the receiving trader's market share in that network area, with market share measured by the number of ICPs calculated prior to any tender.

8.6 Customers noted in paragraph 8.5(a) and 8.5(b) will be allocated randomly between each trader until all customers have been allocated to a new trader in proportion to that trader's market share of the customer segment. However, the Authority may adjust the allocation to ensure customers are not inconvenienced, for example, a customer with multiple ICPs may have all their ICPs transferred to the same new trader.

8.7 In determining the allocation to customers, the Authority will endeavour to take into account ICP characteristics the trader is not able to trade on, for example a trader may not be able to trade with pre-pay customers, unmetered load, non-half hour metering, etc. Traders will be able to notify the Authority of these characteristics in the registry, and the Authority will remind traders to do so prior to day 15.

8.8 However, the Authority must ensure all customers are assigned to a new trader so may need to direct a trader to accept an ICP.

8.9 In determining the allocation of customers to other traders, the Authority will consider any expert opinion and information provided by any trader that an assignment of customers to it would pose a serious threat to its financial viability. Any trader in this situation must provide the relevant evidence to the Authority that establishes the serious financial threat, including which types of customers and how many customers it can accept before a serious financial threat is posed. If the Authority considers that the assignment of customers to a trader would seriously threaten the trader's financial viability, the Authority may adjust the allocation of customers as it considers appropriate.

8.10 The relevant clause of the Code is clause 5 of Schedule 11.5:

5 Authority may assign contracts and ICPs

(1) This clause applies if, by the end of the 17th day after the defaulting **trader** was given notice under clause 2(1),—

- (a) the defaulting **trader** has not remedied the **event of default** or, in the case of an **event of default** under clause 14.41(b) in respect of which there is an unresolved

⁵ As with any other payment for breaking a fixed term contract (such as a fixed term mortgage contract), any penalty must be a genuine pre-estimate of the loss to the supplier from the early end of the contract.

⁶ Note: this could include non-half hour or half-hour customers.

invoice dispute under clause 14.25, has not reached an agreement with the **Authority** to resolve the **event of default**; and

- (b) the defaulting **trader** continues to have 1 or more contracts under which a **customer** of the defaulting **trader** purchases **electricity** from the defaulting **trader** or is still recorded in the **registry** as being responsible for 1 or more **ICPs**.

(2) The **Authority** may—

- (a) exercise its right under a contract under which a **customer** purchases **electricity** from the defaulting **trader** to assign the rights and obligations of the defaulting **trader** under the contract to a recipient **trader** in accordance with the contract; and
- (b) assign an **ICP** to a recipient **trader** and direct the **registry** to amend the record in the **registry** so that the recipient **trader** is recorded as being responsible for the **ICP**; and
- (c) specify the recipient **trader** to whom the rights and obligations under the contract or the **ICP** will be assigned.

(2A) When determining an assignment under subclause (2), the Authority may do 1 or both of the following:

- (a) exercise its discretion to determine the recipient **trader** without going through a tender or other competitive process;
- (b) undertake a tender or other competitive process to determine the recipient **trader**.

- (3) The **Authority** must, by notice in writing to each recipient **trader**, direct the recipient **trader** to accept an assignment under subclause (2).
- (4) Before the **Authority** gives notice to a recipient **trader** under subclause (3), the **Authority** may decide not to assign rights and obligations of the defaulting **trader** under a contract or an **ICP** to a recipient **trader** if the recipient **trader** satisfies the **Authority** that the assignment would pose a serious threat to the financial viability of the recipient **trader**.
- (5) A recipient **trader** must comply with a direction given to it under subclause (3).
- (6) The **registry** must comply with a direction given to it under subclause (2).
- (7) Before the **Authority** exercises its right to assign rights and obligations or an **ICP** under subclause (2), the **Authority** must, if the **Authority** considers it is practicable, consult with the defaulting **trader** as to the need for the notice.

8.11 As soon as possible after the Authority approves the list of customers and/or -ICPs (if any) to be allocated to each trader, the Authority will inform each trader of the number of customers transferred to it and provide as much information as is held by the Authority in relation to those customers.

8.12 Each trader assigned customers by the Authority must use reasonable endeavours to advise each customer assigned to it of the terms of the assigned contract. The Authority expects that the trader will advise each customer assigned to it:

- (a) that the Authority has assigned responsibility for the customer to the recipient trader
- (b) that a contract is in effect between that customer and the recipient trader and this will ensure that there is no disruption of supply
- (c) the terms and conditions of the new contract, which must be the standard terms that the recipient trader would normally have offered to the customer immediately before the event of default occurred, or such other terms that are more advantageous to the customer, as agreed between the Authority and the recipient trader

- (d) contact details for the recipient trader and how any questions or queries the customer might have will be answered
 - (e) that the customer may switch at any time to an alternative trader.⁷
- 8.13 The trader will advise the customers transferred to it of their new terms and conditions within 7 days of being provided with the customer list by the Authority, or such other time as agreed between the trader and the Authority, reflecting the completeness or otherwise of the customer information provided by the Authority to recipient trader.

9 Role of market participants in the process of managing an event of default

- 9.1 The Authority expects market participants to actively participate in managing an event of default by a trader, in the following three ways:
- (a) traders are obliged to include specific clauses in their contracts with their customers or if not included, make the specified changes to their contracts
 - (b) market participants need to notify the Authority when they become aware of an event of trader default
 - (c) traders must accept the customers allocated to them if the trader in default does not make direct arrangements to assign its customers or if the customers do not switch of their own accord.

Traders have to make changes to contracts with their customers

- 9.2 The Code requires that terms and conditions are included in contracts between traders and customers to allow the Authority the means to manage an event of trader default. The relevant clause of the Code is clause 11.15B:

11.15B Trader contracts with customers must permit assignment by Authority

- (1) Each **trader** must at all times ensure that the terms of each contract under which a customer of the **trader** purchases **electricity** from the **trader** permit—
 - (a) the **Authority** to assign the rights and obligations of the **trader** under the contract to another **trader** if the **trader** commits an **event of default** under paragraph (a) or (b) or (f) or (h) of clause 14.41(1); and
 - (b) the terms of the assigned contract to be amended on such an assignment to—
 - (i) the standard terms that the recipient **trader** would normally have offered to the customer immediately before the **event of default** occurred; or
 - (ii) such other terms that are more advantageous to the customer than the standard terms, as the recipient **trader** and the **Authority** agree; and
 - (c) the terms of the assigned contract to be amended on such an assignment to include a minimum term in respect of which the customer must pay an

⁷ If the customer has been assigned to a recipient trader with a fixed term contract (under paragraph 8.4(c)), the recipient trader will advise of the appropriate timeframe that the customer can switch without a financial penalty.

amount for cancelling the contract before the expiry of the minimum term;
and

- (d) the **trader** to provide information about the customer to the **Authority** and for the **Authority** to provide the information to another **trader** if required under Schedule 11.5; and
- (e) the **trader** to assign the rights and obligations of the **trader** to another **trader**.

(2) The terms specified in subclause (1) must—

- (a) be expressed to be for the benefit of the Authority for the purposes of subpart 1 of Part 2 of the Contract and Commercial Law Act 2017; and
- (b) not be able to be amended without the consent of the **Authority**.

Allow the trader to provide information details to the Authority

9.3 Contracts between traders and customers must provide for the trader to hand over the contact details of the customers to the Authority in the event of a default by the trader. The Authority needs this information to contact customers and inform them of the event of default and to urge those customers to switch traders. The Code provides for the Authority to pass this customer information to any trader to which the customer is assigned by the Authority.

Allow for assignment of the contract by the Authority

9.4 Retail contracts need to stipulate that the Authority is able to assign the contract when the trader is in default. The trader to which the customer is allocated is obliged to enter into a contract with the customer under terms specified by the recipient trader. The Code requires that the terms specified by the recipient trader must be the standard terms that the recipient trader would normally have offered to the customer immediately before the event of default occurred, or such other terms that are more advantageous to the customer than the standard terms, as the recipient trader and the Authority agree.

Allow for a commercial sale of customers' contracts between traders

9.5 Contracts between traders and their customers should provide for the contract to be assigned by the trader to another trader. An assignment provision provides for a trader in distress to negotiate a transfer of its customer base to another trader under agreed commercial terms, reducing the prospect of the Authority having to assign the contracts to another trader.

Appendix A Authority key contacts in the event of a trader default

Table 1: Authority key contacts in the event of a trader default

Key contact	Authority role	Contact details	After hours contact
*Peter Taylor	Manager Commercial	04 460 8866	027 281 7672
Mark Herring	GM Corporate and Market Services	04 280 3456	
General	Reception	04 460 8860	

* primary contacts

Glossary of abbreviations and terms

Act	Electricity Industry Act 2010
Authority	Electricity Authority
Code	Electricity Industry Participation Code 2010
ICP	Installation Control Point