

Electricity Industry Participation Code Amendment (Requirements and Processes for Information Requests by Agents) 2020

Under section 38 of the Electricity Industry Act 2010, and having complied with section 39 of that Act, I make the following amendments to the Electricity Industry Participation Code 2010.

At Wellington on the 21st day of January 2020



Dr Thomas Brent Layton
Chair
Electricity Authority

Certified in order for signature:



Katie Wyllie
Senior Legal Counsel
Electricity Authority



Nick Crang
Partner
Duncan Cotterill

14 January 2020

23 December 2019

Contents

1	Title	1
2	Commencement	1
3	Code amended	2
4	Clause 1.1 amended (Interpretation)	2
5	Clause 11.32E amended (Agents)	2
6	New clauses 11.32EA – 11.32EG inserted	2
7	New Schedule 11.6 inserted	5

Schedule 1

New Schedule 11.6 inserted

Amendment

- Title**
This is the Electricity Industry Participation Code Amendment (Requirements and Processes for Information Requests by Agents) 2020.
- Commencement**
This amendment comes into force on 1 March 2020.

3 Code amended

This amendment amends the Electricity Industry Participation Code 2010.

4 Clause 1.1 amended (Interpretation)

In clause 1.1(1) insert in their appropriate alphabetical order:

“**electronic signature** has the meaning given to it in section 209 of the Contract and Commercial Law Act 2017

“**EIE System** means an Electricity Information Exchange System being any system prescribed by the Authority under clause 11.32EG”.

5 Clause 11.32E amended (Agents)

In Clause 11.32E:

(a) after “clause 11.32B” insert “on behalf of the **consumer**”.

(b) after “a **retailer** must” replace “treat a request from the agent as if it were a request from the **consumer**, if the agent has the written authority of the **consumer** to obtain the information or is otherwise properly authorised by that **consumer** to obtain the information” with “deal with any request from the agent for information about the **consumer** under clause 11.32B in accordance with:

“(a) clauses 11.32A and 11.32EB;

“(b) clause 11.32ED, if a request:

“(i) includes a statement from the agent that the agent has obtained, or the request is accompanied by, a written authority from the **consumer** in the form and containing the information required by Schedule 11.6; and

“(ii) the request is made through the **EIE System**; and

“(c) the Privacy Act 1993, where applicable.”

6 New clauses 11.32EA to 11.32EG inserted

After clause 11.32E, insert the following new clauses:

“11.32EA Retailer actions on receipt of requests from agents

“(1) A **retailer**, after receiving a request under clause 11.32B from an agent on behalf of a **consumer**, must:

“(a) make a decision on the request, and advise the agent of that decision, as soon as reasonably practicable; and

“(b) provide the information requested within the timeframe required by clause 11.32B unless there are grounds for refusing the request under clause 11.32EB.

“(2) If the **retailer** considers, in accordance with subclause (1), that there are grounds for refusing the request, the **retailer** must, before refusing the request:

“(a) consider whether any further information could reasonably be provided by the agent to satisfy the **retailer**; and

“(b) request any such further information from the agent, specifying the further information required in detail.

“(3) If further information is provided under subclause (2)(b), the **retailer** upon receiving the further information must:

“(a) make a final decision on the request, and advise the agent of that decision, as soon as reasonably practicable; and

- “(b) provide the information requested within the timeframe required by clause 11.32B as calculated from the time the **retailer** receives the further information, unless there are grounds for refusing the request under clause 11.32EB.
- “(4) If a **retailer** decides to refuse a request, in advising the agent of that decision, the **retailer** must:
 - “(a) indicate the ground or grounds under clause 11.32EB(1) that the **retailer** is relying on to refuse the request; and
 - “(b) provide the agent with the detailed reasons as to why that ground or grounds applies or apply.
- “(5) If a **retailer** decides to grant a request in full, the **retailer** meets the obligation to advise the agent of that decision by providing the information to the agent in accordance with subclauses (1)(b) and (3)(b).
- “(6) The obligations in subclauses (1)(a) and (3)(a) do not detract from the obligations in subclauses (1)(b) and (3)(b), respectively.”

“11.32EB Decisions on requests

- “(1) A **retailer** that receives a request under clause 11.32B from an agent on behalf of a **consumer** must grant the request and provide the information unless the **retailer** believes on reasonable grounds:
 - “(a) that the **consumer** has not authorised the request;
 - “(b) that complying with the request would otherwise cause the **retailer** to breach its obligations under the Privacy Act 1993 (where it applies); or
 - “(c) that:
 - “(i) if the request is accompanied by a written authority in the form and containing the information required by Schedule 11.6 or the agent subsequently provides a copy of such an authority, any of the information required by Schedule 11.6 is incorrect in a material way, such that the **retailer** cannot be satisfied of the matters in paragraphs (a) or (b) or is unable to identify the **consumer** the request relates to; or
 - “(ii) in any other situation, the **retailer** is unable to identify the **consumer** the request relates to.
- “(2) A **retailer** may not refuse a request under clause 11.32B from an agent on behalf of a **consumer** on the basis that the request or any authorisation relating to the request is not in a particular form, or does not follow a particular process.”

“11.32EC Requirements for agents who are participants

- “(1) This clause applies to each **participant** who wishes to make or who makes a request for information to a **retailer** under clause 11.32B as an agent on behalf of a **consumer**.
- “(2) Before making the request, the **participant** must obtain an authorisation from the **consumer** for the **participant** to request the transfer of the information to the agent on behalf of the **consumer**.
- “(3) The **participant** must:
 - “(a) retain a copy of the authorisation under subclause (2) or otherwise retain evidence that the **consumer** has provided the authorisation required by subclause (2); and
 - “(b) provide a copy of the authorisation or other evidence to the **retailer**, if requested by the **retailer**.”

“11.32ED Additional requirements on retailers for authorisations in prescribed form and requests received through the EIE System

- “(1) This clause applies where an agent requests information from a **retailer** on behalf of a **consumer** under clause 11.32B and:
- “(a) subject to clause 11.32EE, either:
 - “(i) the request includes a statement from the agent that the agent has obtained a written authority from the **consumer** in the form and containing the information required by Schedule 11.6 (being an authority that remains in force at the date the request is made); or
 - “(ii) the agent separately provides a written authority in the form and containing the information required by Schedule 11.6 or a copy of such a written authority (being an authority that remains in force at the date the request is made); and
 - “(b) the request is made through the **EIE System**.
- “(2) If this clause applies:
- “(a) the **retailer** must use all reasonable endeavours to take the steps in clauses 11.32EA(1)(a) and 11.32EA(2), as applicable, within 2 **business days** of the later of:
 - “(i) receiving the request; or
 - “(ii) receiving a copy of a written authority under subparagraph (1)(a)(ii); and
 - “(b) where clause 11.32EA(3) applies, the **retailer** must use all reasonable endeavours, within 2 **business days** of receiving further information from the agent, to take the steps in clause 11.32EA(3)(a).
- “(3) Where clause 11.32EA(2) applies, the request may include a request that the agent provide a copy of the written authority referred to in subclause (1)(a), if not provided with the request.
- “(4) If a request is made through the **EIE System**, but the **retailer** believes on reasonable grounds that the request does not meet the requirements of the **EIEP**, subclauses (2) and (3) do not apply but, for the avoidance of doubt, the **retailer** must still comply with clauses 11.32B, 11.32EB and 11.32EC.”

“11.32EE Requirements for written authorities under Schedule 11.6

- “(1) Each written authority, for the purposes of clause 11.32ED, must include or be accompanied by:
- “(a) if the **consumer** is an individual (being a natural person), an **electronic signature** or physical signature of the **consumer** or of a person on behalf of the **consumer** (in which case, evidence of that person’s authority to sign on behalf of the **consumer** is required) or other evidence that the **consumer** has approved the authority; or
 - “(b) if the **consumer** is not an individual (not being a natural person), an **electronic signature** or physical signature of an authorised representative of the **consumer** or other evidence that the **consumer** has approved the authority.
- “(2) Each **electronic signature**, for the purposes of subclause (1), must meet the requirements of sections 226 and 228 of the Contract and Commercial Law Act 2017.”

“11.32EF Revocation of authority

- “(1) If a **retailer** receives notification from a **consumer** that the **consumer** has revoked an authority, the **retailer** must notify the agent within 2 **business days** of receiving the notification that the authority is revoked.

“(2) If an agent that is a **participant** receives notification from a **consumer** that the **consumer** has revoked the agent’s authority, the agent must notify the **retailer** within 2 **business days** of receiving the notification that the authority is revoked.”

“11.32EG Authority may prescribe EIE System

“(1) The **Authority** may prescribe a system for the purpose of clauses 11.32E to 11.32ED for the:

“(a) exchange of information between **participants**;

“(b) the provision of information by **participants** to other **participants** or other persons; and

“(c) the making of requests for information by **participants** or other persons to **participants**.

“(2) The **Authority** must advise **participants** and other parties of any system it prescribes under subclause (1) by posting a notice of the prescribed system on the **Authority’s** website.”

7 New Schedule 11.6 inserted (Forms for authorisation of an Agent to request consumption information)

After Schedule 11.5, insert the Schedule 11.6 set out in Schedule 1 of this amendment.

Schedule 1

New Schedule 11.6 inserted

Forms for authorisation of an Agent to request consumption information

Form 1: Form for authorisation by an individual (being a natural person)

Consumer: [Consumer full name]

Property: [property address (es)]

Customer number¹: [customer number]

Installation Control Points (ICP(s)) Identifier(s): [List all ICPs]

Retailer: [name of Retailer]

Agent: [full name of Agent and contact details]

Period of authority: [enter period of authorisation to Agent]

I (being the Consumer named above) confirm that I own or occupy the Property identified above (or owned or occupied that property at the relevant time) or otherwise am or was responsible for the consumption of electricity at the Property.

I confirm that I am or have been a customer of the Retailer identified above in relation to the Property and ICP(s) identified above.

I authorise:

- (a) the Agent identified above to request, receive and hold information on my behalf about electricity consumption for the Property or the ICP(s); and
- (b) the Retailer to transfer information on my behalf about electricity consumption for the Property or ICP(s) to the Agent.

[Signature/electronic signature of Consumer or of a person on behalf of the Consumer (in which case, evidence of that person's authority to sign on behalf of the Consumer is required) or other evidence of Consumer's agreement]

¹ This is the customer number assigned to the Customer by the Retailer to whom the request is being made.

Form 2: Form for authorisation by a non-individual (not being a natural person)

Consumer: [Consumer full name]

Authorised Representative of Consumer: [Full name and title/position with Consumer]

Property: [property address (es)]

Customer number²: [customer number]

Installation Control Points (ICP(s)) Identifier(s): [List all ICPs]

Retailer: [name of Retailer]

Agent: [full name of Agent and contact details]

Period of authority [enter period of authorisation to Agent]

The Consumer identified above owns or occupies the Property identified above (or owned or occupied that property at the relevant time) or otherwise is or was responsible for the consumption of electricity at the Property.

The Consumer is or has been a customer of the Retailer identified above in relation to the Property and, ICP(s) identified above.

The Consumer authorises:

- (a) the Agent identified above to request, receive and hold information on the Consumer's behalf about electricity consumption for the Property or the ICP(s); and
- (b) the Retailer to transfer information on the Consumer's behalf about electricity consumption for the Property or ICP(s) to the Agent.

In signing this form as the Authorised representative of the Consumer, I warrant that I am authorised to sign this form and agree to the matters above on behalf of the Consumer.

[Signature/electronic signature of Authorised Representative].

Explanatory Note

This note is not part of the amendment, but is intended to indicate its general effect.

This amendment to the Electricity Industry Participation Code 2010 (Code) comes into force on **1 March 2020**.

This amendment amends the Code to set an appropriate minimum standard in terms of timeliness and process for the provision of consumer data to agents. The amendments are designed to provide an efficient and effective mechanism for agents to request and receive on behalf of consumers information from participants whilst also taking into account any obligations participants may have under the Privacy Act 1993.

² This is the customer number assigned to the Customer by the Retailer to whom the request is being made.

This amendment amends Parts 1 and 11 of the Code. The changes include:

- (a) adding a definition of electronic signature;
- (b) providing for the Authority to specify an electronic information exchange system for the purpose of exchange of information between participants, from participants to other persons and the making of requests for information by participants or other persons to participants, and adding a related definition of an EIE System (i.e. an electronic information exchange system);
- (c) clarifying that retailers must deal with requests from agents in accordance with any obligations they may have under the Privacy Act 1993;
- (d) specifying the process and timeframes retailers must follow when they receive and consider requests from agents;
- (e) clarifying that retailers must grant requests and provide information sought unless specified circumstances exist;
- (f) specifying that participant agents must obtain written authorisation from a consumer before making a request on their behalf;
- (g) establishing requirements for written authorities;
- (h) providing for a streamlined process for requests made through the Authority's specified electronic information exchange system; and
- (i) providing for retailers and agents to advise of any revocations of authority within 2 business days of receiving the notification that the authority is revoked.

24 January 2020

Date of notification in the *Gazette*:

2020