



NIGERIAN ELECTRICITY REGULATORY COMMISSION

GUIDELINES ON DEROGATION FROM TECHNICAL CODES AND STANDARDS IN ELECTRICITY GENERATION, TRANSMISSION, DISTRIBUTION AND SUPPLY IN NIGERIA

Introduction

This document summarises the process for applying for and considering requests for derogation from technical codes and standards within electricity generation, transmission and distribution licences. A list of the technical codes and standards together with the associated licence is provided in Appendix 1 to this guidelines note. This document will be updated from time to time to reflect changes in licences, primary and secondary legislation, the technical codes and standards referenced and NERC's processes.

Compliance with technical codes and standards is in the interests of electricity consumers as failure to comply can have a direct and adverse impact on the security and quality of electricity supplied and may have health and safety implications.

What is meant by derogation?

Derogation is a directive from the Nigerian Electricity Regulatory Commission (NERC) relieving a licensee from its obligation to comply with a technical standard or code in its licence in specified circumstances and to a specified extent. The derogation will normally have an expiry date so that the need for it can be systematically reviewed and performance towards compliance can be monitored. The derogation will not apply to a period before the date the direction is issued. Derogation will be entered on Transmission System Operator's register (in case of requests by transmission users) and NERC's public register after it is made. In the case of derogation request by TCN/distribution users/distribution companies derogation will be entered in the NERC's public register.

Once derogation is granted to an individual licensee it is non-transferable. Thus if a non-compliant system or plant item is sold, the new licensee will need to apply for a new derogation.

If a licensee would gain a competitive advantage from any derogation, then a direction would not be issued without NERC assessing what measures might be appropriate to offset that advantage. Such measures may also include requirements to monitor the impact of the derogation on the licensee making the application and other parties who may be affected.

When would derogation be required?

Continued compliance with technical codes and standards is a licence obligation and is the responsibility of each licensee. Failure to comply, unless permitted by

derogation, is a contravention, for which NERC may take enforcement action and consequently issue an order and/or impose a financial penalty.

There are a number of circumstances in which derogation may be required, for example;

- To prevent a breach of a licensee’s obligations while a system or plant item is restored to compliance with a code or standard. Such derogation is likely to be limited to a timescale in which the compliance could reasonably be expected to be restored.
- To prevent a breach of a licensee’s obligations while changes to a code, standard or licence condition are made. Such derogation is likely to be limited to a timescale in which the compliance could reasonably be expected to be restored.
- To permit a system or plant item to operate out of compliance with the standard or code either indefinitely or for the lifetime of the system or plant item.

Types of derogation

There are three main categories of derogation that arise. These are:

Definite	-Continues for a period of time specified in the Commission’s direction
Lifetime	-Specific to a system or plant item and continues for the lifetime of the equipment forming that system or plant item -Would cease should the equipment or plant item be replaced or a further derogation is made or the derogation is revoked

	<ul style="list-style-type: none"> -Would only be granted when there are strong grounds for not taking action to restore compliance -May be made where all parties materially affected by the non-compliance agree in writing to accept the consequences or are protected from its effects
Indefinite	<ul style="list-style-type: none"> - Continues until a further derogation is made or the derogation is revoked. - Would only be granted if there are strong grounds for omitting an expiry date - May be made where all parties materially affected by the non-compliance agree in writing to accept the consequences or are held harmless against its effects -May lack an explicit action to restore compliance which will need to be justified against the Authority's principal objective and statutory duties and the licence obligations of the applicant

It should be noted that a lifetime or indefinite derogation would only be issued in very limited circumstances. It is usual practice for derogations to be limited for a period of time that is specified in the direction.

The Commission may issue further directions that can vary or withdraw previous derogations. This would be done following consultation with the affected licensee (and more widely if required) and may be initiated by a request from a licensee or by the Commission.

How to request for derogation

The licensee should make a written request to NERC's Chairman which should, as a minimum, include:

Details of the applicant (CEO), including the full name of the licensee concerned	
A description of the non-compliance	
-	Type of licence and relevant condition number and/or technical code and/or standard
-	The required performance
-	The existing capability of the system or plant
A description of any health and safety implications and the associated risk management measures	
A description of the proposal for restoring compliance (where applicable) including details of actions to:	
-	Mitigate risks to customers or other authorised electricity operators
-	Restore compliance (including timetable of works)
A description of the reasonable alternative actions that have been considered	
A statement of the expected duration of the non-compliance	

The licensee is required to justify the derogation request in terms of both the specific circumstances and the expected duration. Licensees are advised to give as much notice as possible when making derogation requests since a derogation will not be granted unless NERC is satisfied that the request is justified.

Methodology for Assessment of derogation

Each derogation request is assessed by NERC individually on its merits in terms of the likely effect on consumers and on the ability of other authorised electricity operators to comply with their statutory obligations and licence conditions. In its assessment, NERC, having regard to its principal objective and its general duties including environmental guidance issued by the government will consider:

- a. The nature of derogations already granted by NERC, TCN (SO) or a Disco. The likelihood of similar derogation requests in the future
- b. The effect of dealing with future derogation requests in a consistent manner
- c. Any competitive advantage that may arise from granting the derogation
- d. Allowances that have been made in current and previous price controls (where relevant)
- e. Any other relevant circumstances

If health and safety implications have been identified by the applicant then in addition to consultation with interested parties, NERC may also seek expert advice from the relevant government bodies and other relevant organizations

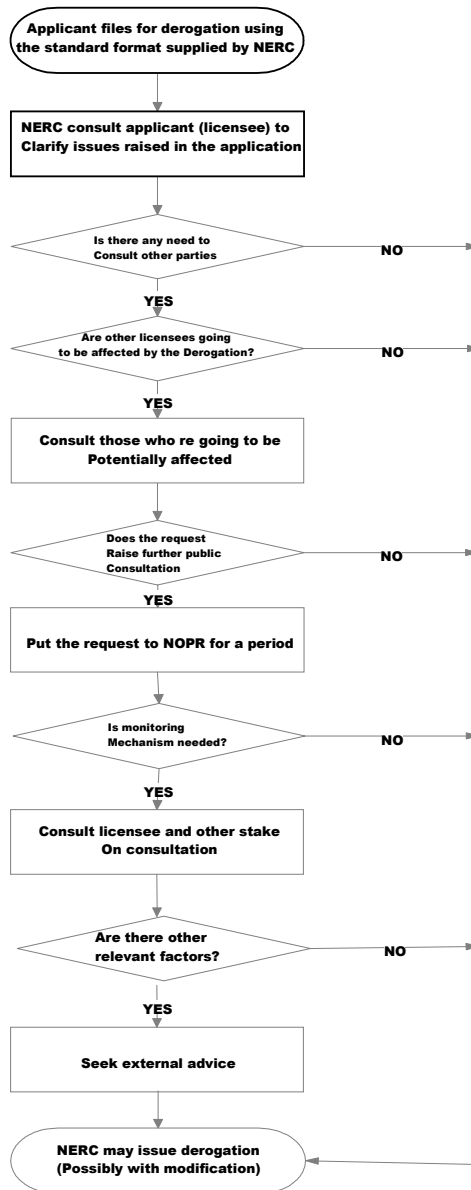
Appendix 1 gives the technical codes and standards these guidelines apply Appendix 2 details NERC's procedure for considering an application for derogation and the criteria that NERC proposes to apply when considering a derogation request.

APPENDIX 1 – TECHNICAL CODES AND STANDARDS TO WHICH THIS GUIDELINE APPLIES

TECHNICAL CODE
GRID
DISTRIBUTION
METERING

APPENDIX 2 – NERC PROCEDURE FOR CONSIDERING AN APPLICATION FOR DEROGATION

NERC will consult, through writing or invitation for meeting or visitation with the licensee making the request initially to clarify points relating to the derogation request and satisfy itself that there is a need for a derogation.



NERC DEROGATION PROCEDURE

NERC will consult with other parties if required in accordance with the following:

NERC is likely to consider that a derogation request is justified if:-

- An impact assessment has been provided by the applicant that demonstrates that there are NO:-

- Significant risks associated with the non-compliance to the licensee, other relevant licensees or connected customers (who may or may not be a licensed party).
- Avoidable adverse impacts (immediately or in the longer term) on the licensee, other relevant licensees or connected customers.
- Additional measures that could be taken to further mitigate the impact of the non-compliance on the licensee, other relevant licensees or connected customers for its duration.
- Outstanding objections from other parties who are materially affected by the non-compliance.
- Competitive advantages to the licensee arising from the derogation that cannot be addressed that are not offset by a suitable mechanism.
- Other reasonable options to address the non-compliance that have not been considered.

- The applicant has presented a robust, economic case that supports the action that it considers necessary to address the non-compliance. (NERC notes that there may be cases where the impact of the non-compliance may not justify the expenditure required to restore compliance but would expect any applicant to make a strong economic case for any decision not to restore compliance.)

- The applicant has presented a realistic and comprehensive implementation plan that defines, at the very least:

- The works required to restore compliance.

- The timetable for those works that show a deadline that is reasonable and is achievable (subject to highlighting any factors that may be outside the applicant's control, for example, third party consents).
- Any measures to mitigate the risks to other parties that will be (or have been) taken until the non-compliance is restored.
- The applicant has produced any other information that is relevant to a specific request.

Where an applicant is unable to satisfy all the above criteria, NERC will assess how far the applicant's ability to satisfy some of the criteria is sufficient to justify the granting of derogation. It is noted that a justified derogation request would not necessarily need to meet all of the listed criteria. NERC would use its judgement in assessing any derogation requests and would advise any applicant of additional information requirements that were not included in the original request.

If NERC considers that the derogation request is justified then the Commission will issue a direction to the licensee granting the necessary relief from the obligations that were specified in the request. A copy will also be placed on NERC's public register.

If NERC considers that the derogation request has not been sufficiently justified then the Commission may:

- Issue a direction granting the derogation for a short duration to allow the licensee time for further investigation of solutions to the non-compliance.
- Refuse the derogation request.

NERC will maintain a record of derogations that have been granted and is likely to incorporate a proactive derogation monitoring activity for fixed duration derogations in its asset risk management work area.

**REQUEST FOR DEROGATION ON STANDARD/LICENSE CONDITION/CODE FOR ELECTRICITY GENERATION/TRANSMISSION
/DISTRIBUTION IN NIGERIA BY-----
STANDARD/LICENSE CONDITION/CODE-----**

S/N	Part/Section	Condition/Standard /Code Requirements	Period of Derogation	Justification for Derogation	Remedial Actions to Achieve Compliance

NAME-----
SIGNATURE-----
DATE-----