

Report

Progress update on licence drafting for RIIO-ED2

Publication date:	29 June 2022	Contact:	Joanna Gaches, Senior Policy Manager
		Team:	Network Price Controls
		Tel:	020 7901 0510
		Email:	Joanna.Gaches@ofgem.gov.uk

Ofgem is working with electricity Distribution Network Operators (DNOs) on the proposed modifications to the licence conditions required to implement the RIIO-ED2 price control settlement.

In this document we provide a progress update report on the elements discussed so far. This process will be ongoing until the proposed changes come into effect on 1st April 2023.

Contents

Introduction and background 3

Proposed changes to the RIIO-ED2 licence conditions..... 4

 Proposed structure of the Special Conditions 5

Next steps 6

 Timetable..... 6

Appendix 1: Style Guide for licence drafting 8

Appendix 2: Principles for Associated Documents 11

Introduction and background

Introduction

- 1.1. We are publishing a progress update on our work on the proposed modifications required to implement the RIIO-ED2 price control settlements that applies to Distribution Network Owners (DNOs). This publication is for information only.
- 1.2. These conditions would apply from 1 April 2023. The attached draft licence condition texts are a snapshot of progress at this stage of the process. They do not represent a comprehensive set of licence conditions as not all existing or proposed new conditions have yet been discussed with the DNOs. Similarly, the policy positions reflected in these conditions remain proposals subject to consultation as reflected in the publication of our RIIO-ED2 Draft Determinations.
- 1.3. We will issue an informal consultation on the proposed changes to licence conditions in September 2022. This will be followed by a statutory consultation in December 2022 after confirming our Final Determinations for the RIIO-ED2 price control.

Approach to licence drafting for RIIO-ED2

- 1.4. We created a RIIO-2 Licence Drafting Working Group (LDWG) in July 2021 comprising representatives of Ofgem and the DNOs. This group meets on a monthly basis to develop and review the proposed licence conditions. We will be holding further meetings of this group between the publication of this document and the statutory consultation in December 2022.
- 1.5. At the start of the LDWG process, we discussed a Style Guide for licence drafting, to ensure a consistent approach to drafting the licence conditions. These guidelines are set out in Appendix 1.
- 1.6. We also discussed principles for Associated Documents, which are documents established by the licence that sit alongside the licence with their change control process set out in the licence. These principles are set out in Appendix 2.
- 1.7. There are two different types of licence conditions to which we are proposing changes: the Standard Conditions that apply to all holders of an electricity distribution and licence and the Special Conditions which apply individually to licence

holders. The majority of changes set out in this progress update relate to the Special Conditions.

- 1.8. We are proposing changes to the electricity distribution licences for Electricity NorthWest Limited (ENWL), Northern PowerGrid (NPg), SP Energy Networks (SPEN), Scottish and Southern Energy Networks (SSEN), UK Power Networks (UKPN), and Western Power Distribution (WPD), covering each of their respective licence areas. Although Special Conditions apply individually to DNOs, the majority of the text will be consistent for all DNOs. Accordingly, at this stage in the licence drafting process we have produced just one set of conditions. At statutory consultation there will be a set of Special Conditions for each individual licensee.
- 1.9. The Standard Conditions and the Special Conditions both contain a definitions section at the start, setting out the definitions used in those conditions. The Standard Conditions also contain additional definitions at the end of individual licence conditions where they are specific to that condition only.
- 1.10. We have provided a list of all proposed definitions for RIIO-ED2 to date and this is included at Annex 3.

Proposed changes to the RIIO-ED2 licence conditions

- 1.11. This section gives a brief overview of the content and nature of the main proposed changes to the RIIO-ED2 licences, as at time of publication.

Types of changes to Licence Conditions

- 1.12. The proposed changes to both SpCs and SLCs are generally:
 - Amendments to a current condition to reflect RIIO-ED2 policy
 - addition of a new licence condition to reflect new policies
 - close out of a RIIO-ED1 scheme
 - removal of a RIIO-1 condition that is not needed for RIIO-2, e.g. because the policy has ended or been replaced.
- 1.13. In the Annexes to this document we have set out:
 - amendments and additions to the SLCs, in track changes for ease of reading

- the current text of the new SpCs, which are mostly being replaced wholesale for RIIO-ED2 to reflect the changes proposed to how the licence and Price Control Financial Model will allow for live calculations of allowed revenue. For more on this see the Annual Iteration Process in section 10 of the Finance Annex to our Draft Determinations.

1.14. Work is still underway on the Associated Documents that supplement some of these licence conditions. When we hold our informal licence drafting consultation in September 2022 and statutory consultation in December 2022 we will publish the draft text of those associated documents drafted at that time.

Proposed structure of the Special Conditions

1.15. We are proposing to change the structure of the SpCs to improve navigation, align them with the other RIIO2 network companies, and help provide greater clarity on the types of regulatory mechanisms. Below we have set out the Chapter structure that we propose to use:

Chapter 1 Interpretation, definitions and common procedure	Chapter 2 Revenue	Chapter 3 Totex
Chapter 4 Output delivery incentives	Chapter 5 Other Revenue Allowance	Chapter 6 Pass through
Chapter 7 Legacy	Chapter 8 Governance	Chapter 9 General obligations

1.16. We have proposed no changes to the structure of the Standard Conditions.

Next steps

- 1.17. We will continue to hold monthly LDWGs until the end of 2022. We will be holding an informal consultation in September 2022 on the text of the licence conditions as at that date. We will hold a statutory consultation in December 2022, ahead of directing licence modifications to come into effect on 1 April 2023.

Timetable

	Date
Licence Drafting Working groups	Monthly since July 2021
Licence progress update	June 2022
Consultation on licence modifications (post Draft Determinations consultation) published	September 2022
Statutory consultation on licence modifications (post Final Determinations)	December 2022
Licence modification decision published	February 2023
Licence changes come into effect	1 April 2023

Appendices

Index

Appendix	Name of Appendix	Page No.
1	Style guide for licence drafting	8
2	Principles for Associated Documents	11

Annexes

Index

Annex	Name of Annex
1	Draft Special Conditions as at 29 June 2022
2	Draft Standard Conditions as at 29 June 2022
3	Definitions as at 29 June 2022

Appendix 1: Style Guide for licence drafting

This Style Guide contains some general principles that Ofgem will use when drafting the licence conditions.

General principles

1. The focus of licence conditions will be on what licensees are required to do and what is the impact on allowed revenue. Licence conditions will set out the procedure Ofgem will follow for things such as directions.
2. Use plain English wherever possible.
3. We will aim for consistency in common drafting and create templates to make that easier.
4. Use “*must*” instead of “*shall*” for placing obligations on the licensee.
5. Use the active rather than the passive voice i.e. “*the licensee must send a notice*”, rather than “*a notice must be sent by the licensee*”.
6. Use sub-paragraphs to show items in a list for clarity. The Oxford comma may assist in the understanding of a provision by showing that the last two items in a list are separate, but it is clearer to use sub-paragraphs. For example, “*wash, cut, and blow dry*” is clearer than “*wash, cut and blow dry*”, but “*(a) wash; (b) cut; and (c) blow dry*” is even clearer.
7. “*Condition*”, “*licence*”, “*standard conditions*” and “*special conditions*” should all be lower case, unless at the beginning of a sentence or naming a specific condition e.g. Standard Condition 1 (Definitions for the standard conditions). Note in ED1 we were somewhat inconsistent about this: lower case was used when naming specific standard conditions but upper case was used for charge restrictions conditions, both generically and in relation to specific conditions.
8. We will not use the term “Charge Restriction Conditions”. It does not differentiate from other types of special condition, since all ED1 special conditions are charge restriction conditions so it does not seem to add value, but does create an

inconsistency with the other sectors. Further, in our proposed structure we will have conditions in Chapter 9 that do not restrict charges, but otherwise relate to ED2, making it inaccurate e.g. digitalisation, annual environmental reporting, cyber resilience reporting.

9. Defined terms will be capitalised and will all be set out in SpC 1.1, not in individual licence conditions.
10. Algebraic terms will be limited to a maximum of four letters wherever possible, plus, where appropriate, a subscript.
11. Avoid cross references if possible. Where needed, the first cross reference to another condition should refer to the number and the title. Subsequent cross references should simply refer to the number.
12. Not say “above” or “below” when referring to another licence condition, or a particular paragraph within a licence condition.
13. When referring to a particular Part within a licence condition, refer to “*Part X*” without saying “*of this condition*”.
14. When referring to an Appendix to the same licence condition, refer to “Appendix X” without saying “to this condition”.
15. Use “determine” only when referring to the actual determination of a question or dispute referred to us, otherwise use “decide”, or “direct” if we will be issuing a direction.
16. We will try to avoid qualified obligations that rely on “endeavours” and instead provide specifically for the circumstances where an obligation does not need to be met or for a derogation to be obtained. Where we need to use “endeavours” we will decide whether to use “best endeavours” or “reasonable endeavours” on a case by case basis. We will not use “all reasonable endeavours” since its meaning is less clear than the other two phrases.
17. Structure: all conditions will have titles and headings, which should be informative. Headings can take the form of questions. All conditions will have introductions, which should be no more than three paragraphs long and is non-operative text.

Conditions should have a logical structure with impacts on revenue dealt with first, and with substantive matters dealt with before procedural matters.

18. Where possible we will deal with interpretation issues globally in SpC 1.1 e.g. price base.
19. We will generally make definitions that rely on other documents ambulatory where Ofgem has some control over those other documents and static where it does not.
20. We will reduce administrative burden by having one version of the Special Conditions for as long as possible, splitting it out for separate licensees late in the process and using “Not Used” for licence conditions that are not applicable to a particular licensee.

Appendix 2: Principles for Associated Documents

The Associated Document principles are:

- i. Associated Documents:
 - a) Must have a logical title, which gives the reader a sense of what the Associated Document will contain and use relevant words from the licence condition in the title;
 - b) Should only be used where more detail and explanation is required, beyond that in the relevant licence condition;
 - c) May contain obligations, guidance and/or other useful information with which the licensee does not have to comply. Where there is a mix of obligations and information, the Associated Document must be clear whether each section is an obligation or guidance only;
 - d) Where an Associated Document contains obligations on the licensee, those obligations must be clearly drafted and it must be clear whether the licensee is required to comply with the obligations or use best or reasonable endeavours to comply with it so the licensee can be sure what is expected of it;
 - e) Must be published in a timely fashion bearing in mind the specifics of the Associated Document and the obligations in question.
- ii. The relevant licence condition must set out clearly:
 - a) Whether the licensee is required to comply with an Associated Document, use best or reasonable endeavours to comply with it or simply have regard to it;
 - b) The circumstances in which the licensee has to comply with, use best or reasonable endeavours to comply with or have regard to the Associated Document;
 - c) What the Associated Document will encompass; and
 - d) The change control process that applies to the Associated Document.
- iii. There should be a clear division between Associated Documents such that they do not cover the same ground.
- iv. The relevant licence condition should not state that "the licensee does not need to comply with [the AD] until it has been issued", as that is inherent in the process of issuing Associated Documents.