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20 October 2023

ESO Response to: FSO draft licences consultation

Dear Sir or Madam,

We are pleased to submit our response to Ofgem's 'FSO draft licences consultation.' This letter provides a summary view of our response alongside the points made in Appendices 1 and 2, which contain further detail on our key points and address the specific consultation questions. Appendices 3 to 5 set out our specific comments on the electricity and gas licence drafting respectively.

Who we are

As the Electricity System Operator (**ESO**) for Great Britain, we are at the heart of the energy system, balancing electricity supply and demand second-by-second.

As the UK moves towards its 2050 net zero target, our mission is to drive the transformation to a fully decarbonised electricity system by 2035, one which is reliable, affordable, and fair for all. Our transformation to a Future System Operator (**FSO**) is set to build on the ESO's position within the energy industry, acting as an enabler for greater industry collaboration and alignment. This will unlock value for current and future consumers through more effective strategic planning, management and coordination across the whole energy system.

Our overall views on this consultation and the draft licences

We welcome this consultation as a significant further step towards implementation of the FSO. The licences will form a key part of the organisation's regulatory framework and it is important that they reflect the broader policy intent behind the FSO's establishment. From Day 1¹, the FSO will be a public corporation with statutory duties, set out in the Energy Bill, giving the FSO a responsibility to make its own judgement on a range of different objectives. It is therefore critical that the licences reflect that framework and that accountabilities are consistent and clear. Given the timescales involved in setting up the FSO, we agree with the approach that Ofgem has taken in terms of using current licence conditions as a starting point for the FSO draft licences, rather than starting from scratch.

We understand that there are other elements of the licence drafting that Ofgem intends to consult on later this year (for both the FSO and other parties). We look forward to continuing to work with the Department of Energy Security and Net Zero (**DESNZ**) and Ofgem as they develop these other areas of licence drafting and associated policy. While it is important to ensure that the FSO's licences accurately reflect policy intent, it is also vital that other licences are modified appropriately such that roles and responsibilities are clearly defined across industry parties.

Looking beyond Day 1 of the FSO, it will be important to maintain a flexible approach to further licence development as the new roles of the FSO continue to evolve and the FSO moves forward as a public corporation.

¹ The first day of the FSO (i.e., from point of designation as a government owned entity and when the licences come into force).

Our key points on the licence drafting

We have been discussing the licences in detail with DESNZ and Ofgem over the last few months to develop the drafting, which has been a positive and collaborative process. We have some remaining points on the drafting in the consultation that we hope to develop further with Ofgem, summarised as follows:

- **Definition of ‘whole energy system’** – we note that ‘whole energy system’ remains an undefined term in the licence drafting but is used, in particular, in relation to scope of deliverables for our critical national infrastructure and resilience activities. We think this introduces uncertainty on scope that could be removed by defining the term and we propose definition wording in our response.
- **‘Functions’ under the FSO’s two licences** – draft Condition C1 in each licence incorporates the new statutory duties and roles into the existing ESO incentive framework but we think this could more clearly set out the roles and activities of the FSO. We have proposed changes that are intended to address our concerns which we believe are still aligned with Ofgem’s policy intent. We would welcome further discussion with Ofgem on these.
- **Obligations relating to the Balancing and Settlement Code (BSC)** – despite the planned change to ownership of Elexon, draft Condition E1 (Balancing and Settlement Code) has had minimal change; it still requires the FSO to have a BSC document in force and ensure that it meets specified criteria. To ensure that the ESO/FSO is subject only to requirements with which it is fully able to comply following this transition, we would ask that further consideration is given to the removal of some BSC licence requirements from the FSO licence or appropriate redrafting.
- **New FSO roles** - broadly we are comfortable that the licence drafting reflects the policy in previous DESNZ and Ofgem consultations, although we are conscious that policy discussions have continued since the publication of those documents. We propose some minor changes, particularly on the resilience licence condition, to ensure clarity of the role on Day 1. We recognise that there are some licence conditions still to be developed for the gas system planner licence that will cover how the FSO will work with National Gas Transmission plc (NGT) in undertaking new gas activities. It is important that licences across the two parties clearly set out roles and responsibilities.
- **Reference to the FSO’s statutory duties** – the FSO’s new statutory duties will apply to all the FSO’s functions and are identified by Ofgem as a key driver for making change to the current ESO licence. While we agree that the licence should not conflict with the new duties, we do not think it is helpful to make reference to the FSO’s ‘Primary’ and ‘Secondary’ duties in the licences, particularly as in some cases this may risk making the expectations on the FSO for Day 1 unclear. Ofgem has pointed to the Roles Guidance document as a means to providing clarity on expectations but we think there are limitations to this approach and that it would mean a major shift in the purpose of that document. We look forward to discussing the proposed scope and content of the Roles Guidance document in this context further with Ofgem.
- **Independence from commercial interests** – we agree with most of the overall approach relating to independence from commercial interests, however, we believe that some of the drafting around managing conflicts of interest is unclear and may lead to unintended consequences. In particular, it is not easy to determine which parties the defined term ‘Conflict of Interest Parties’ will apply to. This definition is also applied to obligations around appointment of Sufficiently Independent Directors (SIDs) which we think could potentially inhibit the board appointment process and the FSO’s ability to appoint appropriate candidates. We have proposed what we see as an appropriate alternative approach and would welcome further discussion with Ofgem on these restrictions and their possible effects.
- **The FSO’s operational independence** – we agree that embedding the operational independence of the FSO in the regulatory framework is important to reflect the policy intent underpinning its establishment. In relation to the reference to independence from government we believe that the drafting in Condition B1 could more appropriately cross-refer to wording which is expected to be included in the Strategy & Policy Statement (SPS).
- **Information ring-fencing** – we agree that for FSO the proposed approach to information ring-fencing is appropriate and more proportionate rather than retaining current licence obligations in place for ESO. We do, however, have some comments relating to the detail and some concerns around the proposed ring-fencing of the new resilience functions.

We have included further detail on these points in Appendix 1 below, as well as setting out some additional areas that we see as important relating to the licences. We set out our drafting proposals for issues we have raised and detailed drafting comments in Appendices 3 and 4. Finally, we set out some general drafting comments in Appendix 5.

We look forward to working with Ofgem and DESNZ further to develop the licence drafting ahead of the statutory consultation in Spring 2024. Should you require further information on any of the points raised in our response please contact Colm Murphy, Head of Transformation, FSO Programme at colm.murphy@nationalgrideso.com.

Our response is not confidential.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kayte O'Neill', is positioned above the printed name.

Kayte O'Neill, Director of Transformation

Appendix 1 – Further detail on our key points

Context of the licences in the FSO legal framework

The Energy Bill sets out provisions for the FSO² which reflect its role in helping to shape future public policy relating to the energy sector and net zero, whilst also directly undertaking operational, market and planning roles as part of the sector. The FSO will be subject to the economic regulation of Ofgem, as ESO is today, but through two new licences (an electricity system operator and a gas system planner). It is important to view these two new licences through the following aspects of the framework:

- The FSO's statutory objectives sit at the heart of the new framework. The FSO must carry out all of its functions in the way that it considers is best calculated to promote the three objectives (net zero, security of supply and efficiency and economy), having regard to specific matters (competition, consumer impact, whole-system impact and innovation). These duties, described in the consultation as the 'Primary' and 'Secondary' Duties, follow a structure similar to those of Ofgem and DESNZ³, giving the FSO a responsibility to independently balance the objectives as applicable and reach an appropriate judgement. The licences will build on the FSO's duties in particular areas, but any licence requirements should reflect this broader context.
- Although the Energy Bill sets out a requirement for one licence for each of the electricity and gas sectors, we understand that this is mainly because of the different legal regimes that have historically governed each sector. The FSO is being set up as a whole energy system organisation, required to have regard to whole-system issues⁴. The licences should enable, and not restrict, the FSO's ability to work across energy vectors. We welcome the approach Ofgem has taken in development of the two licences to aim for consistency between licences wherever possible.
- The FSO will have a statutory duty (mirroring Ofgem's duty) to have regard to the government's strategy and policy statement (SPS)⁵. Although the FSO is being set up to be operationally independent of government, this duty provides a method for the government to direct the FSO's focus to assist the government in meeting its policy objectives. In doing so, the FSO is expected to need to work in conjunction with Ofgem towards particular outcomes⁶. The FSO's licences should enable this work and not inhibit the closer working that will be needed between Ofgem and the FSO in working towards those goals.

We set out our comments on the draft licence conditions with this important context in mind.

Ensuring that the licences set a coherent framework for the FSO from Day 1

As noted above, the FSO's new licences are an important part of the FSO framework, but they operate in conjunction with other documents in a way which is different to how the ESO is regulated today. Below are some focussed areas of the draft licences where we think that further consideration will be needed to ensure clarity and overall coherence of the framework.

Reference to the FSO's statutory duties

Ofgem identifies the FSO's Primary and Secondary Duties as a key driver for change to the current ESO licence and there are a number of references to these duties throughout the draft licences. These statutory duties will apply to all the FSO's functions and so we understand that the inclusion of references in the licence conditions is intended to be a point of emphasis for the FSO's decision-making.

We agree it is important that the licence does not set out obligations for the FSO which are inconsistent with its statutory objectives. In some cases, we also see that consideration of the new statutory objectives will be crucial to particular activities. However, we are not clear that it is beneficial to make reference to these duties

² The FSO is described as the independent system operator and planner or ISOP in the Bill.

³ Set out in 3A of the Electricity Act 1986 and 4AA of the Gas Act 1986.

⁴ Clause 161 of the Energy Bill (11 July 2023 publication)

⁵ Clause 162 of the Energy Bill (11 July 2023 publication)

⁶ For example 'Government and Ofgem will work with the ESO/FSO to ensure a regulatory environment that delivers investment ahead of need' and 'Ofgem should work with ESO/FSO, industry partners and government to urgently address barriers to the efficient and timely connection of new low carbon generation'.

in some parts of the licence and not others based on language used in the ESO's current licence. Given the duties will apply in any event, we see it as simpler to remove the references.

In some areas, as set out in our detailed comments on the draft licence conditions in Appendices 3 and 4, we believe the references are unhelpful; in particular where they may make the expectation on the FSO for Day 1 unclear.

We understand that Ofgem intends to use the Roles Guidance document to set out how it expects the statutory objectives to impact (or not impact) what the FSO does compared to the ESO activities undertaken today. The Roles Guidance document is currently used to provide further explanation of the ESO's roles and the associated expectations, which underpin the ESO's regulatory framework. We have the following concerns with using the Roles Guidance document in this context:

- We think that there are limitations on what can be covered in the Roles Guidance document, particularly given how it is used as part of the ESO's incentive arrangements today. If it were to be used in the way that Ofgem is proposing, this would be a major change. Expectations would need to be set out very clearly to ensure transparency for stakeholders and clarity for FSO outputs.
- To the extent this would be guidance around licence obligations, as a principle we think that licence obligations must be drafted clearly, ensuring that there is clarity through the licence itself without needing to be read alongside the Associated Documents.
- As noted in the consultation, the FSO is given the responsibility under the Energy Bill of deciding how best to balance considerations in applying its Primary and Secondary Duties. Anything included in the Roles Guidance would need to be consistent with that principle.

Obligations relating to the SPS

Draft Condition C2 sets out a requirement linking business planning and the SPS which is not consistent with our expectations. It would be helpful to discuss the detail of this further to ensure that we understand the intention here.

We do not object to the principle of Ofgem asking the FSO for information to demonstrate how it has had regard to the SPS. However, we do not see the need for a specific licence obligation on this given other information provisions. In addition, the policy outcomes in the SPS are an expectation of government, rather than Ofgem. It would be important that the FSO does not have duplicate requirements to report to DESNZ and Ofgem. Moreover, where the SPS sets out shared policy outcomes for the FSO and Ofgem to work towards together, the practicalities of the FSO being required to report to Ofgem on those may need further consideration.

Information ring-fencing

Draft Condition B8⁷ sets out a new framework for the protection of information held by the FSO, in place of a number of more specific restrictions which are set out in the ESO's current licence. We agree that this more adaptable approach is more appropriate for the FSO as a public sector organisation, ensuring that information is protected as required as the FSO's activities develop, but also that the running of the organisation is not impeded by blanket restrictions. While we agree with the approach, there are some changes we would suggest to ensure that the interaction is clear, and to avoid duplication between Draft Condition B8 and the FSO's duties under the Utilities Act 2000 relating to protecting information from disclosure.

Setting an appropriate framework to deliver an independent FSO

We agree that embedding the operational independence of the FSO into the regulatory framework is important to reflect the policy intent underpinning its establishment and to help to give stakeholders confidence that the FSO can act impartially. It is vital that any such requirements are clear and workable in practice and consistent with the overall policy vision for the FSO.

⁷ In the draft electricity system operator licence conditions.

Independence from commercial interests

We agree with much of the approach here, as set out in draft Condition B1, as being appropriate for the new organisation, including the need to publicly set out arrangements for securing independence. However, we do think that changes could be made to make the provision clearer and more accessible. In particular:

- While we agree that appropriate systems should be in place to maintain employee impartiality, it should be accepted that such situations cannot in practice be completely avoided. What matters in that situation is that the FSO has in place appropriate processes to ensure that the issue has no bearing on its decision-making. We think this could be set out more clearly in the drafting.
- The current drafting sets out the obligations by reference to the defined term '*Conflict of Interest Parties*'. The definition is not clear to us and it is not easy to determine which entities fall within it, leading to potential uncertainty. It is unclear whether the focus is commercial interests or broader, and what the distinction is between the FSO having a conflict as opposed to its personnel. It covers shareholders of energy companies, which are a very broad class. It also incorporates the FSO's relationship with its suppliers, which does not appear to us to be the purpose of the provision (and where supplier conflicts will be subject to other regulation). In Appendix 3 of our response, we propose an alternative approach which could create certainty whilst giving appropriate assurance and allowing for flexibility.
- Finally, we do not find the term '*Conflict of Interest Parties*' helpful, given many of these organisations will be key partners to the FSO in the journey to a net zero society and suggest that more neutral language is used.

These provisions are a very important part of the framework, and we look forward to discussing them further with Ofgem.

Independence requirements for the FSO's non-executive directors

Draft Condition B1 also broadens the current obligations for Sufficiently Independent Directors (**SIDs**) to regulate non-executive directors' past and current relationships with external parties⁸. The ability of the FSO board to reach decisions impartially will be key to the FSO's success. However, it seems to us that the rigidity and breadth of the current draft restrictions is likely to inhibit the board appointment process and potentially cause a challenge in appointing candidates with the optimal skills and experience:

- The restrictions refer back to the proposed definition of '*Conflict of Interest Parties*'. As noted above, we do not find this definition particularly clear. Using this definition, it would not seem possible for the FSO to set out a list of organisations which could be compared against the directors' employment history, shareholdings or previous arrangements.
- Part of the restrictions provide that a SID must not be employed by an organisation that has entered into any contractual arrangements with a Conflict of Interest Party. This seems too broad, potentially onerous and could have unintended consequences. For example, almost all employers will have supply contracts with an energy supplier (which would appear to fall within the definition of Conflict of Interest Party) – this would seem to prohibit the non-executive director from having almost any other form of employment.
- The obligations are greatly expanded compared to the ESO's current licence. It is important to test whether it is still appropriate to set out rigid rules on the face of the licence, rather than in other aspects of the corporate governance framework or in policies which sit under the licence. Doing the latter could allow for greater flexibility so that changes can be made more easily to reflect any initial experience of the appointment process.
- We welcome the inclusion of provisions allowing Ofgem to consent to appropriate alternative treatment. However, we would be grateful for further discussion on this with Ofgem to ensure that the provisions do not require consent to be requested routinely to enable the proper functioning of the board.

⁸ The equivalent obligation on ESO currently applies only to non-executive directors' relationships with the ESO and other group companies.

The FSO's operational independence from government

DESNZ and Ofgem have committed to creating an organisation which is truly independent from day-to-day operational control of government⁹. Draft Condition B1 sets out independence requirements for the FSO. We welcome the acknowledgement of this issue in the introductory paragraph but believe this would be more appropriate if it reflected wording in the broader framework. The draft SPS consulted on earlier this year¹⁰ made direct reference to this issue and it would seem appropriate to cross-refer to this as a formal statement of government policy relating to the FSO's relationship with its shareholder.

Ensuring that the licences set clear and appropriate accountabilities for the FSO on Day 1

It is a core aspect of the policy intent for the FSO that it is in the position to develop and take on new roles over time. The licence framework should naturally evolve to enable this. However, lack of clarity, particularly around accountabilities or ways of working could have a negative impact on the FSO from Day 1, and there are some areas where we suggest that further clarity will be needed.

Definition of 'whole energy system'

The term 'whole energy system' is introduced in various draft licence conditions but is not currently a proposed new defined term in the licences. It is used, in particular, in relation to the scope of deliverables for the FSO's new critical national infrastructure and resilience activities. We think it is very important that this term is defined to provide clarity and certainty on the scope of these new roles, both for the FSO and stakeholders moving forward, and to avoid unnecessary disagreements arising over roles and responsibilities. As the definition of whole energy system evolves, the licence definition can be changed accordingly to reflect this.

We understand that Ofgem is considering clarifying the meaning of whole energy system in the Roles Guidance document. We believe that there should be certainty of what is required in the licence itself, rather than in guidance. Although we have proposed drafting below in line with our understanding of the current scope of the term, we welcome further discussion on this with Ofgem.

'Functions' under the FSO's two licences

Draft Condition C1 of the licences sets out functions for the FSO, split between electricity and gas. The purpose of this is to incorporate the new statutory duties and roles into the existing ESO incentive framework. However, it appears to us that the drafts are not entirely clear and we suggest they should be considered further, particularly given this may be viewed by stakeholders as a key list of what the FSO does:

- The drafts set out a list of FSO activities as the FSO's '*functions*' under the licence, but some obligations are set out in statute, rather than licence. For others, it isn't clear whether the list is simply summarising a list of activities found elsewhere or whether the intention is for the condition to set out standalone requirements in addition to other obligations. (We note that not all statutory obligations are included.)
- The current Standard Condition C28, on which the drafts are based, places requirements on the ESO at a general activity level. In contrast, some requirements of draft Condition C1 require the FSO to ensure industry-wide goals, in a manner that we do not think is solely within the FSO's control.
- There is a significant overlap between the lists in draft Condition C1 and the definition of '*ISOP Business*', used throughout the licence to define the core FSO business. However, the two are not exactly the same and the distinction does not seem clear to us.

We have made some suggestions that are intended to address these concerns while aligning with Ofgem's policy intent, and we welcome further discussion with Ofgem on these. Given the overall approach is designed to reflect the current incentive scheme, it is important that the approach is reconsidered at whatever point the incentive framework is changed.

Information exchange with National Gas Transmission

We note that Ofgem is considering further what licence obligations may be required to support engagement between the FSO and National Gas Transmission plc (NGT). We believe that ensuring clarity around ways of

⁹ As set out in the DESNZ and Ofgem response to the FSO consultation in April 2022: [Future System Operator: government and Ofgem response to consultation](https://publishing.service.gov.uk/government/consultations/future-system-operator) (publishing.service.gov.uk)

¹⁰ <https://www.gov.uk/government/consultations/strategy-and-policy-statement-for-energy-policy-in-great-britain>

working and the sharing of information will be beneficial to both organisations. This includes clarity around the sharing of information that may be subject to industry confidentiality restrictions and working through any interdependencies between FSO's planning role and NGT's health and safety responsibilities. We look forward to working with Ofgem and NGT on this further.

Obligations relating to the Balancing and Settlement Code (the BSC)

The BSC forms a critical part of our electricity market arrangements. In March 2023, the government and Ofgem jointly decided that Elexon (described as the Balancing Settlement Code Company or BSCCo in the ESO's licence) should remain in industry ownership when the ESO transitions into government ownership. The 13 largest energy suppliers and generators will be mandated to take on shares in Elexon.

The consultation prior to this decision assumed that the obligations currently held by the ESO should pass to the FSO's electricity system operator licence, but this was not covered in detail and the decision was silent on this point. It is proposed in draft Condition E1 (Balancing and Settlement Code) to retain the current obligations held by ESO with minimal changes. This will still require the FSO to have a BSC document in force and ensure that it meets specified criteria. The only substantive change proposed is that the requirement on the FSO to be the sole shareholder of Elexon will be removed in the event that the above transfer of Elexon ownership does occur on or before FSO Day 1 as planned.

We do not believe that these proposals will set up the FSO for success, since from Day 1 the FSO would be subject to obligations on matters not within its control and that it may not be able to comply with (taking into account its limited powers under the BSC). Our view is that this condition should undergo substantial change so that the FSO's role in respect of the BSC is properly reflected. We appreciate that there are legal reasons why the BSC must remain a document which is required to be in force under an electricity licence. If it is considered inappropriate to apply licence obligations on the coverage of the BSC to its new owners, we do not object to some obligations being included in the FSO's licence. However, to ensure that the ESO/FSO is subject only to requirements which it is fully able to comply with, we would ask that further consideration is given to removal of some provisions and appropriate redrafting.

Evolution of the FSO licences

We agree with the consultation position that most of the current licence conditions from the ESO's licence should stay largely the same when the FSO licences are introduced. This is to ensure that the FSO will continue to deliver existing roles, but also because there has not been sufficient time to carry out a complete overhaul of the licence conditions (with appropriate stakeholder engagement) before Day 1 of FSO.

Following Day 1, the FSO licences are likely to need to be updated to reflect new roles that the FSO takes on. But we believe it is important that it is not assumed that the licence conditions implemented on Day 1 are fit for purpose for the long term. As the FSO develops its operations as a public corporation and whole system organisation, FSO, Ofgem and other stakeholders may well see other changes that would be appropriate (e.g., to remove or streamline processes that no longer add value to the consumer).

With this in mind, we think that it would be helpful for Ofgem to commit to a review of the FSO licence conditions within two years following Day 1. The aim could be to complete that review before the licence modification powers set out in the Energy Bill expire (three years after first designation of the FSO). This three-year sunset period is something that we also note in our response to the DESNZ and Ofgem 'FSO Second Policy Consultation and Update'.

Further points for consideration

This consultation covers an important part of the regulatory framework for the FSO. As is acknowledged, further development of the financial licence conditions, other policy areas (notably around the Central Strategy Network Plan (CSNP) and early competition) and consequential licence changes to other licences may impact our views on the drafting within this consultation. Similarly, any late changes to the Energy Bill or changes from the draft SPS could also have an impact. It will be important that the licence is considered within the context of the whole governance framework as the various policy proposals and documents are finalised.

As noted in Ofgem's recent decision on FSO transition funding¹¹, the programme to create the FSO is complex and unique, with uncertainty around the implementation in some areas. We welcome continued discussion around the implementation of new licence obligations as the programme moves forward.

We also note the following points for consideration, which we look forward to discussing with Ofgem.

- There are a number of dates in the licence drafting, particularly relating to the delivery of new activities and outputs that are currently placeholders. We look forward to working with Ofgem on these dates, which will require a level of pragmatism to take into account the FSO's maturity from Day 1.
- We agree that the licensing scheme will mean that documents approved under the ESO's licence conditions (along with consents, derogations etc. under those conditions) will automatically take effect under the FSO's electricity system operator licence unless changes are made. However, we consider that provision will still need to be made to ensure the continuity of those documents is clear¹².
- Although understandably not part of Ofgem's informal licence consultation, we consider that detailed consideration should be given to the appropriate terms of each of the FSO's licences. It should not be assumed that the terms of the ESO's licence are appropriate to use for the FSO's licences.
- Although this may be simply a formality, we note that we expect the unbundling certification for ESO¹³ will need to be reviewed as it transitions to FSO.
- While it has been confirmed that the intention is to use a licensing scheme to direct that the ESO's transmission licence will have effect as the FSO's electricity system operator licence, it would be helpful to better understand the process for the issue of the FSO's gas system planner licence.

¹¹ <https://www.ofgem.gov.uk/publications/decision-funding-transition-future-system-operator>

¹² Many of the relevant licence conditions have been updated and most likely all will have been renumbered.

¹³ As provided for under section 10B of the Electricity Act 1989

Appendix 2 – Consultation question responses

Q1. Does the draft ESO licence capture the policy intent set out by the Joint ‘Proposals for a Future System Operator’ and ‘Future System Operator: second policy consultation and project update’ consultations?

From a new roles and activities perspective, broadly we agree that the licence drafting reflects the policy intent set out in the joint ‘Proposals for a Future System Operator’ and ‘Future System Operator: second policy consultation and project update’ consultations. We note that these roles only cover what has been set out as obligations in the FSO’s draft licences and therefore may not be an exhaustive list of what the FSO will be doing from Day 1. Where there are minor differences between the policy documents and the drafting, we recognise that these are as a result of continued policy conversations between ESO, Ofgem and DESNZ since the consultations were published. We set out our comments below in relation to some of the FSO’s new roles and have some further comments on the specific licence conditions in Appendices 3 and 4.

- **Advisory role**

We note that the draft Condition D1 in each licence requires the FSO to have regard to the ISOP Advice Process Document which is a document that is yet to be developed. We welcome further discussion with DESNZ and Ofgem on the proposed content of this document.

- **Security and resilience**

We set out above in our response that the licences should be flexible to change following Day 1 of the FSO. For the FSO’s security and resilience roles in particular, which cover the FSO’s Office for Energy Resilience and Emergency Management (**OREM**), the licence drafting in Conditions C6 and C7 of the gas and electricity licences respectively may require evolution over time as the role develops and expands. As drafted, the licence condition does however provide DESNZ some flexibility to request a broader scope than required by the licence in relation to the Energy Resilience Assessment Report and the Emergency Processes Assessment outputs. While we think that this potentially creates some risk that the FSO may not have yet developed the capability in those additional areas, we understand the drivers behind its inclusion and that the risk is low.

Conditions C6 and C7 also require, for each obligation, a single output or report to be produced for both Ofgem and DESNZ. The OREM role will be managing potentially very sensitive data on the security of national energy systems. We therefore think it is likely that DESNZ and Ofgem personnel may potentially have different security clearances for this type of sensitive information and we need to be clear as to what information can be shared and with whom.

While the current information ring-fencing arrangements for the ESO have been removed in the proposed licence drafting, there is an obligation in draft Condition B8 of the electricity system operator licence and B6 of the gas system planner licence that relates to ring-fencing information from the resilience role. This requires that persons engaged in the delivery of Parts A, B and D of draft Condition C7 *‘ensure that such data and information involved in this delivery is not directly or indirectly disclosed to, solicited, or used by any person who is engaged in the coordination and directing the flow of electricity onto and over Transmission Systems’*.

We understand there need to be tight controls around sensitive data particularly where it relates to the resilience of energy systems, post-event analysis, and where it is gathered from third parties. However:

- The restriction on *‘any person who is engaged in the coordination and directing the flow of electricity onto and over Transmission Systems’* is very broad, covering a number of functions of the FSO. While we understand the importance of sensitivity, we also need to ensure that such controls do not inhibit the insight and expertise that FSO operational colleagues can bring to OREM deliverables, adding to the value of the FSO adopting this new role.
- Information gathered and used by the FSO OREM function will absolutely be on a need-to-know basis and the function itself will have transparent mechanisms in place to ensure it acts independently from other FSO functions as and when required.
- It seems to us that there would be some circumstances where it would be entirely appropriate to share information on risks to other parts of the FSO to allow for proper risk mitigation. For example,

paragraph 9 of Condition C7 acknowledges that the Emergency Processes Assessment should be shared with other materially impact parties. This might include the FSO itself, including the Control Room, to which communication of the type of data and information in scope of B8 might be necessary.

We would like to further understand the intent behind this restriction on sharing information and be clear that it is driving the desired outcomes.

- **Directions related to national security**

We note and welcome that the licence drafting makes provision for a direction by the Secretary of State related to national security to relieve the FSO of any obligation under its licences where the obligation conflicts with the direction. This is in line with the policy consultation.

Q2. Does the draft GSP licence capture the policy intent set out by the joint 'Proposals for a Future System Operator' and 'Future System Operator: second policy consultation and project update' consultations?

From a new roles and activities perspective, broadly, we agree that the licence drafting in Ofgem's consultation reflects the policy intent set out in the joint 'Proposals for a Future System Operator' and 'Future System Operator: second policy consultation and project update' consultations. In addition to our comments above, we note that:

- **Gas strategic network planning**

We are comfortable with the draft Condition C8 in the gas system planner licence and that this reflects the policy intent of this new role and recent discussion between DESNZ, Ofgem, the ESO and National Gas Transmission plc (NGT). However, we are mindful that there is interaction between this draft condition and ongoing development of policy around the CSNP role. Ofgem acknowledges in the consultation document for the electricity planning related conditions (C12 and C13) that it expects the ongoing work on the CSNP may require further amendments to, or replacement for, these conditions in the coming months. Given that the CSNP will develop to integrate and consider gas strategic network planning in the future, the associated gas licence conditions will also need to be reviewed and changed as appropriate.

- **Network Innovation Strategy**

We note that the Electricity Network Innovation Strategy licence condition has been replicated in the FSO's gas system planner licence in draft Condition C9 (Gas Network Innovation Strategy) which obliges the FSO to work with other network licensees to develop and maintain a gas network innovation strategy. We are aware that a combined network strategy is already prepared by the Energy Networks Association (ENA), previously produced at individual vector level but now combined across both gas and electricity¹⁴. The ESO's requirement to produce an electricity network innovation strategy is something that we feed into the ENA process today and we would do the same for the gas strategy required by Condition C9. As we transition to the FSO, if the approach to being a member of industry bodies such as the ENA were to change, the innovation activities set out in both licences may need to be reviewed and adapted accordingly.

We also note that Ofgem plans to consider how the FSO is incentivised to facilitate innovation as part of the upcoming consultation that will include the financial provisions which may lead to minor changes to this licence condition or the definitions associated with this licence condition. We look forward to discussing this further and how this links with the new draft Condition C9.

More broadly for the gas system planner licence, we are aware that the changes to NGT's licence are not due to be consulted upon until later this year and that there are two draft gas licence conditions (provisionally on Forecasting and Arrangements with the NTS System Operator) that are also not included in this FSO draft licences consultation. With these elements yet to be reviewed, we are unable to assess yet whether the gas system planner activities and responsibilities are captured clearly across the two licensees and will work

¹⁴ Energy Networks Innovation Strategy 2022

holistically. We look forward to seeing these proposed developments in the following consultation particularly in relation to the FSO's gas strategic network planning role. We are also aware that these changes will require consequential code change to be developed via the Cross-Code workgroup¹⁵.

Q3. Do you have any other views or comments relating to the proposed approach to associated documents?

We think that Ofgem's initial view of the likely changes needed to associated licence documents listed in the consultation is reasonable, noting that further work is required to develop the FSO's financial model and related licence drafting and that it is not a final list. However, we have the following comments:

- There are some further Associated Documents and other licence subsidiary documents which we suggest merit consideration for inclusion within the review (some of which fall under the subject matter of the financial consultation):
 - Ofgem's Licence Fee Cost Recovery Principles
 - The Strategic Innovation Fund Governance document
 - The RIIO2 – Network Innovation Allowance Governance Document
 - The RIIO-1 NIA Governance Document
 - The NIC Governance Document
 - Decision on Ofgem's policy for funding Pension Scheme Established Deficits
 - The Business Plan Guidance Document
- We note that Ofgem intends to use the Roles Guidance associated document to set out expectations on the FSO where the licence has been amended in relation to the activities the ESO undertakes today. We comment on this in Appendix 1 above.
- We also note that there is the potential for overlap between the proposed Role 4 (Energy System Insight) and the content of the ISOP Advice Process Document and it would be helpful to understand further the proposals for the two documents to ensure that this is avoided.
- We note that Ofgem is considering making reference to compliance with FSO information request powers in its enforcement guidelines. We suggest that the FSO's status as a public corporation, along with the underpinning legal regime, also merit a review of the enforcement guidelines to ensure that they remain appropriate to the enforcement approach for FSO.

Q4. Have we correctly identified the major consequential impacts of the FSO licence proposals on other licences? Any further comments are welcome.

We think that Ofgem's initial view of expected high level consequential impacts of the FSO policy decisions on other licensees' licences is broadly correct, again noting that further work to identify all impacts will be needed following policy development on the FSO's financial model and other new roles. As well as considering consequential licence changes required to reflect the establishment of FSO as a new regulated entity, the forthcoming review should also consider the extent to which new or evolving roles for FSO might impact the roles and / or obligations of other regulated entities. For example, the introduction of CSNP is likely to require a more detailed look at how FSO and transmission licensees share responsibilities to comply with the security and quality of supply standard and may therefore require more material licence change.

The more material change identified in this consultation is to the Gas Transporter licence conditions to reflect the new gas roles of the FSO. As we set out in our response to question 2 above, we look forward to reviewing the proposed changes to NGT's licence and how these work with the proposed FSO gas system planner licence drafting to ensure it works in aggregate.

In addition to the list set out in the consultation:

¹⁵ This is a dedicated Cross-Code Workgroup (CCWG), set up by Ofgem to develop the industry code modifications required for the establishment of the FSO for which Ofgem published a 'call for volunteers' in August 2023: [FSO Codes Change Programme \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/fsocodeschange)

- We think that for the electricity interconnector standard licence conditions, any references to system operator / transmission licensees / relevant transmission licensee will also need to be checked over and updated as appropriate.
- We believe that there are also references to 'Relevant Network Licensees' in relation to innovation strategies that will require updating in the Electricity Transmission and Distribution Standard Licence Conditions.

Appendix 3 – ESO specific comments on the Electricity System Operator licence drafting

This appendix sets out our comments on each licence condition, where applicable. The references in the tables below are in relation to ‘Annex A – Draft Electricity System Operator licence CLEAN’ of Ofgem’s draft licences consultation.

Condition A1 Definitions

Reference	ESO comments
Part A, para 4, page 4	We suggest confirming whether this should also refer to the BSC.
Part A, Applicable Balancing Services (spreadsheet)	We suggest that it would be clearer to change to ‘...has directed...’.
Part A, Balancing Services (spreadsheet)	We suggest that it would be simpler to replace the statutory and licence references by making the following change - ‘ <i>in accordance with its statutory duties or the conditions of this licence, but shall not...</i> ’.
Part A, Conflict of Interest Party (spreadsheet)	<p>Our concerns with the currently proposed definition are set out in our cover letter and Appendix 1. Instead, we suggest an approach which will allow the FSO to propose, and for Ofgem to approve, a more specific list of classes of organisation (which can be more easily updated). FSO would propose a list as part of the Independence Statement, for Ofgem to approve. The list would be published and could be updated by the FSO and Ofgem in line with the update provisions for the Independence Statement.</p> <p>In line with our proposals below, we suggest changing this to Industry Party – ‘<i>means any class of person set out on the list referred to in paragraph 16(x) of Condition B1... which is included in the approved Independence Statement</i>’.</p>
Part A, DAG Data (spreadsheet)	This is a new term rather than an existing term, which is ‘Data’. We note that this will also need to be updated in the DAG itself as it refers back to the definition in the licence.
Part A, Data Assurance Guidance (DAG) Framework (spreadsheet)	In the drafting, the definition mainly used is ‘DAG’. We suggest making clear here that the defined term is Data Assurance Guidance or DAG.
Part A, Electricity System Restoration Framework (spreadsheet)	We note that this definition does not use the standard formulation for such documents. This could be changed to ‘ <i>means the document of that name prepared by the licensee under Part B of Condition C4...</i> ’.
Part A, Electricity Ten Year Statement (ETYS) (spreadsheet)	In the drafting, the definition mainly used is ‘ETYS’. We suggest making clear here that the defined term is Electricity Ten Year Statement or ETYS.

Part A, ISOP Business (spreadsheet)	The proposed definition makes reference to the matters which the FSO's functions will relate to, as set out in clause 158 of the Energy Bill ¹⁶ . We understand these to be deliberately very broad to give a guide on the nature of the licence obligations for the FSO. We welcome further discussion on whether it would be preferable to link the definition more directly to the statutory and licence obligations of the ISOP.
Part A, Network Access Policy (NAP) (spreadsheet)	In the drafting, the definition used is ' <i>NAP</i> '. We suggest making clear here that the defined term is Network Access Policy or NAP.
Part A, Network Options Assessment (NOA) (spreadsheet)	In the drafting, the definition mainly used is ' <i>NOA</i> '. We suggest making clear here that the defined term is Network Options Assessment or NOA.
Part A, Permitted Administration Fee (spreadsheet)	We suggest that the reference should be to Condition E14.
Part A, Regulatory Instructions and Guidance (RIGs) (spreadsheet)	In the drafting, the definition mainly used is ' <i>RIGs</i> '. We suggest making clear here that the defined term is Regulatory Instructions and Guidance or RIGs.
Part A, Sufficiently Independent Director (spreadsheet)	If this is retained, it appears to us that the references should be ' <i>paragraphs 7, 8 and 9</i> '.
Part A, Transmission Services (spreadsheet)	We request that this refers to ' <i>the licensee</i> ' rather than ' <i>the ISOP</i> '.
Part A, Transitional Services (spreadsheet)	We note that this definition is taken from the ESO's transmission licence. It will not be appropriate for the FSO's licence as not all the services listed are expected to be transitional services. However, the appropriate wording will depend on ongoing discussions on the scope of the transitional services and so we suggest that this is revisited as that scope is refined.
Part A, Use of System Charging Methodology (spreadsheet)	It seems to us that the reference should be to paragraph 14, noting that we also suggest a new defined term in our comments on Condition E10 (below).
Part A, Use of System Charging Objectives (new definition)	We suggest adding this definition – ' <i>means the objectives referred to in paragraph 14 of Condition E10 (Use of System Charging and Methodology)</i> '.

¹⁶ Clause 158(3) of the Energy Bill (11 July 2023 publication)

Part A, Whole Energy System (new proposed definition)	We suggest adding this definition – <i>‘means the whole system consisting of the carrying out of the following activities, so far as set out in the course of a business: (a) an activity mentioned in section 5(1) of the Gas Act 1986 (gas transportation, interconnection, supply, shipping, system planning, smart meter communication, code management); and (b) an activity mentioned in section 4(1) of the Electricity Act 1989 (electricity generation, transmission, distribution, supply, interconnection, multi-purpose interconnection, system operation, smart meter communication, code management);’.</i>
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Condition A2 Interpretation

Reference	ESO comments
General	There are a small number of provisions in the licences, notably Condition B4, which seek to disapply specified obligations in other conditions in particular circumstances. We suggest it may be helpful to include a provision making clear that, in such circumstances, it is the cross-referring condition which takes precedence.
Introduction, para 2, page 4	Please refer to our comments in Appendix 1 in relation to the terms of the ESO's licence.
Para 3, page 4	It appears that this is a formatting error and that paragraph 3, which currently reads <i>‘General rules of interpretation’</i> , should be entitled Part A. Paragraph 4 which follows should be renumbered to paragraph 3, with renumbering applied to the remaining provisions in the condition.
Part A, para 5, page 5	For the avoidance of doubt, it would be helpful to list the Energy Acts alluded to in the wording <i>“Energy Acts 2004 to [2023]”</i> .
Part A, para 10(c), page 5	Given that para 10(b) refers to both standard and special conditions of electricity Transmission Licences, we do not consider it is necessary for (c) to repeat reference to the special conditions. We suggest deleting.
Part A, para 14(f), page 6	It appears that both references to paragraph 5 (of condition B8 in the ESO licence and B6 in the GSP licence) should be changed to paragraph 6.
Part B, Para 16 (b), page 7	It is not completely clear what is meant by the words <i>‘to make it again under that power’</i> and it would be helpful to discuss this further, in particular if the suggestion is that the Authority's powers are enduring, and do not lapse in a particular case following a determination or a decision.

Condition A3 Housekeeping licence modifications

Reference	ESO comments
General	We note that this is a provision introduced in licences for RII0-2, but we are not aware of it being widely used, instead of corrections etc. being made alongside other updates to the licence. It would be helpful to discuss whether it is necessary to retain the provisions.

Condition B1 Independence Requirements and compliance obligations

Reference	ESO comments
General	We set out various comments on Condition B1 in our cover letter and Appendix 1. We provide more detail in specific parts of the condition below.
Introduction, para 1(b), page 9	Given Part B covers appointment and other obligations in relation to SIDs, we propose that this is changed to <i>'Part B sets out requirements in relation to Sufficiently Independent Directors'</i> .
Introduction, para 2, page 9	<p>Our general comments on the reference to operational independence from government in the licence are set out in our response letter and Appendix 1.</p> <p>On the basis of the current approach, in our view the reference would be clearer if it more directly cross-referenced a statement of government policy. For example, the SPS, which was consulted on in 2023¹⁷, stated that <i>'The FSO will be set up to have operational independence from government'</i> and the FSO Second Policy Consultation stated that <i>'The FSO will act independently'</i>. We suggest that referencing the SPS wording directly would be helpful.</p> <p>We do not consider that the final sentence of the paragraph is needed. It is redundant given the general rule of interpretation in draft Condition A1, paragraph 7, which states that introductory paragraphs are for convenience only. It also seems confusing in circumstances where policy statements published elsewhere may impact on rights and obligations.</p> <p>We propose the following drafting:</p> <p><i>'The Strategy and Policy Statement designated under section 131 of the Energy Act 2013 states that the FSO will be set up to be operationally independent of government. However, this condition focuses on independence from [Industry Parties]'</i>.</p> <p>(In the event that the SPS is not designated before the licence comes into force, we suggest that the language which is to be included in the SPS could be lifted directly into the licence.)</p>
Part A, para 3, page 9	<p>As noted in our cover letter, we agree that the general approach of this obligation sets out an appropriate framework for securing the independence of the FSO from commercial interests. However, we have two concerns:</p> <ul style="list-style-type: none"> • The drafting sets the independence of the ISOP Business and maintaining the impartiality of employees as the goal of the systems, processes and governance arrangements. Subject to our comments on the definition of <i>'ISOP Business'</i> (see above), we agree with the goal relating to independence. • But it seems to us that the impartiality of all employees is not something that can be guaranteed in all cases. What matters is that systems etc. ensure that the FSO takes actions and makes decisions impartially. • Please see above our comments on the definition of <i>'Conflict of Interest Parties'</i> in our cover letter and Appendix 1, and our proposed drafting for an alternative Industry Party defined term above.

¹⁷ Strategy and Policy Statement for energy policy in Great Britain - GOV.UK (www.gov.uk)

	We propose: <i>‘The licensee must put in place and maintain systems, process and other governance arrangements that are necessary to maintain the impartiality of its actions and decisions and the independence of the ISOP Business from [any Industry Party]’.</i>
Part A, paragraph 4, page 9	<p>We are whole-heartedly in agreement with the principle that (1) the FSO should avoid any of its personnel having a conflict of interest which might lead to actions and decisions of the FSO which are not taken/made impartially, and (2) interests should be appropriately identified and recorded. This will require the FSO to apply its conflict of interest policies (in place under paragraph 3). We understand that to be the intent here.</p> <p>As above, we propose changing reference to <i>‘Conflict of Interest Parties’</i> to our proposed definition of <i>‘Industry Party’</i>.</p>
Part A, para 5, page 9	<p>We suggest that this exception applies to both paragraphs 3 and 4 and so propose that this is changed to <i>‘Paragraphs 3 and 4’</i>.</p> <p>For clarity, we suggest adding <i>‘engaging in partnership projects with [Industry Parties] or cooperating with [Industry Parties] for the purpose of complying with any of its statutory duties or the conditions of its licences’</i>. The FSO will need to work in partnership with many industry participants as the ESO does today; there should be no suggestion that this close cooperation gives rise to a perceived conflict of interest.</p>
Part B, para 8(b), page 10	The words <i>‘...of the Licensee’</i> are redundant given the definitions and can be deleted.
Part B, para 8(c), page 10	<p>Please see our comment above, and in our covering letter and Appendix 1, about our concerns regarding the breadth of the definition of <i>‘Conflict of Interest Party’</i>. It would not seem possible for the FSO to set out a list of organisations which could be compared against the directors’ employment history, shareholdings or previous arrangements, and we think that the process should have this clarity and certainty. Otherwise, the default would seem to be that candidates could have no recent employment (at least in Great Britain) outside the public or charitable sectors. We do not think this best sets up the FSO’s board for success.</p> <p>Our proposed updated definition of <i>‘Industry Party’</i> seeks to address these issues.</p>
Part B, para 9, page 10	<p>Please see our comment above, and in our covering letter and Appendix 1, about our concerns regarding the breadth of the definition of <i>‘Conflict of Interest Party’</i>. The breadth of these restrictions due to that definition would seem to create barriers to the appointment of SIDs which seem overly onerous. For example:</p> <ul style="list-style-type: none"> • Candidates may have supply contracts with a domestic energy supplier (which would appear to fall within the definition of Conflict of Interest Party) – these would be prohibited. • Candidates may have shares in businesses unrelated to energy, but where the business takes part in some limited form of electricity demand control which might arguably lead them to fall within the definition of Conflict of Interest Party. It may be very difficult for FSO to know if this is the case. <p>Our proposed updated definition of <i>‘Industry Party’</i> seeks to address these issues.</p>
Part B, para 9(a), page 10	<p>Separate to the provision around a 12 month <i>‘cool off period’</i> for employment in paragraph 8, paragraph 9(a) creates a separate restriction around candidates not being allowed to be employed by an organisation that entered into a contract with the FSO group or any <i>‘Conflict of Interest Party’</i>. To take some examples:</p> <ul style="list-style-type: none"> • Almost all employers will have supply contracts with an energy supplier (which would appear to fall within the definition of Conflict of Interest Party) –

	<p>this would seem to prohibit the non-executive director from having almost any other form of employment (including other non-executive directorships).</p> <ul style="list-style-type: none"> Major consultancy and professional services firms and IT providers are all likely to have some supplier relationship with a Conflict of Interest Party as drafted. Therefore, the restriction would apply to potentially all candidates from these sectors, creating a further barrier for potential candidates even where there is no arguable risk to the FSO's impartiality. <p>We suggest that this part of the paragraph should be removed.</p>
Part D, para 16, page 11	<p>Part D sets out provisions around an Independence Statement but deals both with the general independence of the FSO from industry parties and the arrangements to ensure appropriate arrangements relating to transitional services.</p> <p>Given the transitional services issues will apply only until FSO ceases taking transitional services from National Grid Group, we suggest that these are split out into two separate statements, with content relating to transitional services being set out under a '<i>Transitional Services Statement</i>' (covering all sub-paragraphs apart from paragraph 16(c)). The drafting approach for the Transitional Services Statement could mirror that of the Independence Statement.</p> <p>This will be helpful both structurally and practically, since when transitional services cease these parts of the condition can be removed.</p>
Part D, para 16(b), page 11	<p>This does not read as consistent with the main obligation in paragraph 4. In line with our proposed changes above, it could read '<i>an explanation of how they ensure that the licensee is able to meet its Independence Requirements</i>'.</p>
Part D, para 16(d), page 11	<p>We note that this paragraph refers to '<i>...and obligations under this condition</i>', but that these obligations do not form part of this consultation. As a result, we note that what should be included here will depend on that later drafting.</p>
Part D, para 16(d), page 11	<p>It appears that the term '<i>Transitional Services Statement</i>' has not been included intentionally but given our comments above, we agree with this being part of a Transitional Services Statement.</p>
Part D, para 16(e), pages 11 -12	<p>We understand that this should refer to '<i>the licensee</i>', rather than '<i>ISOP</i>' where it appears.</p>
Part D, para 16(e)(ii), page 12	<p>We are not clear what is intended by the words '<i>...with due regard to the need to remove any real or perceived conflicts of interest</i>'. If this is referring to the new arrangements under the condition, we suggest this could be replaced by '<i>...with due regard to its Independence Requirements</i>'. Otherwise, we suggest that it should be deleted.</p>
Part D, para 16(g), page 12	<p>We are not clear on what this is intended to cover, given this will form part of the published statement. If the intention is that Ofgem may request further information, we suggest that this should be changed to '<i>such other information as reasonably requested by the Authority in relation to real or perceived conflicts of interest</i>'.</p>
Part D, para 16(x) – addition, page 12	<p>In line with our comments above on replacing the definition of '<i>Conflict of Interest Party</i>' with a new definition of '<i>Industry Party</i>', we propose the following new sub-paragraph – '<i>a list of classes of person, which (due to their commercial interests or interests of those that they represent) fall within the scope of the Independence Requirements</i>'.</p>

Part D, para 19, page 12	For clarity, we suggest changing this to ' <i>The licensee may publish a version of the Independence Statement as approved, having removed any commercially confidential material, on its website...</i> '.
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Condition B2 Restriction on activity and financial ring fencing

Reference	ESO comments
General, from page 15	Given that further work is forthcoming on the financial model, we think it would be appropriate to give further consideration to whether some reference to <i>de minimis</i> activities may still be required in the FSO's licence (as per the ESO's current equivalent standard licence condition B6). This element of the drafting should be considered holistically with the other financial conditions and the price control frameworks.
Part A, para 2, page 15	We suggest that for clarity the references here should be to ' <i>paragraphs 3 to 6</i> ', Please see our comments above on the definition of ' <i>ISOP Business</i> '.
Part A, para 3, page 15	Generally, we suggest referring to ' <i>the ISOP Business</i> ' (as in paragraph 2).
Part A, para 4(c), page 15	It would be helpful to discuss whether it is appropriate to retain reference to corporate governance practice as required by the Financial Conduct Authority from time to time for listed companies in the United Kingdom.
Part B, para 6(a), page 16	We suggest changing the opening to ' <i>Nothing in this condition prevents the licensee...</i> '.
Part B, para 6(a), page 16	Our understanding of the intent here is to ensure that the FSO is not prevented from carrying any activity which is carried on as a result of its designation as the ISOP under the Energy Bill, or which is ancillary to its functions or activities. This was previously the content of Clause 177(3) of the Bill. However, we understand that in September the House of Commons passed Amendment 173, which changed the relevant clause of the Bill to refer to any functions of the ISOP, whether exercisable in its capacity as the ISOP or another capacity ¹⁸ . Since this now refers to all the FSO's functions and activities, the drafting of paragraph 6(a) no longer seems clear. In line with our understanding of the policy intent, we suggest that the drafting is changed to ' <i>carrying out any activity which is ancillary to the business and activities of the ISOP Business</i> '. However, we welcome further discussion on this as it will be important to get this provision right from Day 1.
Part B, para 7, page 16	For consistency, to use the defined term we suggest changing the final wording to ' <i>... in accordance with the Independence Requirements</i> '.

¹⁸ <https://bills.parliament.uk/publications/52514/documents/3912>

Condition B3 Conduct of ISOP Business

Reference	ESO comments
Introduction, para 1, page 16	Given much of the licence regulates the conduct of the ISOP Business, we suggest changing the wording at the end to <i>'the conduct of its ISOP Business <u>relating to discriminatory and preferential behaviour</u>'</i> .
Part A, para 2(a), page 16	For consistency, we suggest this is changed to <i>'the licensee'</i> (and a semicolon added).
Part A, para 3, page 17	<p>The promotion of appropriate competition will be an important aim for the FSO. Indeed, this is embedded in the FSO's statutory duties. It is completely appropriate that the FSO should be required to act in a manner best calculated to ensure that it does not distort competition in favour of particular businesses and to treat its compliance with competition law seriously.</p> <p>However, it could be that some actions taken by the FSO in compliance with its duties have an impact on competition in particular markets, through changing the rules in which that market operates or providing advice that could have such an impact if adopted. Similarly, the FSO will need to look across markets to consider and propose solutions. Our understanding of the inclusion of the word <i>'unduly'</i> in the drafting is to make clear that such actions are in line with the vision for the FSO and are permitted.</p> <p>(For consistency with other licence conditions, we also suggest that the opening line could be changed to <i>'The licensee must <u>conduct</u> its ISOP Business...'</i>.)</p>
Part A, proposed addition	To add further clarity, we think that it would also be helpful to add a paragraph 4, which could broadly state that <i>'For the avoidance of doubt, nothing in this condition prevents the licensee from taking actions relating to the development of markets which are in accordance with its statutory duties'</i> .

Condition B4 Compliance with directions related to national security

Reference	ESO comments
General, from page 17	<p>We note that this condition only allows the FSO to take action within its power in response to a national security direction and does not extend to instructing third parties.</p> <p>We also consider that the introduction of this licence condition into the FSO's licence will require some consequential industry code change to ensure that the FSO can legally undertake actions directed by the Secretary of State where applicable. We will look to progress these changes through the FSO Cross-Code Workgroup as recently established by Ofgem¹⁹.</p>

¹⁹ This is a dedicated Cross-Code Workgroup (CCWG) to develop the industry code modifications required for the establishment of the FSO for which Ofgem published a decision on CCWG membership in October 2023: <https://www.ofgem.gov.uk/publications/decision-letter-ofgems-call-volunteers-fso-codes-change-programme>

Introduction, para 1, page 17	We suggest that the introduction may currently be confusing because it sets out most of the test as in paragraph 3 in full, but not all of the test. We suggest that it would be preferable to summarise the provision – <i>‘directions issued by the Secretary of State in connection with risks relating to national security’</i> .
Introduction, proposed addition, page 17	<p>We suggest adding a new paragraph in the introduction to flag the relieving of obligations, given the importance of this part – <i>‘This condition also relieves the licensee of obligations under its licences where and to the extent that they conflict with a direction issued under this condition’</i>.</p> <p>Of course, we note that the direction will not itself relieve the FSO of other legal obligations outside of licence obligations.</p>
Part A, para 6, page 18	It would be helpful to discuss further with Ofgem and DESNZ the reference to <i>‘the period set out in the direction’</i> and to confirm that the direction will contain such a period in every case. Presumably this should refer to the period <i>‘for so long as the direction has effect’</i> , since otherwise arguably the direction may continue in effect after the period relieving the FSO of any conflicting licence obligations has expired.

Condition B6 Prohibition on discriminating between users

Reference	ESO comments
Introduction, para 1, page 18	We suggest it may be clearer to refer to <i>‘...users <u>of the National Electricity Transmission System</u>’</i> .
Part A, para 4, page 18	We suggest that there should be a change to <i>‘...except insofar <u>as</u> such...’</i> to address a typo.
Part A, para 5, page 19	We suggest changing to <i>‘Use of System <u>Charges</u>’</i> .
Part A, para 6, page 19	<p>As noted above, the promotion of appropriate competition will be an important aim for the FSO.</p> <p>However, it could be that some actions taken by the FSO in compliance with its duties have an impact on competition in particular markets, through changing the rules in which that market operates or providing advice which could have such an impact if adopted. For example, if FSO decides to set Use of System Charges in a way that reflects government policy to incentivise say investment in renewables assets in the electricity sector, this may open it to arguments that it is restricting competition in relation to activities in the gas sector. Our understanding of the inclusion of the word <i>‘unduly’</i> in the drafting is to make clear that such actions are in line with the vision for the FSO and are permitted.</p>
Part A, proposed addition	To add further clarity, we think that it would also be helpful to add a paragraph 7, which could broadly state that <i>‘For the avoidance of doubt, nothing in this condition prevents the licensee from taking actions relating to the development of markets which are in accordance with its statutory duties’</i> .

Condition B7 Notification of changes that may affect Eligibility for Certification

Reference	ESO comments
Part A, para 2, page 19	We note that this is in the current licence, but query whether the statutory reference should be to section 10D(1).

Condition B8 Information ringfencing requirements

Reference	ESO comments
General, from page 20	<p>As noted in Appendix 1, Draft Condition B8 sets out a new framework for the protection of information held by the FSO, in place of a number of more specific restrictions set out in the ESO's current licence.</p> <p>We agree that this more adaptable approach is more appropriate for the FSO as a public sector organisation, ensuring that information is protected as required as the FSO's activities develop, but also that the running of the organisation is not impeded by blanket restrictions. However, we do have some more specific comments - in particular, the interaction between this condition and the FSO's obligations under section 105 of the Utilities Act 2000 (as amended by the Energy Bill).</p>
Part A, para 2, page 20	<p>Under section 105, the FSO will have a general restriction on the disclosure of information, where information obtained by or under the provisions of the Energy Bill (or the Electricity Act 1989) relating to an individual or business should not be disclosed unless an exception applies²⁰. This will apply confidentiality rules to a broad range of information held by the FSO. One of the exceptions introduced by the Energy Bill is that the restriction does not apply to disclosures which are for the purpose of facilitating the performance by the FSO of any of its functions.</p> <p>Our understanding of paragraph 2 is that it is intended to require the FSO to identify a more specific category of information which the FSO considers should not generally be disclosed, for example where disclosure could impact national security or commercially prejudice an industry participant. In addition, the FSO will know that there are some circumstances where it should be disclosed (as set out later in the condition).</p> <p>We therefore suggest changing paragraph 2 to:</p> <p><i><u>'The licensee must identify any confidential information it holds in the conduct of the ISOP Business that in its opinion should not be disclosed or otherwise be accessible to persons other than the licensee's employees, agents, contractors and advisors (other than as set out in paragraph 5), which includes but is not limited to...'</u></i></p> <p>(It seems unnecessary to us to refer to 'confidential data', which falls within confidential information.)</p>
Part A, para 2(b), page 20	<p>We look forward to discussing further with Ofgem whether a definition or further clarity around the term 'market sensitive' would be of assistance to the FSO in that exercise.</p>
Part A, para 3, page 20	<p>Although we agree that it is appropriate for confidentiality obligations to cover the provision of transitional services, we do not completely understand the proposed drafting here and it seems to us that a simpler provision could meet our understanding of the policy intent while avoiding unnecessary complexity. We suggest changing paragraph 3 to:</p> <p><i><u>'Unless the Authority otherwise consents, the licensee must ensure that appropriate protections are in place to secure that any confidential information under paragraph 2 that is disclosed to any person involved in the delivery of Transitional Services is not subsequently directly or indirectly disclosed to, solicited, or used by any person who is not permitted to have access to that information'</u></i>.</p>

²⁰ See paragraph 8 of Schedule 11 to the Energy Bill (11 July 2023 publication)

Part A, para 4, page 20	<p>This paragraph notes that the ISOP should have systems in place relating to confidential data and information that cannot be disclosed to, or otherwise accessed by, persons engaged in the management or operation of any Conflict of Interest Party. The definition of <i>'Conflict of Interest Party'</i> currently:</p> <p><i>'...excludes government and consumer bodies.'</i></p> <p>The proposed drafting implies that the FSO will not have to consider whether its systems prevent disclosure from consumer bodies. It is perhaps a minor point, but worth clarifying if that is not the intention of the drafting. Clearly, having identified that information should be confidential other than where set out in paragraph 5, the FSO will not then expect to disclose the information to any organisation unless the exception applies.</p> <p>Section 105 of the Utilities Act 2000 will apply to such bodies when considering whether a disclosure should be made. There is an exception allowing disclosure to relevant consumer bodies in the proper exercise of their powers under that section, which could involve access to systems relating to confidential data and information.</p>
Part A, para 5, page 20	As a general point, we welcome further discussion on ensuring appropriate alignment between the exceptions here and the exceptions in section 105(3) and 105(4) of the Utilities Act 2000. It may be that it does not align with the policy intent for the two lists to be identical, but we think it merits further consideration.
Part A, para. 5(a), page 20	There is a repetition of the words <i>'where required by or under any statute, enactment or provision of subordinate legislation'</i> in sub-paragraphs (a) and (e) of paragraph 5. We would propose omitting the words in sub-paragraph (a) so that it reads in its entirety <i>'Where the licensee is specifically required to do so under a condition of this licence'</i> , and retaining them in sub-paragraph (e).
Part A, para. 5(c), (d) page 21	Reference here is made to the STC and UNC. We would like to query whether reference should also be made to other industry codes, such as the CUSC, which contains numerous provisions around permitted or required disclosures.
Part A, para 5(b), page 21	This may need to be considered further in light of the proposed provisions relating to information sharing with NGT and further licence changes relating to the two organisations working together. Based on our proposed changes above, the reference to paragraph 3(c) can be deleted.
Part A, para. 5(e), page 21	This paragraph refers to the functions of the Secretary of State as shareholder. We suggest that it would be clearer to use wording similar to the shareholder exception in ESO's current licence condition around information ring-fencing.
Part A, para 6, page 21	There is clearly an interaction between the FSO's policy around information restrictions and transitional services and the statement required under Condition B1 relating to transitional services. It would be helpful to discuss this further.
Part B, para 9, page 21	Please see our comments on this paragraph in Appendix 2.

Condition C1 Functions under the Electricity System Operator Licence

Reference	ESO comments
General, from page 22	Please see our cover letter and Appendix 1 for general comments on this condition, with our more specific comments set out below.

	<p>In its consultation, Ofgem has explained the linkage between this licence condition and the ESO's current incentive framework. Given this link, we have not on the whole proposed changes to licence text included in the Standard Condition C28 of the ESO's transmission licence.</p> <p>This licence condition will therefore require further review and development at any point when the regulatory model for the FSO changes in the future. It will also require further review as other new roles of the FSO continue to be developed, such as the introduction of Central Strategic Network Plan (CSNP).</p>
Introduction, para 1, page 22	<p>We do not see that this paragraph accurately describes what is set out in the condition. It seems to us that the deleted purpose condition from Standard Condition C28 would be a better summary. We suggest this is changed to:</p> <p><i>'The purpose of this condition is to provide greater clarity on the obligations of the licensee in carrying out its functions as electricity system operator and its broader functions as the designated ISOP'.</i></p>
Part A, para 3, page 22	<p>This paragraph seems unnecessary since the FSO will carry out the functions of the ISOP pursuant to the designation given by the Secretary of State under the Energy Bill.</p>
Part A, para 4, page 22	<p>Our understanding is that the list is intended to cover the ESO current activities and other categories of activity that the FSO must perform. We think that the current long list of functions is not completely clear and suggest that the current list in paragraph 4 is separated into three paragraphs:</p> <ul style="list-style-type: none"> • The first paragraph would include sub-paragraphs (a) to (s) – <i>'In its role as electricity system operator, the licensee must.'</i> • The second paragraph would include sub-paragraph (t) and two further paragraphs summarising the FSO's duty to have regard to the SPS and its duty to keep under review developments in the energy sector – <i>'In its role as the ISOP, the licensee has the following statutory duties:'</i>. This paragraph would be legally unnecessary but would help to give the fuller coverage of activities. • The third paragraph would include sub-paragraphs (u) to (w) – <i>'In its role as the ISOP, the licensee must also (in accordance with the other conditions of its licence or otherwise as it sees appropriate).'</i>. The final wording is added because, even accounting for the drafting changes proposed below, the proposed activities are very broad and could be interpreted in many different ways. If wording such as this is not included, we request that further consideration should be given to making the drafting more specific and making clear the interrelationship between this and the other relevant conditions. <p>Including headings between each paragraph may also be helpful.</p>
Part A, para 4(a), page 22	<p>We understand that the words <i>'most efficient'</i> have been removed given the FSO's Primary Duty requires consideration of matters other than efficiency. For the avoidance of any doubt, we are committed to continuing to operate the system in an efficient way.</p>
Part A, para 4(b), page 22	<p>It appears to us that <i>'such'</i> actions is correct here and this should be reinstated as expressed in our current licence. There is no need to broaden out the current obligation since this is covered within the FSO's statutory duties.</p> <p>For the reasons set out in our comments in Appendix 1, we suggest that the references to the Primary and Secondary Duty should be removed. In addition, although the Primary and Secondary Duty relevant to decisions in this area, we find</p>

	the drafting unclear since it will not be the development of the system which complies with the duties.
Part A, para 4(c), page 22	<p>This paragraph (along with sub-paragraphs (f), (s), (v) and (w)) makes reference to ‘<i>whole energy system</i>’ which is an undefined term in the draft licence. We consider that, for clarity, it should be defined and have proposed definition wording which we would welcome further discussion on.</p> <p>The addition of ‘<i>pursuant to section 161(1)(c) of the Energy Act 2023</i>’ seems to us to be unnecessary wording.</p>
Part A, para 4(h), page 23	Please see our comment above on the definition of ‘ <i>Balancing Services</i> ’.
Part A, para 4(l), page 24	Our understanding is that preceding this provision in the current licence is sub-paragraph 4(l) of C28 which reads ‘ <i>(l) facilitating an economic and efficient transition to a zero carbon energy system</i> ’ before going on to note the currently proposed C1 para 4(l). Our understanding is that this reference to a zero carbon energy system has been removed due to the overlap with the FSO’s statutory duties.
Part A, para 4(n), page 24	<p>For the reasons set out in our comments in Appendix 1 and above, we suggest that reference to the Primary/Secondary Duty should not be included. (We do not think that stating that outputs must facilitate compliance with the Primary and Secondary duties is consistent with how they are framed in drafting terms in the Energy Bill.)</p> <p>However, we see that an update is needed here and suggest ‘<i>...that the licensee considers to be appropriate...</i>’ (with that being a judgement that would be made in line with the Primary and Secondary duty sitting outside the licence).</p>
Part A, para 4(o), page 24	<p>For the same reasons as above, we suggest a change to ‘<i>...that the licensee considers to be appropriate and to facilitate market development...</i>’ (with that being a judgement that would be made in line with the Primary and Secondary duty sitting outside the licence).</p> <p>We suggest that further consideration is given to retaining the reference to optimal utilisation of resources.</p>
Part A, para 4(s), page 24	<p>We understand that minor amendments have been proposed here for the purposes of this informal consultation. However, we recognise that it is likely to change substantially to implement policy on the Central Strategic Network Plan (CSNP) and we look forward to working with Ofgem and DESNZ to develop the policy and associated drafting.</p> <p>We suggest that this should begin ‘<i>coordinating and engaging with interested parties...</i>’. The FSO cannot ensure that all parties come together to meet this outcome and our understanding is that the purpose of this condition is to set out the activities rather than outputs. Even though this is current licence text, we suggest that the broader context for FSO justifies the change here to make accountabilities clear.</p> <p>It appears to us that there will necessarily be a limitation on the activity that the FSO can deliver on Day 1.</p> <p>For the same reasons as above, we suggest a change to ‘<i>...to meet the needs of the future [Whole Energy System] that the licensee considers to be appropriate and to facilitate market development...</i>’ (with that being a judgement that would be made in line with the Primary and Secondary duty sitting outside the licence).</p>

Part A, para 4(t), page 24	The Bill reference is included in the definition of ' <i>ISOP Advice</i> ' and so the words ' <i>...in accordance with section 168 of the Energy Act 2023</i> ' are duplicative and can be deleted.
Part A, para 4(u), page 24	For the same reasons as above, we suggest a change to ' <i>...that the licensee considers to be appropriate, and publish...</i> ' (with that being a judgement that would be made in line with the Primary and Secondary duty sitting outside the licence).
Part A, para 4(v), page 24	Please see our comments above.
Part A, para 4(w), page 25	In addition to our comments above, we suggest that the reference to ' <i>responding to</i> ' emergency events could easily be misunderstood. Given it is not part of the policy proposals that FSO should provide an operational response to an emergency (other than where it forms part of the current ESO role), we suggest that this is changed to ' <i>reporting on</i> ' or ' <i>enquiring into</i> '.
Part B, para 5, page 25	<p>We understand that policy discussions are still ongoing on the future coverage of the Roles Guidance.</p> <p>As noted in our response above, we think there are limitations on what the Roles Guidance could cover. For example, it would need to be consistent with the broader framework for the FSO's statutory objectives. The proposals would also be a substantial change to the role the document plays today.</p>
Part B, para 8, page 25	We would suggest a slight reword to this (and the equivalent provision in the GSP licence) to read ' <i>Before issuing new or amended ISOP Roles Guidance...</i> '.
Part B, para 9, page 35	It appears that the reference to paragraph 6 is incorrect and should be amended to read ' <i>paragraph 8</i> '.
Part C, para 10, page 25	<p>We note that the derogation is still based on the single criterion of efficiency. It would be helpful to discuss whether it would be appropriate to update this.</p> <p>The reference in this paragraph to paragraph 3(i) appears to be incorrect. We note that the reference should be amended to '<i>paragraph 4(h)(i)</i>'.</p>

Condition C2 Licensee's regard to Strategy and Policy Statement

Reference	ESO comments
Part A, para 2, page 25	<p>This paragraph sets out that the FSO must explain in its Business Plan how it has acted in respect of the Strategy and Policy Statement (SPS) in the carrying out of its functions. Currently the ESO's Business Plan is a forward-looking document, setting out our detailed proposals for the forthcoming two-year period. The licence drafting is therefore inconsistent with this business planning approach, and we would welcome further discussion with Ofgem on the best route to meeting Ofgem's expectations in this area.</p> <p>We note that, if anything is included in the licence in relation to the SPS, it is important that this is consistent with the statutory framework set out in the Energy Bill. The words '<i>acted in respect of</i>' do not clearly align with that framework and we suggest this wording should not be used.</p>
Part A, para 3, page 25	We do not object to the principle of a requirement on the FSO to demonstrate how it has had regard to the SPS. However, the provision duplicates other information request provisions and so seems unnecessary.

It would be helpful to discuss further the practicalities of how such a requirement would work. In particular:

- The policy outcomes in the SPS are an expectation of government, rather than Ofgem. We expect to be asked to report to DESNZ on how the FSO has had regard to the SPS. It would be important that the FSO does not have duplicate requirements to report to DESNZ and Ofgem.
- Where the SPS sets out shared policy outcomes for the FSO and Ofgem to work towards together, the practicalities of the FSO being required to report to Ofgem on those may need further consideration. Pulling together such a response to a request from Ofgem may well need the input of Ofgem teams.

Condition C3 Digitalisation

Reference	ESO comments
Part E, para 17, page 27	We would suggest a slight reword to this and the equivalent provision in the GSP licence to read ' <i>Before issuing new or amended DSAP Guidance</i> '.
Part E, para 17, page 27	We suggest that the references to ' <i>guidance</i> ' are changed to ' <i>guidance document</i> ', since this links more closely with the definition.

Condition C4 Electricity System Restoration Standard

Reference	ESO comments
Part A, para 2(b), page 28	Given general rules of interpretation, we suggest referring to ' <i>direction</i> '.
Part A, para 3, page 28	We agree with the change, but it may be clearer to add ' <i>where the licensee has the power to propose modifications</i> ' in brackets.
Part D, para 16, page 30	<p>We do not see the reference to the Primary and Secondary Duty as helpful here. In particular, the FSO must carry out all its functions in the way that it considers is best calculated to promote the three objectives, acting in accordance with its Secondary Duty.</p> <p>Ofgem has separate statutory objectives to apply to its decisions. Given Ofgem will apply these in any case, and these will include the consideration of economy and efficiency and value for money, we suggest that the criteria for Ofgem's direction may be removed.</p> <p>We note that there are no similar criteria for Ofgem's initial approval under paragraph 11. Removal of the criteria would simply align the two approval processes.</p>

Condition C5 Limits on the level to which Transmission Services are provided

Reference	ESO comments
Part A, para 2, page 31	Please see our comment on the definition of ' <i>Transmission Services</i> ' above.

Condition C6 Licensee's obligations regarding critical national infrastructure

Reference	ESO comments
General, from page 31	Please see our comments above on the definition of ' <i>Whole Energy System</i> '.
Introduction, para 1, page 31	For clarity, we suggest changing the final words to ' <i>...where requested by the Secretary of State</i> '.
Part A, para 2, page 31	Condition A1, paragraph 4 provides that the provisions of the licence are to be read as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them. Section 6 of the 1978 Act provides that, unless the contrary intention appears, words in the singular shall include the plural and vice versa. On that basis, the words ' <i>(or methodologies)</i> ' where they appear should be deleted and ' <i>parts(s)</i> ' should be ' <i>part</i> '. This is consistent with the drafting approach taken generally across the licence.
Part A, paras 2(d) and 4(d), page 32	For consistency with other parts of the licence, we suggest changing ' <i>the licensee views...</i> ' to ' <i>...the licensee <u>considers</u>...</i> '.
Part A, para 4, page 32	For clarity, we suggest changing to ' <i>...must, when requested by the Secretary of State, apply...</i> '. This formulation is consistent with Condition C6, Part B.

Condition C7 Energy resilience and resilience reporting

Reference	ESO comments
General	<p>The term '<i>whole energy system</i>' sets the scope for the obligations of this condition but is not currently a proposed new defined term in the licences. We think it is very important that this term is defined to provide clarity and certainty on the scope of these new roles, both for the FSO and stakeholders moving forward, and to avoid unnecessary disagreements arising over roles and responsibilities.</p> <p>We have set out our proposals in the section on Condition A1 above.</p>
Part A, para 3, page 32	<p>This paragraph is quite long and complex and the intent behind '<i>or manage risks</i>' could be misunderstood as the FSO needing to manage the risks identified for others rather than advising on mitigations and remediations to manage risks.</p> <p>We suggest that the wording be amended to '<i>....The licensee must advise the Authority and the Secretary of State on any mitigations and remediations the licensee considers could be applied to:</i></p> <ul style="list-style-type: none"> <i>(a) improve whole energy system resilience, or</i> <i>(b) manage risks or threats identified in accordance with paragraph 2 including products, services and regulatory changes ..</i>'.
Part B, para 4, page 32	<p>Our understanding is that the Secretary of State or Ofgem will request analysis/assessment in relation to one or more specific events. On that basis, we suggest that the drafting is changed to:</p> <p><i>'The licensee must, when requested by the Authority or the Secretary of State, provide post-event analysis and assessment in relation to an event that has impacted, or could have impacted, the licensee, consumers, or any licensed party operating across the National Electricity Transmission System, Distribution Systems or Electricity Generators'.</i></p>

Part B, para 5, page 33	<p>As above, our understanding is that the Secretary of State or Ofgem will request analysis/assessment in relation to one or more specific emergencies. On that basis, we suggest that the drafting is changed to:</p> <p><i>'The licensee must, when requested by the Authority or the Secretary of State, provide post-emergency analysis and assessment <u>in relation to an emergency which has occurred on the National Electricity Transmission System</u>'.</i></p>
Part C, para 7(a), page 33	For clarity, we suggest ' <i>...that the Secretary of State <u>has requested</u></i> '.
Part C, para 7(b) and (c), page 33	For clarity, we suggest ' <i>...threats <u>included in the licensee's view under...</u></i> ' in both of sub-paragraphs (b) and (c).
Part C, para 8, page 33	We would like to ensure that the list of parties with which the FSO must engage to produce the energy resilience assessment report listed in this paragraph aligns with the scope of the resilience role for Day 1. Use of the term ' <i>Transmission Licensees</i> ' seems broader than the initial scope.
Part D, para 9, page 33	<p>In the initial wording, '<i>...relevant accompanying information and analysis...</i>' does not seem clear to us. We suggest this is updated to '<i>..., along with such accompanying information and analysis that the licensee considers appropriate to provide, ...</i>'.</p> <p>As well as this, the obligation to provide the Emergency Processes Assessment and relevant accompanying information to materially impacted parties may need further consideration. Presumably some content may be relevant to one party but not another and some content could be commercially sensitive such that it could be seen by the party that provided it, but it would not be appropriate to disclose it to other commercial parties. It would be helpful to discuss this further to ensure that risks around disclosure are avoided.</p>
Part D, para 10, page 33	For clarity, we suggest ' <i>...that the Secretary of State <u>has requested</u></i> ' in the final wording.
Part D, para 10(a), page 33	For clarity, we suggest ' <i>...assessment of scenarios and <u>its view on best practice for emergency processes and preparedness</u></i> '.
Part D, para 10(b), page 33	For clarity, we suggest ' <i>...<u>the licensee's recommended improvements and learnings...</u></i> '.
Part E, para 12, page 34	In line with our comment above for paragraph 9, we think this requires further consideration to ensure that risks around disclosure of information are avoided.
Part E, para 13, page 34	<p>It does not read as clear in the drafting what the '<i>incidents and emergencies</i>' relate to, since the list is referring to the persons being assessed.</p> <p>We suggest changing this to '<i>...readiness for incidents and emergencies <u>occurring on (including assessing persons that operate or are connected to):...</u></i>'</p>
Part E, para 13(a), page 34	Suggest change to ' <i>National Electricity <u>Transmission System</u></i> '.
Part E, para 13(c), page 34	For clarity, we suggest ' <i>...that the Secretary of State <u>has requested</u></i> ' in the final wording.

Condition C8 EMR Arrangements

Reference	ESO comments
Condition Title, page 34	It may be beneficial to amend the title of condition C8 to ' <i>Electricity Market Reform (EMR) arrangements</i> '. This better reflects the formatting of conditions C10 and C13 where acronyms are introduced and alleviates any ambiguity around EMR Arrangements being a defined term.
Part B Customer and Stakeholder Satisfaction Surveys, page 35	We question the rationale for maintaining a separate EMR customer and stakeholder satisfaction survey when this could form part of the broader survey covering all of the FSO's activities, particularly as the EMR physical ringfence has now been removed. Removing the requirement for a separate survey would also streamline our surveying process from our customers' perspective.

Condition C9 Procurement and use of Balancing Services

Reference	ESO comments
General	See our comments above on the definition of ' <i>Balancing Services</i> '.
Introduction, para 1, page 36	We do not see the references to Primary and Secondary Duties here as particularly helpful. Such wording could in theory be included in almost all licence conditions and we do not see a particular reason to include it here.
Part B, para 5(b), page 36	It appears to us that this paragraph should refer to ' <i>...paragraphs 22 and 23...</i> '.
Part C, para 6, page 37	<p>We do not see that there is a need to refer to new statutory duties here, which will apply to the development of the statement in any case.</p> <p>We suggest a change to '<i>...The licensee must have in place a statement approved by the Authority setting out (consistently with the licensee's obligation under paragraph 3 and consistently with its other duties under the Electricity Act 1989 and the conditions of this licence) the principles and criteria by which the licensee will determine, at different times and in different circumstances, which Balancing Services the licensee will use to assist in coordinating and directing the flow of electricity onto and over the National Electricity Transmission System and when the licensee would resort to measures not involving the use of Balancing Services;...</i>' (The statement would be made in line with the Primary and Secondary duty sitting outside the licence).</p> <p>We note that a further concern with the current drafting is that it leads to a lack of clarity around whether Ofgem expects the balancing principles statement to be approved by it again for FSO Day 1, even if a statement has already been approved. We welcome further discussion on this.</p>
Part D, para 9(a), page 37	We suggest changing to " <i>Balancing Services Adjustment Data <u>Methodology</u></i> ".
Part D, para 9(d), page 37	Based on the standard rules of interpretation, we suggest a change to ' <i>Prices</i> '.
Part E, para 12, page 38	We note that ' <i>in Writing</i> ' seems unnecessary here. It is taken as implicit in other paragraphs of the condition.
Part E, para 12(b), page 38	It seems to us that this should be split into two sub-paragraphs, with sub-paragraph (c) starting from ' <i>...at all times...</i> '. This mirrors other parts of the condition.

	Based on the standard rules of interpretation, we suggest a change to ' <i>Prices</i> '.
Part H, para 22(d), page 40	This sub-paragraph appears to us to be unnecessary given the standard rules of interpretation that an Ofgem direction may be subject to conditions.
Part H, para 23, page 40	We appreciate that this is existing licence drafting, but this paragraph does not seem particularly clear to us and we welcome a discussion around whether it could be clarified.

Condition C10 Network Access Policy (NAP)

Reference	ESO comments
General, from page 41	See our comments above on the term ' <i>NAP</i> '.

Condition C11 Requirements of a Connect and Manage Connection

Reference	ESO comments
General, from page 42	Obligations from ESO's current standard licence condition C26 have been elevated from a duty for ESO to use ' <i>all reasonable endeavours</i> ' to ' <i>best endeavours</i> ' in relation to discharging its functions in this area. Our understanding is that it is not generally intended to change existing obligations without a clear rationale and we are not aware that the impact of the higher standard has been considered. We request maintaining reference to ' <i>all reasonable endeavours</i> '.
Part A, para 4, page 42	We question whether the requirement for the Connect and Manage Derogation Report, as required by this obligation, is necessary for the FSO and request that Ofgem review the ongoing need for this report.
Part B, para 10, page 43	For clarity, we suggest that the final sentence should be moved to a separate paragraph and reworded as follows – ' <i>This condition does not require the licensee to produce any information which exceeds that which may...</i> '.

Condition C12 Production of information about the National Electricity Transmission System

Reference	ESO comments
General	We understand that minor amendments have been proposed to this licence condition for the purposes of this informal consultation. However, we recognise that it is likely to change substantially to implement policy on the Central Strategic Network Plan (CSNP) and we look forward to working with Ofgem and DESNZ to develop the policy and associated drafting.
Part A, Para 4 page 44	<p>We do not see the references to Primary and Secondary Duties here as helpful and it seems unclear. We acknowledge that this is intended to be an update to existing licence drafting, but it is not clear how the '<i>form and manner</i>' of the ETYS links to the Primary and Secondary Duties (although they will be relevant in its preparation). We suggest that it would be preferable to remove this language and change the paragraph to: .</p> <p><i>'The licensee must prepare the ETYS in accordance with the Development Information Objectives.'</i></p>

	(In line with the new defined term, we suggest that <i>'further'</i> should be deleted. Otherwise it should be added to the defined term.)
Part A, Para 5 page 44	For clarity, we suggest changing the wording in the final wording of the opening sentence to <i>'...in such a form that covers the Development Information Objectives, being:'</i>
Part A, Paras 5(a) to 5(d), pages 44- 45	Given standard rules of interpretation, it seems to us that (a) to (d) can refer to <i>'Interconnector'</i> as (e) does.
Part A, Para 5(e), page 45	<p>We do not see the Primary/Secondary Duties reference as helpful in this sub-paragraph. We suggest that this new wording can be omitted. To ensure that the licence does not include a paragraph which might be read as conflicting with the Primary Duty, we suggest changing this paragraph to:</p> <p><i>'the licensee's best view of the capacity, location and timing of the connection of new Interconnectors. This should take into account the impact on GB wholesale prices, the provision of Ancillary Services, constraint management and other operational considerations;'</i></p> <p>(This will be a view that would be made in line with the Primary and Secondary duty sitting outside the licence, which incorporate consideration of an efficient, economical and coordinated system of electricity).</p>
Part A, Para 8, page 45	Again, we do not see the Primary/Secondary Duties reference as helpful in this sub-paragraph. For the same reasons as above, we suggest a change to <i>'...revisions to the ETYS that the licensee considers to be appropriate and to facilitate Development Information Objectives...'</i> (that being a judgement that would be made in line with the Primary and Secondary Duty sitting outside the licence).
Part C, Para 15, page 46	It appears that the reference in this paragraph to paragraph 15 should be amended to paragraph 14.
Part A, Para 18, page 47	We note that the term <i>'coordinated development objective'</i> is no longer defined. We suggest that this could be expanded to refer to <i>'the development of an efficient, co-ordinated and economical system of electricity transmission'</i> .

Condition C13 The Network Options Assessment (NOA) process and reporting requirements

Reference	ESO comments
General	<p>We understand that minor amendments have been proposed to this licence condition for the purposes of this informal consultation. However, we recognise that it is likely to change substantially to implement policy on the Central Strategic Network Plan (CSNP) and we look forward to working with Ofgem and DESNZ to develop the policy and associated drafting.</p> <p>Please see above our comments on the definition of Network Options Assessment.</p>
Introduction, para 2, page 48	<p>If this is intended to be an introductory paragraph, we suggest that the language of obligation should be changed to set out that these outputs are the purpose of the condition, rather than licence obligations.</p> <p>If it is intended to be substantive and not introductory we note that the references to transparency and independence are taken from existing licence drafting, but suggest</p>

	that it would be helpful to reconsider these in the context of FSO. We suggest that it would be helpful to clarify the reference to transparency given the various other information provisions set out in the licence. We also suggest that the reference to independence is covered in Condition B1 and need not be duplicated. We therefore suggest – ‘... <i>in a manner than best ensures a transparent process</i> ’.
Part A, para 7, page 49	<p>We do not see the Primary/Secondary Duties references as helpful in this sub-paragraph (although they will be relevant to preparation of the NOA). We suggest that the opening line of this paragraph can set out ‘<i>The NOA methodology must include (but need not be limited to):</i>’..</p> <p>Sub-paragraph (b) could refer to ‘...<i>assessing options to meet system needs, as set out in the NOA report...</i>’.</p>
Part B, para 9(a), page 49	For the same reasons as above, we suggest a change to ‘... <i>prepared and published in the previous Financial Year and consider any improvements...</i> ’ (that being a judgement that would be made in line with the Primary and Secondary duty sitting outside the licence).
Part B, para 13, pages 50 & 51	<p>As above, we do not see the Primary/Secondary Duties references as helpful in this paragraph (although they will be relevant to activities set out). We suggest that all references to the Primary and Secondary Duties are omitted throughout.</p> <p>It appears to us that the reference in the opening sentence should be to the approved methodology in paragraph 6.</p>
Part B, para 13(d), page 51	The term ‘ <i>Guidance on the Criteria for Competition</i> ’ could be defined to prevent repetition and shorten the drafting.
Part B, para 13(f), page 51	We suggest that ‘ <i>plan</i> ’ should be capitalised.
Part B, para 14, page 51	Again, we do not see the Primary/Secondary Duties reference as helpful in this sub-paragraph but suggest that this should end at ‘ <i>onto and over the National Electricity Transmission System</i> ’.
Part C, para 15(a), page 51	As above, we suggest a change to ‘... <i>This must include information on the potential for coordination between parties where the licensee’s analysis suggests coordination could be appropriate. The licensee must provide...</i> ’ (that being a judgement that would be made in line with the Primary and Secondary duty sitting outside the licence).
Part D, para 19, page 53	Given other powers to request information in the licence, this paragraph seems redundant to us.

Condition C14 Electricity Network Innovation Strategy

Reference	ESO comments
General	Please see our more general comments in Appendix 2 above.
Introduction, para 2, page 33	We do not propose a change here, noting that the wording is used in different licences. However, we note that given the remit of the FSO it will also be undertaking innovation work in a range of areas outside of the projects referred to here.
Part A, para 3, page 33	See our comment above on the definition of ‘ <i>Relevant Network Licensees</i> ’.

Part B, Para 5(b), page 54	We suggest amending the reference for accuracy to ' <i>paragraph 5(a)</i> '
Part B, Para 6(d), page 54	Unless the difference in wording is intentional, we suggest amending the following phrasing to align to the equivalent GSP provision which reads ' <i>... Consideration <u>should</u> be given to the suitability of the Relevant Network Licensees...</i> '.

Condition D1 Provision of ISOP Advice

Reference	ESO comments
Part A, para 2, page 56	The Bill reference is included in the definition of 'ISOP Advice' and so the words ' <i>...in accordance with section 168 of the Energy Act 2023</i> ' are duplicative and can be deleted.
Part B, para 3(b), page 56	<p>This requires the FSO to retain a copy of correspondence related to ISOP Advice provided, and related to each request, without any stated deadline for the retention.</p> <p>We would like to understand if there is a more specific intention for retaining such records to avoid the unnecessary burden of retaining all correspondence. For example, we suggest that this be limited to formal meetings and correspondence between the requester and the FSO relating to the scope of the request.</p> <p>More broadly, we note that Condition D2 sets out a 6-year retention period, which seems appropriate in this condition also.</p>
Part B, para 3(c), page 56	Under the duties set out in the Energy Bill it is not open to the FSO to simply refuse a request for advice. To align with the legislation, we suggest that this is changed to ' <i>a record of any correspondence setting out the licensee's position that it is not reasonably practicable for it to comply with a request</i> '.
Part B, para 4, page 56	For clarity we suggest ' <i>as the Authority or the Secretary of State <u>has requested</u></i> '.
Part B, para 5, page 56	It seems to us that this duplicates Condition D3, paragraph 4 and so can be deleted.

Condition D2 Information requests by the licensee

Reference	ESO comments
Introduction, para 1, page 56	The words ' <i>and requirements</i> ' seem redundant.
Part A, para 3, page 57	For clarity, we suggest a change to ' <i>Where the licensee requests information under section 169...</i> '.
Part B, para 6, page 57	For clarity, we suggest a change to ' <i>to better facilitate the licensee making requests for information under...</i> '. (The statement will facilitate the process, rather than acting in accordance with the duty.)
Part B, para 8(c), page 57	The proposed time of 14 days seems short in circumstances where there is unlikely to be an urgent need for the change and the FSO should give thorough consideration to any consultation responses. We suggest that 28 days would be a more appropriate time period.
Part B, para 11, page 57	We suggest that the references should also include paragraph 4.

Part C, Heading, page 58	We note that the heading that currently reads 'Part B: Reporting requirements' should be ' <i>Part C</i> '.
Part C, para 13, page 58	For clarity we suggest ' <i>as the Authority <u>has requested</u></i> '.

Condition D3 Provision of information to the Authority

Reference	ESO comments
General	We agree that the proposal to remove the ultimate controller undertaking provisions seems appropriate.
Part A heading, page 58	We suggest that "information" does not need to be capitalised as it is not a defined term.
Part A, para 2, page 58	It appears that the reference to paragraph 6 is incorrect and should instead reference ' <i>paragraphs 3 and 5</i> '.
Part B, para 5, page 59	For clarity, we suggest that this should be changed to – ' <i>This condition <u>does not</u> require the licensee to produce any documents...</i> '.

Condition D4 Provision of information and assistance to the Authority in relation to applications requiring the appointment of an Offshore Transmission Owner

Reference	ESO comments
Part A, para 2(c), page 60	Although taken from the current licence drafting, it seems to us that the reference to ' <i>variation(s)</i> ' in 2(c) may be an error and should be a reference to ' <i>agreement</i> '. Due to standard rules of interpretation, we suggest changing to ' <i>variation</i> ' if this word is retained.
Part A, para 10, page 61	For clarity, we suggest that this should be changed to – ' <i>This condition <u>does not</u> require the licensee to provide any information to the Authority for the purpose of...</i> '.
Part A, para 11, page 61	For clarity, we suggest that this should be changed to – ' <i>This condition <u>does not</u> require the licensee to produce any documents...</i> '.

Condition D5 Data assurance requirements

Reference	ESO comments
General	We agree with the removal of the current paragraph 6 of this condition in the ESO's licence, which is redundant.
Part B, para 7(g), page 64	Due to standard rules of interpretation, we suggest changing to ' <i>period</i> '.

Condition D6 Regulatory Instructions and Guidance (RIGs)

Reference	ESO comments
Introduction, para 1, page 65	It is proposed to remove some detail from the introduction. We understand that there is not a proposal to broaden the scope of the RIGs and it would be helpful to confirm this point.
Part A, para 6, page 66	Noting that this is taken from existing licence wording, we welcome discussion on whether this could be made more readable; perhaps bringing together paragraphs 6 and 14.

Condition E1 Balancing and Settlement Code (BSC)

Reference	ESO comments
General	<p>E1 is very similar to Standard Condition C3 of the ESO's current licence. The ESO is currently required by condition C3 of its Transmission Licence to have in force and maintain the BSC which it does through its appointment of Elexon as the BSC Company.</p> <p>Other than the ability as a party to the BSC to propose code modifications, the FSO will have limited ability to ensure compliance with its licence condition. We understand that this will continue to be the position until the BSC is 'designated' under the Energy Bill which will entail the appointment of a licenced Code Manager. The BSC contains indirect mitigations to ESO's compliance with its licence condition through provisions such as Section F para 1.2.2(b) which compels the BSC Panel to modify the BSC in way that facilitates achievement of the Applicable BSC Objectives.</p> <p>In order to ensure that the FSO is subject only to requirements which it is fully able to comply with, we would ask that further consideration is given to the removal of the majority of these licence requirements or, at least, to modifying the wording as proposed below to acknowledge the relevant role that the licensee will play under the BSC.</p> <p>It is understood that while the paragraph requiring the FSO to establish a BSCCo is left in the informal consultation document it is understood that this will be removed if ownership transfer is achieved on or before FSO Day 1.</p>
General	<p>Whilst we look forward to working closely with Ofgem to further develop E1 in a way that more closely reflects the FSO's ability to comply with its licence condition, including our preference for a more substantial change to the drafting, we would like to propose at this stage substitution of paragraph 35 with a new paragraph 2 as follows:</p> <p><i>'2. Without prejudice to any rights of approval, veto or direction the Authority may have, the licensee must use its reasonable endeavours to take such steps (including ensuring that procedures are in place) to facilitate the BSC meeting the requirements set out for it in this condition including by:</i></p> <p><i>(a) taking such steps as necessary to comply with any such rights of approval, veto or direction as the Authority may issue from time to time;</i></p> <p><i>(b) raising code modification proposals;</i></p> <p><i>(c) providing such assistance as required under the BSC; and</i></p>

	<i>(d) creating or modifying industry documents including but not limited to the BSC, Core Industry Documents and Industry Codes where necessary, and, for the avoidance of doubt, this condition does not require the licensee to ensure anything which is outside its power or control.'</i>
Part A, paras 7-12, page 10	To the extent that reference to the EMI Modification Proposal is necessary to ensure ongoing compliance, we do not consider that references to 1 April 2018 which is a date when various aspects of the EMI Modification Proposal were expected to be implemented by is necessary.
Part A, para 12 (b), page 71	It appears that there is a formatting error which has resulted in paragraphs 12(c) and 12(d) being numbered incorrectly. These paragraphs should be amended and renumbered to paragraphs 12(b)(i) and 12(b)(ii) respectively.
Part A, para 13, page 71	We suggest that reference should also be made to the obligations of the FSO under the Energy Act 2023 and to consider whether further drafting should be introduced pertaining to the amendments to section 9 of the Electricity Act 1989 introduced by clause 174 of the Energy Bill. We suggest that the reference in paragraph 13(d) should be to paragraph 12.
Part A, para 16, page 72	It appears that the reference to paragraph 15(c) is incorrect and should be amended to 14(c).
Part C heading, page 76	We suggest amending the formatting of the heading of Part C to remove any ambiguity surrounding "Self-Governance Route" being a defined term. We suggest changing to ' <u>Self-governance route</u> '.
Part D, para 25, page 79	The sentence beginning ' <i>The Authority...</i> ' may read better as a separate paragraph. This point applies equally to paragraph 28.
Part D, para 29, page 81	We suggest ' <i>...may issue a Backstop Direction, which...</i> ' (given the defined term).
Part E, para 32, page 81	The two sub-paragraphs (iv) and (v) should be further indented sub-paragraphs as part of sub-paragraph (iii).

Condition E2 Connection and Use of System Code (CUSC)

Reference	ESO comments
Part A, para 2, page 83	Consider re-ordering reference to the conditions listed in this paragraph to match the sequence in the licence, i.e. B6, E3, E10, E11, E12, E13
Part A, para 4(a)(iii), page 83	We suggest this should be sub-paragraph (b), with the following numbering updated accordingly.
Part A, para 4(a)(iv), page 84	We suggest that reference should also be made to the Energy Act 2023 within the scope of the Applicable CUSC Objectives.
Part A, para 6, page 84	We suggest that this does not need to repeat the obligation to prepare the CUSC.
Part A, para 9, page 85	We suggest ' <i>...do not limit</i> '.

Part B, para 10(i)(iv), page 87	The references to ' <i>paragraphs 4(b)(i) and 4(b)(ii)</i> ' should be amended to read ' <i>4(a)(i)</i> ' and ' <i>4(a)(ii)</i> ' respectively.
Part B, para 10(j)(ii), page 89	A portion of text is set out below which can remain with the opening text.
Part C, para 11, page 89	We suggest simply referring to ' <i>this paragraph</i> ' (without ' <i>11</i> ').
Parts C, D, E, pages 89-96	The tracked version of the licence (Annex B of the consultation) appears to have been incorrectly tracked, leading to omission of Parts C-E of the licence showing in the clean version (Annex A).

Condition E3 Grid Code

Reference	ESO comments
Part A, para 2(b), page 97	We suggest that reference should also be made to the obligations of the FSO under the Energy Act 2023 and to consider whether further drafting should be introduced pertaining to the amendments to section 9 of the Electricity Act 1989 introduced by clause 174 of the Energy Bill.
Part A, para 2 page 97	The wording ' <i>paragraph 5 without prejudice to the obligations in paragraph 5...</i> ' seems unclear to us and we request this is considered further.
Part A, para 2(b)(ii), page 97	We suggest ' <i>...restricts...</i> '.
Part A, para 4(c), page 98	Rephrase to read as 2 sentences – ' <i>the Grid Code Administrator. In addition to...</i> '
Part A, para 4(c)(4), page 98	We suggest lower-case ' <i>accessing</i> '.
Part A, para 5(d), page 99	We suggest changing to ' <i>Generation Sets</i> '.
Part B, para 6(g)(vii)(3), page 101	The reference to ' <i>paragraph 6(g)(iv)</i> ' appears to be incorrect and should be amended to reference ' <i>paragraph 6(g)(vi)</i> '.
Part B, para 6(x), page 101	We suggest changing to ' <i>this paragraph 6</i> '.
Part C, para 10(d), page 102	The reference to ' <i>paragraph 10(g)(v)</i> ' appears to be incorrect and we suggest that this should reference ' <i>6(g)(v)</i> '.
Part C, para 11, page 103	We suggest changing to ' <i>Working Days</i> '.
Part C, para 13(d), page 104	Typo – amend ' <i>paragraph 13©</i> ' to ' <i>paragraph 13(c)</i> '.
Part D, para 15(e), page 105	The reference to paragraphs ' <i>11(b)</i> ' and ' <i>11(d)</i> ' appear to be incorrect and should be amended to reference paragraph ' <i>15(b)</i> ' and ' <i>15(d)</i> ' respectively.

Condition E4 System Operator – Transmission Owner Code

Reference	ESO comments
Part A, para 2, page 108	We suggest changing to ' <i>...to which standard condition...</i> '.
Part A, para 4, page 109	It appears to us that the final paragraph may be better as a standalone paragraph.
Part A, para 4(b)(ix), page 109	We suggest a change to ' <i>...and Condition C13...</i> '.
Part A, para 5, page 109	There is a typo in the opening sentence that should read ' <i>...referred to in paragraph 2(c) are:</i> '
Part A, para 7	Suggest amending ' <i>must not</i> ' to ' <i>do not</i> '.
Part C title, page 114	We suggest amending the formatting of the title of Part C to remove any ambiguity surrounding 'Self-Governance Route' being a defined term. We suggest change to ' <i>Self-governance route</i> '.
Part C, para 9(e)(i), page 114	We suggest changing to ' <i>Working Day</i> '.
Part C, para 10, page 115	We suggest changing to ' <i>Working Days</i> '.
Part C, para 11(b), page 115	It appears that the second reference to 9(d) on line 4 of this licence condition is incorrect and should instead reference paragraph 10.
Part C, para 12(d), page 115	We suggest changing to ' <i>Working Days</i> '.
Part C, para 13, page 116	Could a reference to paragraph 13 be included in paragraph 7, rather than using the current opening wording in paragraph 13?
Part D, para 18(a)(ii)-(vii), pages 117-118	Suggest amending the verbs to fit the opening statement i.e. amending ' <i>assessment</i> ' to ' <i>assessing</i> ' and ' <i>inclusion</i> ' to ' <i>including</i> '.
Part G, para 25(a), page 120	Suggest adding words ' <i>for admitting as an additional party to the STC Framework Agreement</i> ' and amend ' <i>any persons</i> ' to ' <i>any person</i> '.

Condition E8 SO-TO Optimisation Governance

Reference	ESO comments
General	Although reflecting in part existing licence drafting, we note that the name of the relevant Ofgem document is the SO:TO Optimisation Governance Document. It may be clearer to reflect this in full in the licence condition and to amend the relevant definition accordingly.
Part A, para 6, page 124	Although reflecting existing licence drafting, we note that the initial sentence of this condition is not particularly clear and does not reflect the wording in transmission owner licences.

Part B, para 10, page 125	This relates to an obligation to publish a SO-TO Optimisation Report. We understand from Ofgem's recent decision on the SO-TO optimisation output delivery incentive ²¹ that annual reporting requirements will be moved to the Regulatory Reporting Pack cycle. The licence will therefore need to be clear on the reporting requirements going forward on this area.
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Condition E9 Duty to cooperate

Reference	ESO comments
Introduction and Part A, paras 1-2, page 125	We suggest that paragraph 1 could be simplified as there is a degree of overlap and repetition with paragraph 2.

Condition E10 Use of System charging and methodology

Reference	ESO comments
Part A, Heading, page 126	We suggest a change to ' <i>...Charges</i> '.
Part A, para 2(a), page 126	Use of the word ' <i>determine</i> ' – perhaps this was more appropriate at legal separation. Suggest the obligation should be to ' <i>have in force</i> ' or to ' <i>maintain</i> ' a Use of System Charging Methodology given that the methodology sits in CUSC and is subject to the usual industry code governance framework. It's arguable whether this is needed at all – see the omission of a similar obligation in E11 (taken from C6 of the current licence).
Part A, para 3(c), page 127	<p>The wording here is a little unclear. Suggest the simplest way to clarify the obligation is to break the middle part down into two sub-paragraphs, so that it reads:</p> <p><i>'...change is made in:</i></p> <p>(i) <i>the Use of System Charges other than in relation to charges to be made in respect of the Balancing Services Activity; or</i></p> <p>(ii) <i>the Use of System Charging Methodology,</i></p> <p><i>the licensee must...'</i></p> <p>We suggest replacing '<i>accepts</i>' with '<i>consents</i>' to follow more standard licence wording.</p>
Part A, para 7, page 128	We welcome further discussion as to whether we could make the drafting of this paragraph clearer.
Part A, para 8, page 128	<p>Query whether the definitions mean that paragraph 8(a) is no longer needed.</p> <p>On paragraph 8(b), perhaps adding '<i>...as being excluded</i>' or similar at the end may help to clarify this provision.</p>
Part B, Heading, page 128	We suggest a change to ' <i>Charging Methodology</i> '.

²¹ [RIIO-2 System Operator: Transmission Owner Optimisation output delivery incentive \(ofgem.gov.uk\)](https://www.ofgem.gov.uk/rpr/regulation/2022/03/riio-2-system-operator-transmission-owner-optimisation-output-delivery-incentive)

Part B, para 12, page 128	We suggest that, in line with Condition E11, it would be helpful to have a defined term for relevant objectives. We have suggested adding a definition of Use of System Charging Objectives.
Part B, para 13, page 128	We suggest ' <i>...modifications <u>to</u> the Use of System Charging Methodology...</i> '.
Part B, para 15, page 129	We suggest changing to ' <i>...application of Transmission Licence special condition 4C...</i> ' and also removing the square brackets to correct formatting.

Condition E11 Connection Charging Methodology

Reference	ESO comments
Part A, para 4, page 130	Amend ' <i>for the purpose of to better achieving</i> ' to ' <i>for the purpose of better achieving</i> '.
Part A, para 6, page 131	The reference to paragraph 2 seems incorrect here. We question whether this is needed.
Part B, para 8, page 131	We welcome further discussion on how this drafting could be made clearer.
Part B, para 12, page 132	It isn't clear what ' <i>report</i> ' is being referred to in this paragraph.
Part B, para 12, page 132	We propose amending to ' <i>The licensee must <u>publish</u> a copy of any Connection Charging Methodology Statement or revision thereof or report furnished under paragraphs 5 or 10 <u>on its website</u>.</i> ' This obligation is currently discharged by way of publication and we think the drafting could be updated to reflect this.
Part C, para 14, page 132	We suggest changing to ' <i>...application of <u>Transmission Licence special condition</u>...</i> ' and also removing the square brackets to correct formatting.

Condition E12 Requirement to offer terms

Reference	ESO comments
Part A, para 4, page 133	It may be clearer to cross-reference paragraph 2(b) here.
Part A, para 7, page 134	We do not see the Primary/Secondary Duties references as helpful in this sub-paragraph (although they will be relevant to activities set out). We suggest that all this should be changed to ' <i>...the solution to be included in the offer to enter into a Bilateral Agreement and/or Construction Agreement under this condition</i> '.
Part A, para 8(c), page 135	We suggest this should refer to paragraph 2(a).
Part A, para 15, page 136	There are two errors in the text below (a) and (b). We suggest a change to ' <i>submit...</i> ' And to remove 'o'.

Condition E13 Functions of the Authority

Reference	ESO comments
Part D, para 9, page 139	The words in the sentence from ‘ <i>such dispute may be referred to the Authority...</i> ’ should be moved into a sub-paragraph and aligned left to the same level as the opening words to paragraph 9, as they apply to both sub-paragraphs (a) and (b).
Part D, para 9(b), page 140	We suggest changing to ‘ <u>Statement of the Connection Charging Methodology</u> ’ as this is a defined term.

Condition E15 Assistance for Areas with High Distribution Costs Scheme (AAHDCS)

Reference	ESO comments
General	<p>While we agree that merging the current draft conditions is helpful, we welcome discussion on whether the condition can be further shortened by bringing together some provisions relating to the Assistance Amount and the Shetland Assistance Amount.</p> <p>We note that the formulae conditions are missing colons and semi-colons where they would normally be included in such licence provisions.</p>
Part B, para 7, page 148	We suggest that this paragraph will need to be reconsidered. From Day 1 of FSO, the provisions will need to map back to the previous provisions of the ESO’s transmission licence and this should be made clear. This is a general point that it would be helpful to discuss as the financial provisions are developed.
Part B, para 14(c), page 147	We suggest ‘ <i>paragraph 11 including</i> ’.
Part B, para 16, page 148	We propose amending this condition, so that it reads in its entirety ‘ <i>For each Relevant Year, as soon as reasonably practicable after the preparation of the statement made pursuant to paragraph 15 and not less than 1 month prior to issuing the first invoice in the Relevant Year to which such statement relates, the licensee shall <u>publish</u> a copy of the statement <u>on its website</u></i> ’. This obligation is currently discharged by way of publication and we think the drafting could be updated to reflect this.
Part B, para 17, page 148	We propose amending to ‘ <i>The licensee must <u>publish</u> a copy of any statement prepared pursuant to paragraph 14 <u>on its website</u></i> ’ for the reasons described above.

Miscellaneous comments regarding the Electricity System Operator licence

Reference	ESO comments
Annex E – NGESO licence condition assessment	We note that Special Condition 2.9 (Services treated as Directly Remunerated Services) has been omitted from the table of current NGESO licence conditions in Appendix E. We believe that this condition will be considered as part of the financial model which remains under construction.

Appendix 4 – ESO specific comments on the Gas System Planner licence drafting

This sets out our comments on each licence condition, where applicable. The references in the tables below are in relation to ‘Annex C – Gas System Planner Draft Licence CLEAN’ of Ofgem’s draft licences consultation.

While our comments below are with specific reference to the Gas System Planner (GSP) Licence, there are comments made in Appendix 3 above that are relevant to the conditions in both the Electricity System Operator Licence and the Gas System Planner Licence (where applicable). Comments in Appendix 3 on the conditions listed below should also be read as equally applying to the corresponding conditions in the Gas System Planner Licence in Appendix 4:

- Section A
 - Condition A1 Definitions (for those definitions that are covered in each licence);
 - Condition A2 Interpretation; and
 - Condition A3 Housekeeping licence modifications.
- Section B
 - B1 Independence Requirements and compliance obligations;
 - B2 Restriction on activity and financial ring fencing;
 - B3 Conduct of ISOP Business;
 - B4 Compliance with directions related to national security;
 - B5 Prohibition of cross-subsidies; and
 - B8 Information ring fencing requirements (B6 in GSP Licence).
- Section C
 - C2 Licensee’s regard to Strategy and Policy Statement;
 - C3 Digitalisation;
 - C6 Licensee’s obligations regarding critical national infrastructure (C5 in GSP Licence); and
 - C7 Energy resilience and resilience reporting (C6 in GSP Licence).
- Section D
 - D1 Provision of ISOP Advice;
 - D2 Information requests by the licensee;
 - D3 Provision of information to the Authority;
 - D5 Data assurance requirements (D4 in GSP Licence); and
 - D6 Regulatory Instructions and Guidance (RIGs) (D5 in GSP Licence).

Condition A1 Definitions

Reference	ESO comments
Part A, Funded Incremental Obligated Entry Capacity (spreadsheet)	We suggest that this is changed to refer to ‘ <i>Special Condition 3.13... of the Transporter Licence held by...</i> ’.

Part A, Funded Incremental Obligated Exit Capacity (spreadsheet)	We suggest that this is changed to refer to ' <i>Special Condition 3.13... of the Transporter Licence held by...</i> '.
Part A, Long Term Development Statement (spreadsheet)	It appears that this existing definition is not used within the GSP Licence drafting
Meter-Related Services Business (spreadsheet)	It appears that this existing definition is not used within the GSP Licence drafting
Part A, Relevant Network Licensee (spreadsheet)	We suggest the words ' <i>...or the ISOP</i> ' should be clarified in the final sentence of this definition.

Condition A2 Interpretation

Reference	ESO comments
Part A, para 8(a), page 4	For clarity, consider ending the provision with ' <i>the conditions of this licence</i> ' instead of ' <i>the conditions of the licence</i> '.
Part B, para 13(a), page 5	Please consider whether the correct reference here is to paragraph 16 and not paragraph 18 of B1 of the GSP and ESO licences.
Part B, para 13(b), Page 5	Please consider whether the correct references here are to paragraph 26(h) of condition B1 of the GSP and ESO licences.
Part B, para 13(f), Page 5	Please consider whether references should be to paragraphs 6 of conditions B8 and B6 of the ESO and GSP licences respectively.
Part C, para 16, page 6	Comparing the wording in this paragraph to the equivalent paragraph (17) in the ESO licence, the GSP licence omits the words ' <i>decision or other instrument given or be made</i> '. We would be grateful for further review and inclusion of this wording in the GSP licence if required.

Condition B1 Independence Requirements and compliance obligations

Reference	ESO comments
Part E, para 23, page 12	We note that the term ' <i>ISOP Business</i> ' is used in this condition. We understood that this term would be deleted and so we request that the drafting is amended to mirror the ESO licence condition B1 (Part E, para 23).

Condition B3 Conduct of ISOP Business

Reference	ESO comments
Part A, para 2(f), page 15	Please consider changing ' <i>and</i> ' to ' <i>or</i> ' to align with the equivalent provision in the ESO licence.

Condition C1 Functions under the Gas System Planner Licence

Reference	ESO comments
General	<p>Please see our cover letter and Appendix 1 for general comments on this condition, with our more specific comments set out below.</p> <p>This licence condition will require further review and development at any point when the regulatory model for the FSO changes in the future. It will also require further review as other new roles of the FSO continue to be developed, such as the introduction of Central Strategic Network Plan (CSNP).</p>
Introduction, para 1, page 20	<p>We do not consider that this paragraph accurately describes what is set out in the condition. It seems to us that the purpose condition from Standard Condition C28 would be a better summary. We suggest this is changed to:</p> <p><i>'The purpose of this condition is to provide greater clarity on the obligations of the licensee in carrying out its functions as gas system planner and its broader functions as the designated ISOP'.</i></p>
Part A, para 3, page 20	<p>This paragraph seems unnecessary, since the FSO will carry out the functions of the ISOP pursuant to the designation given by the Secretary of State under the Energy Bill.</p>
Part A, para 4, page 20	<p>Our understanding is that the list is intended to cover the GSP activities and other categories of activity that the FSO must perform. We think that the current long list of functions is not completely clear and suggest that the current list in paragraph 4 is separated into three paragraphs:</p> <ul style="list-style-type: none"> • The first paragraph would include sub-paragraphs (a), (b), (c), (h), (i), (m) and (n) – <i>'In its role as gas system planner, the licensee must (in accordance with the other conditions of its licence or otherwise as it sees appropriate) carry out:'</i> The final wording is added because (even accounting for the drafting changes proposed below, the proposed activities are very broad and could be interpreted in many different ways. If wording such as this is not included, we request that further consideration should be given to making the drafting more specific and making clear the interrelationship between this and the other relevant conditions of the licence. • The second paragraph would include sub-paragraph (d) and two further paragraphs (summarising the FSO's duty to have regard to the SPS and its duty to keep under review developments in the energy sector – <i>'In its role as the ISOP, the licensee has the following statutory duties'</i>. (This paragraph would be legally unnecessary, but would help to give the fuller coverage of activities.) • The third paragraph would include sub-paragraphs (e) to (g) and (i) to (l) – <i>'In its role as the ISOP, the licensee must also (in accordance with the other conditions of its licence or otherwise as it sees appropriate) carry out:'</i>. <p>Including headings between each paragraph may also be helpful.</p>
Part A, para 4(a), page 20	<p>We suggest that this should be <i>'interested parties'</i> as used elsewhere in the condition.</p>
Part A, para 4(c), page 20	<p>We suggest that this should begin <i>'coordinating and engaging with interested parties...'</i>. The FSO cannot ensure that all parties come together to meet this outcome and our understanding is that the purpose of this condition is to set out the activities rather than outputs.</p>

	<p>For the same reasons as set out in Appendix 3 above, we suggest omitting the references to Primary and Secondary Duties and a change to <i>'...to meet the needs of the future [Whole Energy System] that the licensee considers to be appropriate ...'</i> (with that being a judgement that would be made in line with the Primary and Secondary duty sitting outside the licence).</p> <p>This (along with sub-paragraphs (k), (l) and (m)) makes reference to <i>'whole energy system'</i> which is an undefined term in the draft licence. We consider that, for clarity, it should be defined and have proposed definition wording.</p>
Part A, para 4(d), page 20	The Bill reference is included in the definition of <i>'ISOP Advice'</i> and so the words <i>'...in accordance with section 168 of the Energy Act 2023'</i> are duplicative and can be deleted.
Part A, para 4(e), page 20	<p>For the same reasons as above, we suggest a change to <i>'...providing guidance, information and analysis to persons involved in the energy sector, and publish this guidance, information and analysis where appropriate...'</i> (publication involving a judgement that would be made in line with the Primary and Secondary duty sitting outside the licence).</p> <p>(This change works in conjunction with our proposal above around splitting paragraph 4 with our added wording.)</p>
Part A, para 4(f), page 20	We suggest there should be consideration given to whether the wording here should align with para 4(e) of the ESO licence.
Part A, para 4(g), page 20	This paragraph uses the undefined term <i>'energy system'</i> . It would be helpful to discuss the drafting further.
Part A, para 4(j), page 21	<p>We suggest that this should begin <i>'promoting market arrangements...'</i>.</p> <p>The FSO cannot ensure that all parties come together to meet this outcome and will not have the power to ensure it. As above, our understanding is that the purpose of this condition is to set out the activities rather than outputs.</p> <p>This paragraph also uses the undefined term <i>'energy system'</i>. It would be helpful to discuss the drafting further.</p>
Part A, para 4(l), page 21	In addition to our comments above, we suggest that the reference to <i>'responding to'</i> emergency events could easily be misunderstood. Given it is not part of the policy proposals that FSO should provide an operational response to an emergency (other than where it forms part of the current ESO role), we suggest that this is changed to <i>'reporting on'</i> or <i>'enquiring into'</i> .
Part A, para 4(m), page 21	We suggest that this should be <i>'interested parties'</i> as used elsewhere in the condition.
Part A, para 4(n), page 21	We suggest that this wording in particular is too broad if our proposals to the splitting and opening wording above are not made. It would seem to blur accountabilities between FSO and other gas industry parties.
Part B, para 5, page 21	Please see our comments above on the Roles Guidance.
Part B, para 8(d), page 21	Delete the word <i>'the'</i> in the phrasing <i>'or amended <u>the</u> ISOP Roles Guidance'</i> .

Condition C3 Digitalisation

Reference	ESO comments
General, from page 22	This draft condition requires the FSO to have in place a Digitalisation Strategy and Digitalisation Action Plan in relation to the scope of its gas activities. On a practical level, we would like to understand the proposed timing of change in scope in the DSAP from being electricity focussed to including the gas elements and therefore when the FSO will be required to publish the first strategy and action plan that will contain the gas elements.

Condition C4 Licensee's assessment of gas supply security

Reference	ESO comments
Part A, para 3(a), page 24	It is unclear what the obligation on the FSO is here in relation to the words ' <i>assessing a period viewed to be least resilient at future 5 year and 10 year time intervals</i> '. It would suggest that as well as considering gas supply ' <i>availability, reliability and deliverability</i> ' (the first limb of 3(a)), the FSO should identify times within the 5 and 10 year time intervals when gas supplies are least resilient with reference to those factors. If that is the intention, for clarity, perhaps this could stand as a separate obligation separate to 3(a).

Condition C5 Licensee's obligations regarding critical national infrastructure

Reference	ESO comments
General, from page 25	This licence condition is a duplicate of C6 of the ESO draft licence. The scope of the obligations relates to sites, systems and assets in the electricity sector as well as parts of the whole energy that FSO deems to be appropriate to include. We consider that the rationale for the duplication of this licence condition here is to indicate that the FSO may consider sites, systems and assets in the gas sector as well, notwithstanding a future amendment to the condition whereby Ofgem can add explicit reference to reflect that intention. We do not consider that duplicating the licence condition affects the scope of the FSO's functions in this area. Further to the above, we would be grateful if Ofgem could confirm the rationale for the duplication.

Condition C6 Energy resilience and resilience reporting

Reference	ESO comments
General, from page 26	In a similar way to C5, this licence condition is a duplicate of C7 of the ESO draft licence. The scope of the obligations relates to the electricity sector as well as parts of the whole energy. We consider that the rationale for the duplication of this licence condition is to indicate that the FSO may be requested to consider the gas sector as well, notwithstanding a future amendment to the condition whereby Ofgem can add explicit reference to reflect that intention. We do not consider that duplicating the licence condition affects the scope of the FSO's functions in this area. Further to the above, we would be grateful if Ofgem could confirm the rationale for the duplication.

Condition C7 Arrangements in coordinating market strategy

Reference	ESO comments
General, from page 28	We would welcome the opportunity to discuss using a defined term for the forum in paragraph 2, to avoid having to cross-reference throughout the condition. A suggestion could be ' <i>Future Market Forum</i> '.

Introduction, para 1, page 28	For the reasons set out in our comments in Appendix 1 we suggest deleting the reference to the Primary and Secondary Duty.
Part A, Heading, page 28	Given that the paragraphs in Part A refer to 'a forum', should the heading also read ' <i>Future market forum</i> ' (singular).
Part A, para 2, page 28	<p>The references to '<i>engagement</i>' here do not seem entirely clear to us. To clarify, we suggest changing this to:</p> <p><i>'The licensee must, within 90 days of this condition coming into effect, establish a forum for the <u>progression and development</u> of projects and plans that facilitate the transition of the energy market to a decarbonised energy system, where such a forum includes engagement <u>with Relevant Gas Market Participants</u> on the transition of the market and industry arrangements for gas against potential future scenarios'.</i></p>
Part A, para 3(a), page 28	This requires the FSO to establish a steering group associated with the forum referenced in paragraph 2 but we want to be clear on the anticipated role of the steering group. While it may reflect today's arrangements we want to ensure that the licence condition provides flexibility for evolution of the FSO's role moving forward.
Part A, para 4, page 29	<p>Noting our comment above around introducing a definition, the cross-reference here should be paragraph 2 and not paragraph 3.</p> <p>For the same reasons as above, we suggest a change to '<i>...paragraph 3 that the licensee considers to be appropriate.</i>' (that being a judgement that would be made in line with the Primary and Secondary duty sitting outside the licence).</p>
Part A, para 5, page 29	We note our understanding that, in this context, using reasonable endeavours will not involve the FSO seeking to itself take on any additional regulated gas activity. It would be helpful to confirm this understanding.
Part B, page 29	We propose that the ' <i>Future Market Action Plan</i> ' is renamed the ' <i>Future Market Plan</i> ' to align with the current name of the Gas Markets Plan.
Part A, para 6, page 29	Our understanding is that the document will be an FSO document, produced in cooperation with Relevant Gas Market Participants. We therefore suggest the following change to the paragraph – ' <i>reasonable endeavours to produce, in cooperation with Relevant Gas Market Participants, a Future Market Plan...</i> '.
Part B, para 7(b), page 29	For clarity we suggest replacing ' <i>...in connection with...</i> ' with ' <i>...as referred to in...</i> '.
Part B, para 7(c), page 29	For clarity we suggest replacing ' <i>...under...</i> ' with ' <i>...as referred to in...</i> '.

Condition C8 Gas strategic network planning

Reference	ESO comments
General, from page 29	As we set out in response to Question 2 in Appendix 2 above, we are mindful that there is interaction between this draft condition and ongoing development of policy around the FSO's CSNP role. Ofgem acknowledges in the consultation document for the electricity planning related conditions (C12 and C13) that it expects the ongoing work on the CSNP may require further amendments to, or replacement for, these conditions in the coming months. Given that the CSNP will develop to integrate and

	consider gas strategic network planning in the future, the associated gas licence conditions will also need to be adapted accordingly.
Introduction, para 1, page 29	We suggest this should be ' <i>...gas strategic <u>network</u> planning functions</i> '.
Part A, para 2, page 29	We suggest adding a comma – ' <i>...to enable, and facilitate any improvements...</i> '.
Part A, para 3, page 29	<p>While we agree completely with the general principle of the FSO acting transparently in undertaking its gas strategic network planning, we are concerned that as drafted this obligation is not sufficiently clear for FSO to have certainty over its obligations. We welcome further discussion with Ofgem on this issue.</p> <p>To align with the ambition to have a general obligation around transparency, we suggest that appropriate drafting could be – '<i>The licensee must use reasonable endeavours to develop the Gas Network Capability Needs Report and Gas Options Assessment Report in a transparent manner</i>'.</p>
Part B, para 4(a), page 29	For the same reasons as above, we suggest removing the reference to Primary/Secondary Duties and deleting this sub-paragraph and renumbering. (The production of information and system needs would be made in line with the Primary and Secondary duty sitting outside the licence).
Part B, para 6, page 30	For clarity, we suggest ' <i>Alongside the Gas Network Capability Needs Report provided under paragraph 5, the licensee must provide to the Authority a summary of:...</i> '. Alternatively, if the intention is for this to be part of the report, this should be made clear.
Part B, para 7, page 30	For clarity, we suggest adding to the end of the opening words: ' <i><u>include, in relation to the National Transmission System:...</u></i> '. It is helpful to explicitly state which system the report is focussed on.
Part B, para 7(h), page 30	For the same reasons as above, we suggest removing the reference to Primary/Secondary Duties and finishing this sub-paragraph after '2050'. (The view would be made in line with the Primary and Secondary duty sitting outside the licence).
Part B, para 8, page 30	<p>Since paragraph 4 does not require publication of information, we suggest changing this to:</p> <p><i>'...the information produced in the Gas Network Capability Needs Report is capable of being applied for the purpose of identifying and proposing options that respond to the <u>system</u> needs <u>identified</u>, where such options are evaluated in the Gas Options Assessment Document</i>'.</p>
Part B, para 10 & 16, pages 31 & 32	We think this should be replaced with wording used elsewhere in the licence where published reports may contain sensitive information: ' <i>Where the licensee considers that there are legitimate reasons for not publishing certain information or data on its website in accordance with paragraph [9/15], it must seek the Authority's approval to publish a redacted version.</i> '
Part C, para 12(a), page 31	For the same reasons as above, we suggest removing the reference to Primary/Secondary Duties. (The view of drivers for change would be made in line with the Primary and Secondary duty sitting outside the licence).
Part C, para 12(a)(iii), page 31	This requires the FSO to consider 'social impact' when providing a view of the drivers for change to the National Transmission System. We understand that this criterion is

	being considered as part of the future CSNP methodology but question whether it is something that should be in scope for Day 1 in the GSP licence.
Part C, para 12(a)(iv), page 31	It may be helpful to give further consideration to the precise drafting here, since the condition in NGT's licence referred to does not refer to ' <i>release obligations</i> '.
Part C, para 12(b)(iii), page 31	We suggest replacing ' <i>regulations</i> ' with ' <i>legislation</i> ' to capture a broader set of options.
Part C, para 12(b)(v), page 31	Generally the licences refer to ' <i>interested parties</i> '.
Part C, para 12(c), page 32	For clarity, we suggest ' <i>...where (to the extent relevant) suitability is also measured against the drivers for change identified under...</i> '. It may be clearer to pull this detail out of paragraph 12(c) and include all requirements for the licensee's view here in paragraph 13 (rather than having them in two places).
Part C, para 12(d), page 32	As set out further in Appendix 3 above, due to the rules of interpretation there is no need to include ' <i>option(s)</i> ' and this may be changed to ' <i>option</i> '. For the same reasons as above, we suggest removing the reference to Primary/Secondary Duties. (The recommendation would be made in line with the Primary and Secondary duty sitting outside the licence).
Part C, para 12(e), page 32	For clarity and consistency, we suggest ' <i>...the provision of its <u>most recent</u> Gas Network Capability Needs Report</i> '.
Part C, para 12(f), page 32	For clarity and consistency, we suggest ' <i>...system needs set out in its <u>most recent</u> Gas Network Capability Needs Report that may have...</i> '.
Part C, para 13, page 32	It would be helpful to discuss the circumstances in which a cost benefit analysis of options may not be required.

Condition C9 Gas network innovation strategy

Reference	ESO comments
General, from page 33	Please see our comments in Appendix 2 on requesting that the appropriateness of the obligations in this condition are kept under review.
Introduction, para 2, page 33	We do not propose a change here, noting that the wording is used in different licences. However, we note that given the remit of the FSO it will also be undertaking innovation work in a range of areas outside of the projects referred to here.
Part A, para 3, page 33	See our comment above on the definition of ' <i>Relevant Network Licensees</i> '.

Condition D3 Provision of information to the Authority

Reference	ESO comments
Part B, para 3, page 38	Please omit the word ' <i>the</i> ' from the following wording ' <i>...exercise of its <u>the</u> functions</i> '

Condition E1 Obligations regarding the Uniform Network Code

Reference	ESO comments
General, from page 44	We note that discussions are ongoing in relation to the FSO's role in the UNC and it may be appropriate to revisit the drafting here depending on the outcome of those discussions.
Introduction, para 1, page 44	Paragraph 1 of this licence condition notes that its purpose is to establish among other things obligations ' <i>due to the requirement on the licensee to enter into or accede to the Uniform Network Code</i> '. There is however no explicit obligation requiring such entry or accession in E1.
Part A, para 2, page 44	It will be important that this change is mirrored in Standard Special Condition A11 of NGT's transporter licence.
Part A, para 3, page 44	Given the Network Code Modification Procedures form part of the UNC, it would be helpful to discuss further whether there is a need for a licence obligation around this.
Part A, para 4, page 44	We note that elsewhere minor drafting changes have been made to the equivalent drafting in the transporter licence. On the same basis, we suggest that ' <i>and/or</i> ' can be replaced by ' <i>and</i> ' and ' <i>person(s)</i> ' can be replaced by ' <i>person</i> ', in line with the drafting used generally throughout the draft licence conditions.
Part A, para 5(d), page 44	We suggest adding ' <i>and</i> ' after sub-paragraph (d).
Part A, para 4(e)(i), page 44	Given general rules of interpretation, we suggest referring to ' <i>action</i> '.
Part A, para 6, page 45	It would be helpful to discuss further the scenarios in practice that this obligation is intended to cover.
Part B, para 9(a), page 45	We suggest that the word ' <i>other</i> ' here can be deleted, since the FSO is not a Gas Transporter.

Appendix 5 – ESO general drafting comments on the Electricity System Operator and Gas System Planner licence drafting

We appreciate that a considerable amount of work, by DESNZ and Ofgem, has gone into reviewing drafting from the ESO's existing licence and taking steps to modernise the drafting as well as developing new drafting as required. Given the timescales involved in setting up the FSO, we agree with the approach that Ofgem has taken in terms of using current licence conditions as a starting point for the FSO draft licences, rather than starting from scratch. In modernising existing drafting, there is necessarily a balance to be struck between making appropriate changes to modernise and ensuring that the scale of change is appropriate to the timescales. We have made our drafting comments with this in mind.

This appendix sets out a small number of general comments on the licence drafting, in case helpful in addition to the comments set out elsewhere in our response.

Reference	ESO comments
Condition numbering	We question whether it will cause confusion to have condition references for equivalent conditions which differ between the FSO's two licences. It may be more appropriate to include blank conditions for a licence which does not have an equivalent.
ISOP / licensee	There are a number of places where the FSO is referred to as ' <i>the ISOP</i> '. We suggest using the term ' <i>licensee</i> ' throughout and using the term ISOP where helpful for particular definitions (e.g. ISOP Business).
Condition	We suggest that ' <i>Condition X</i> ' should use a capital and ' <i>this condition</i> ' should be lower case throughout.
Plural / Singular	We agree with the proposed rule of interpretation which allows for the singular to be read as the plural and vice versa. This should mean that the use of '(s)' at the end of words can be avoided.
Pursuant to	We have not flagged each reference of this term in the licence but agree with the approach used in some conditions that this should be modernised (e.g. ' <i>under</i> ' or ' <i>in accordance with</i> ').
Abbreviated definitions	A number of terms flagged above have abbreviated definitions. As flagged above, we suggest that it should be made clear that the defined term is either the full term <u>or</u> the abbreviated term.