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Territorial extent: Great Britain

Response author: SGN

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Response to Modifications to the RIIO-3 licences and associated documents

Thank you for the opportunity to respond to the above consultation.¹ as a continuation of the Licence Drafting Working Groups (LDWG) and initial Licence Consultation (Sept 25).

SGN has provided a specific response to individual licence details and associated documents within the response templates provided, including proposed amended drafting where appropriate.

Consideration of the licence arrangements is a matter for each licensee, and as such, we would encourage Ofgem to carefully and separately consider each licensee's specific circumstances, which may not be homogeneous.

In this response, under Appendix 1, we draw out the most material issues which we consider are unresolved from a policy or licence drafting perspective. Below, we also highlight our key observations in terms of the RIIO-GD3 policy development and consultation process followed to date.

Limited Opportunities for Collaborative Engagement

We note that in the preliminary consultation on the licence, SGN set out some significant concerns, with Ofgem's feedback which is set out within Ofgem's Aggregate Responses.² spreadsheet. While we welcome Ofgem's responses to our points we note that these responses appear to be generally superficial in nature, with the vast majority³ dismissed. Furthermore, this document was provided only as part of the Statutory Consultation and there has not been an opportunity for any discussion with Ofgem to shape the licence where there is a misalignment on important points.

Consultation Timescales

The RIIO-GD3 Final Determination (FD) is a document without legal standing and does not in itself bind or make any decisions in relation to RIIO-3 and the RIIO-3 process. Any policy positions stated within the FD must therefore be reflected in the licence drafting, the review of which is the purpose of this Statutory Consultation. In this respect, the application by Ofgem of the minimum 28-day consultation period (over a period of predictably constrained resources) shortly after the publication of the final determination is inadequate to allow licensees to conduct a full and thorough review. In a similar manner, the proposed 2-week period for Ofgem, we believe, is inappropriate to provide sufficient consideration

¹ [Modifications to the RIIO-3 licences and associated documents | Ofgem](#)

² [Aggregate RIIO-3-Initial-Licence-Consultation-Responses.xlsx](#)

³ Approximately 75% of SGN's feedback points were rejected.

to the important points that we are presenting, as is the requirement placed on Ofgem by the legislature through statute and which we would expect to see adequately evidenced.

As previously raised to Ofgem via the Licence Drafting Working Groups and on a bilateral basis, we have concerns regarding the robustness of the licence drafting process where many elements of policy have appeared in the licence (at either the initial or this Statutory Consultation) as their first point of visibility and could have benefited from greater development and discussion. These concerns are exacerbated by the identification of a number of formatting⁴, referencing⁵ errors, and missing values⁶ and that a full suite of licence conditions remains unavailable for wholesale assessment⁷.

As a consequence of the timelines and the limited engagement prior to the publication of the Final Determination, we would expect that any feedback raised beyond the closure of this Statutory Consultation, either as subsequently identified or feedback and questions raised provided after the proposed end-date for the Final Determination Questions (FDQs) process and model error checking process (as posted on Gitlab), to be considered and amendments made as required.

Parallel Consultation Processes

Given the above, we note that there is also a significant risk of misalignment within the licence review process that has been created as a consequence of multiple consultations being run concurrently or in quick succession.

Specifically, the GD3 Licence Statutory Consultation is taking place alongside the Energy Networks Ring Fence Review Consultation⁸, with both consultations impacting the same elements of the Gas Transporter Licence⁹ and closing within a day of each other. We have responded to the Ringfence Review Document as the primary consultation on these specific points and have not duplicated within this licence response, however, it is very important that the two processes are aligned and co-ordinated.

We also note that the Statutory Consultation has not included a full list of Standard Licence Conditions and only highlights the Standard Conditions which are subject to change under GD3. The absence of this full suite of documents limits our assessment of the licence in terms of changes that may be required as we move from GD2 to GD3. Additionally, there are Standard Licence Conditions under consultation due to changes made by Ofgem in the Ring Fence Review which have not been reflected in the specifically highlighted standard conditions in this Statutory Consultation. For clarity, we have responded in the detail to the Ring Fence Review on the 15th January 2026 and for the relevant licence conditions, our response to the ringfence review should take to this GD3 licence Statutory Consultation. The relevant comments covered, but not limited to, asset disposal valuations and timelines, role of Sufficiently Independent Directors, availability of resources process, requirements to hold credit ratings, definition of credit ratings and various additional regulatory consents which would be required.

Having several live consultations discussing divergent licence drafting, such as the ringfence review and the debt relief recovery schemes, creates a substantial risk that the agreed changes will not align across all platforms. Whilst simultaneous consultations may be unavoidable in extreme circumstances, this would not appear to be such a situation, and furthermore, we note the consultations are seemingly being managed in parallel (with no cross-engagement) rather than concurrently.

⁴ As highlighted in our response template, for example: SpC 4.3 Part A

⁵ As highlighted in our response template, for example: SpC 2.3, 'for any further applicable explanation or elaboration' in the PCFH is referenced but absent

⁶ As highlighted in our response template, for example: SpC 3.6.4 the text refers to Appendix 1, however the table in appendix 1 is populated with N/A rather than values.

⁷ These include: Data Assurance Guidance, Fair Treatment Guidance, VCMi Governance Document, Collaborative Street works Governance Document, Cyber Reporting Guidance and the RIGs

⁸ [Energy Networks Ring-fence Review consultation | Ofgem](#)

⁹ For example, Standard Special Conditions A26, A27, A33, A35, A36, A37, A38, A39 and A42

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This approach intensifies our concerns articulated above, with the absence of an overall assessment of the full licence suite. In the most extreme scenario, licensees cannot accept a regulatory environment which creates an undefined risk exposure to which no cohesive consideration has been given.

Licence Document Hierarchy

While the Price Control Financial Handbook (PCFH) and Price Control Financial Model (PCFM) are identified as Price Control Financial Instruments¹⁰, they are subject to less robust governance controls and can be amended “*by direction...at any time during the Price Control Period*”, subject to a now limited consultation period “*of up to 28 days*”, something that we raise as a significant risk that is discussed in Appendix 1 below.

The PCFH and PCFM are subsidiary to the licence and are therefore easier to change. With this in mind, we are concerned at the movement of multiple items from the licence into the PCFH which represents a downgrade in their relative legislative standing.

Two material examples are the relocation of the Annual Iteration Process and elements of the tax review process (for example references to “unexplained material differences”. Given the importance of these elements, it would be more appropriate for their governance to reside within the licence and their movement to the PCFH exposes licensees to a significant increased risk of changes being put through without a full discussion and understanding of the risk.

The Authority’s duty to undertake an Impact Assessment

We note the duty of the Authority to undertake an Impact Assessment¹¹, including assessment of the “*likely impact*” of implementing certain proposals¹². The Impact Assessments conducted by Ofgem alongside the RIIO-3 Sector Specific Methodology Decision (SSMD) and FD fail to meet the requirements as set out in the Utilities Act and do not adequately assess the impact of the proposed upon the licensee or its operations. An example is the treatment of Streetworks, in relation to which SGN has highlighted concerns in the context of both the DD and the cost assessment model. The absence of the appropriate resolution leaves licensees exposed to significant costs which at present are unrecoverable but would have been identified if a robust Impact Assessment were undertaken. We discuss this in more detail in Appendix 1.

Disapplication of Conditions

In the absence of a robust impact assessment, there has been little consideration on the compatibility of the GD3 Price Control Final Determination (FD) with the obligations set out in statute and the updated GD3 licence. In the context of SGN, the GD3 Final Determination¹³ disallowed 15% of our investment plan with specific operational requirements such as those observed in the Southern region not being given the necessary consideration or support. As highlighted in our response to the DD, the regulatory expectation of a ‘fair bet’ is that there is an equal chance of outperformance or underperformance, this has not been reflected in the risk-adjusted RORE¹⁴ for our networks. At the same time, the licence drafting reflects an escalation of expectations to often absolute standards, which will naturally drive operational costs.

As such, SGN notes the option to seek disapplication of specific conditions should the licence not be fit for purpose. and the risks identified materialise, and this option could require serious consideration if all other avenues are closed off. It would be preferable for everyone that an appropriate and deliverable suite of licence conditions are established from the outset.

¹⁰ Part B, 8.1.2(a)(b)

¹¹ Utilities Act, 5A Duty of Authority to Carry Out Impact Assessment, (2) - [Utilities Act 2000](#)

¹² Utilities Act, 5A Duty of Authority to Carry Out Impact Assessment, (3) (a) - [Utilities Act 2000](#)

¹³ [RIIO-3 Draft Determinations – Gas Distribution](#)

¹⁴ The risk-adjusted RORE for our network in Scotland was already 3.11% below the anticipated neutral performance, but the situation in the South is even more stark, with performance 4.27% below neutral.

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In summary, SGN is of the view that the approach to GD3 policy development and licence drafting creates a significant risk for licensees, whereby the overall impact of the GD3 Licence, and many of the policy decisions it seeks to deliver, have not been adequately developed, defined or sufficiently assessed on an individual or collective basis. This has resulted in short and long-term impacts of the licence suite as a long-run document which cannot at present be accepted.

In Appendix 1 below, we provide the priority matters that we remain of the view that they have been insufficiently developed and assessed.

I hope the above feedback, plus our responses to the detailed licence review template, is helpful. We remain committed to working collaboratively to assist Ofgem in discharging its duties in establishing a stable regulatory framework which mitigates against rising costs of finance to protect customers from short and longer-term bill increases, while enabling SGN to deliver our licence obligations.

Given the short consultation period, and the complexity of these licence conditions, we trust that any further adjustments that we identify prior to the publication of the final licence will be fully considered by Ofgem.

Kind Regards,

David Handley,
Director of Strategy and Regulation,
SGN

Appendix 1 – Priority Matters

The ambitions and overall impact of the GD3 Licence drafting process, and many of the policy decisions it seeks to deliver, have not been adequately developed, defined or sufficiently assessed on an individual or collective basis, meaning the current and long-term impacts of the licence suite as long-term documents cannot currently be considered acceptable.

Below, SGN presents the outstanding policy, and licence matters which should be re-considered as a priority:

Financeability in the price control period and the longer term

For the GT Licence to support financeability both now and in the future, the whole licence—including its duration — must function effectively. It is important that the framework does not create ongoing financial issues that last beyond the licence period, considering that the licence serves as a long-term document that is continually updated with future amendments.

In our DD response, SGN outlined that for GEMA to reasonably determine the price control as financeable over the medium to long term, it would have been necessary for them to assume that revenues required to recover allowed operational and investment costs were fully attainable. In our business plan submission, we provided robust scenarios—using Ofgem’s preferred forecasts—that demonstrated this assumption may not hold true. In assuming that licensees can continue to invest and finance their activities, Ofgem is operating under the basis that these revenues deferred to RAV are recoverable, and as such this should be clearly stated in the licence.

In *Special Condition 2.1*, obligations are placed on licensees when setting Network Charges. Given the identified risk of under-recovery, and the above assumption that must have been made by GEMA to conclude that they would be recoverable in order to conclude that the price control would be financeable, it is imperative in our view to be both consistent with this approach, and for Ofgem to be able to demonstrate it has adequately considered what its financeability (and investability) duty means that there needs to be a term stating that Ofgem will ensure that the licensee is able to recover their costs in the GD3 and future price control periods as an additional subsection of *Special Condition 2.1*:

RAV_t means Regulatory Asset Value as of year t set out in the “Return & RAV” sheet of the GD3 Price Control Financial Model which will not be recovered as Fast Money but will be recoverable in subsequent periods by the licensee on an NPV neutral basis by reference to the Nominal WACC pertaining.

The following additional text should also be included under *Special Condition 2.1*:

R_t shall be adjusted in future periods such that the licensee can recover RAV_t in full on an NPV neutral basis by reference to nomWACC_t.

The above changes are necessary to clearly demonstrate consistency between the licence and the assumptions employed by Ofgem in setting the FD in the context of Ofgem’s discharge of its statutory obligations.

Application of Revenue Forecasting Penalty (FPt)

Special Condition 2.1, Part G sets out the arrangements for the inclusion of a revenue forecasting penalty. The purpose of the penalty as set out is to incentivise accurate forecasting for charge setting and base revenues.

By definition, licensees cannot be incentivised in relation to matters beyond their control and it is an accepted practice that, where incentives are introduced, there should be an adjustment for external or extraneous matters. As a result, it is not appropriate that forecasting penalties apply to revenue which is comprised of a significant value which is outside of the licensee’s control and cannot be influenced, irrespective of any incentives.

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As set out in our Initial Licence Consultation response, a base revenue penalty is not appropriate for the Gas Distribution sector where evidence has been provided that the pass-through items included in revenue forecasts are more significant, and more volatile than those seen in the Electricity Distribution sector, which Ofgem appears to be using as the basis of alignment for the gas licence.

As a constructive alternative, if the penalty is to remain, then the drafting should explicitly exclude pass-through items, and, as a default position, have the penalty factor set to zero, with it only being amended and applied in the event that the forecastable elements of revenue within control of the GDNs is beyond the threshold and a direction has been made from the Authority.

We note Ofgem's response to this point in the Aggregate Consultation Responses deferring to FD as a policy matter, however as highlighted in our cover letter, this has therefore provided little to no opportunity for effective engagement or discussion of this important policy issue, and the consequent financial exposure for networks during the price control.

Any licence text – as is now proposed – which includes potential for the application of forecast penalty for forecast errors outside the control of the licensee fails to deliver the stated policy intent to incentivise accurate forecasting by the nature of extraneous factors volatility significantly surpassing forecasts risk on controllable cost.

Furthermore, the nature of any revenue components as extraneous to the licensee should represent a matter of fact, rather than a matter on which there is a need for the Authority to exercise discretion. This would include pass through and other associated costs where there should be no need for the Authority to “satisfy” itself that the differences were for reasons outside the reasonable control of the licensee. As such, Ofgem's description of such discretion as a “waiver”, with the FD articulating an expectation that use of the waiver would not be expected or should be done so sparingly is clearly inappropriate.

Lastly, there is an observable escalation in obligations relating to the revenue forecasting penalty, with proposed amended text requiring Licensees to “*use its best endeavours to ensure that Recovered Revenue does not exceed equals Allowed Revenue*”. The use of “*equals*” within this condition is not appropriate as it is not practicably deliverable, due to forecast revenue ultimately being recovered based on an estimated volumetric multiplier.

This use of a volumetric multiplier in the gas charging methodology has been discussed throughout the LDWG process, where Ofgem acknowledged that it is not possible for forecast and recovered revenue to be equal, hence the K correction would remain. Regardless of K, this drafting puts networks in an immediate position of almost certain licence breach.

Given the increased expectation around forecasting accuracy, it is appropriate that any extraneous factors are not taken into account when assessing the application of the penalty, and all pass-through items should be explicitly excluded. In order to the conditions to be consistent with the intended policy, the conditions SPC 2.1.17 needs to be amended to remove references to passthrough. This will make clear and binary that no penalty will apply where differences are outside of the control of the licensee and this is not a matter of regulatory discretion.

Treatment of Senior Unsecured Debt

Ofgem has incorrectly tightened the credit rating thresholds at which lock-up provisions come into effect. The consequences of the lock-up provisions are material for companies and investors and so, as highlighted in SGN's RIIO-3 draft determinations response¹⁵, it is important that the rating threshold applied to each rating agency are based on a consistent methodological basis that reflects all relevant information and that the appropriate ratings definitions are referenced.

¹⁵ Finance Annex – section F.2

Ofgem's intention in setting thresholds, is presumably to capture the creditworthiness of the entity separate from any particular class of debt. Creditworthiness is based on two components – (i) the probability of default and (ii) the likely proportion of capital returned to investors in the event of a default. The Moody's Corporate Family Rating (CFR) considers both of these elements together and is therefore the correct rating to use, as set out in the licence. However, the equivalent Fitch rating set out in the licence, its Issuer Default Rating (IDR), only considers the first of these two components. The second element, likely proportion of return of capital, is only considered in the Fitch unsecured debt ratings, which tend to be a notch higher than its IDR rating for regulated utilities. For other rating agencies the unsecured debt ratings are aligned with the issuer credit quality as the proportion of capital return has already been taken into account.

The current licence drafting therefore, does not appropriately assess financial resilience for those companies with a Fitch Rating, as the rating used does not take into consideration all the relevant information and is on an inconsistent basis with the other credit rating agencies threshold applied. The continued use of Fitch IDR instead of Fitch unsecured debt rating is a clear error in assessing the creditworthiness of the entity.

Fitch themselves have stated that the senior unsecured rating (which is one notch above the Issuer Default Rating (IDR) that Ofgem are proposing to use) would be a more appropriate rating to monitor to factor in recovery considerations and to allow a better comparison with the ratings of other agencies (where rating definitions may vary).¹⁶

To rectify the error, Ofgem should either commit to making a direction that the Fitch Ratings Ltd unsecured debt rating is equivalent to an Issuer Credit Rating, or amend Licence Condition A3– the definition of Issuer Credit Rating - so that subparagraph (c) is replaced with *"an unsecured debt rating, or in the absence of such rating, an issuer credit rating by Fitch Ratings Ltd or any of its subsidiaries;"*.

An absolute requirement to maintain two Credit Ratings

We disagree with the absolute requirement (*"must"*) to maintain more than one investment grade issuer credit ratings, which is a significant escalation from the GD2 position of using *"reasonable endeavours"* to maintain one rating.¹⁷

Going forward, Gas Networks are much more exposed to negative rating actions as a consequence of policy decisions out with their control such as Government messaging and policy around net zero, the future of the gas networks and future regulatory frameworks. The increasing exposure to policy decisions, in addition to the requirement to hold a minimum of two ratings (rather than one) significantly increases the risk placed on network companies as a result of them being essentially unable to control compliance with this element of the licence.

It is not clear why one investment grade issuer credit rating is now considered insufficient. However, if the Authority is to maintain this position, then the licence wording should be amended to align with that of Electricity Distribution stating that *"the licensee must take all appropriate steps within its power to maintain more than one...."*. This feedback is also set out within the ringfence review, however, as set out in the cover letter we are concerned about the risk of a lack of alignment between the two consultation responses.

We also note that the final determination has prescribed an additional distribution lock up trigger when the licensee reaches 75% regulatory gearing, as set out in Standard Special Condition A39 (9). As with the reasons set out above regarding credit ratings there is a high risk that policy and regulatory decision making could cause a breach of this trigger, particularly as the RAV starts to reduce. As a result, we disagree that there is a need for an upper gearing threshold and this intervention does not achieve GEMA's stated aim of increasing financial resilience.

¹⁶ Fitch Ratings – 'What Investors Want to Know: RIIO-3 Sector Specific Methodology Decision' 14th November 2024

¹⁷ Standard Special Condition A38, Part A, 2.

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On this basis it is important that the para 9 in Standard Special Condition 39 *“The circumstance described by this paragraph is that the licensee has an Actual Regulatory Gearing ratio of 75% or higher or and, based on reasonable projections, will not exceed this ratio at the end of the current Regulatory Year.”* is removed.

GD2/GD3 Crossover Adjustment

We note the addition of *Special Condition 3.32 GD2/GD3 crossover Adjustment*. While we would expect a degree of optionality for the Authority to adjust certain items which may cross between price controls, we would expect this to be time limited. Rather we note that such adjustments can be made *“at any time during the Price Control Period”*¹⁸. The consequence of this drafting is to diminish licensee’s confidence that the previous price control has truly been closed out.

Given that 3.32 is a new condition, we would expect:

- Clarity within the licence on the purpose of this condition
- Explicit detail regarding the process through which any adjustments will be applied
- Confirmation that the crossover adjustment values (*Appendix 1*) will be populated through the close out mechanism, assuming that this is the intention
- Confirmation that delivery of such cross over adjustments will be subject to the close out mechanism for GD3, assuming that this is the intention
- That the determination of cross over adjustment values should be limited to the close out mechanism process and should be consulted on through that licence modification process only, or, if this is not the case, a clear explanation on the rationale, in addition to details as to when else the adjustment values may be utilised.

The above omissions from the licence again demonstrate a lack of collaborative development and discussion during policy definition and licence drafting, with licensees being exposed to an increased degree of risk the drivers for which are not clearly set out or understood.

It is important the GEMA clearly sets out the circumstances in which an adjustment would be made, and furthermore the criteria against which the *“value of such a modification”*¹⁹ will be assessed and deemed sufficiently material to implement.

Timing of Re-Openers

Re-opener costs represent expenditure which is incremental to the basis on which business plans are set and arise as a result of policy changes or implementation outside of the licencees control, which could not be forecast with a reasonable degree of confidence in order to be included at the point of setting allowances.

As such, re-openers should apply to such matters that were not considered in either:

- The submission by the licensee of the response to the Business Plan Data Tables requested by Ofgem;
- Ofgem’s assessment of the costs for the licensee as part of the determination of Totex.

In the majority of cases, the point at which submissions were fixed and could no longer accommodate changes would be October 2024. This timeframe is consistent with Ofgem’s overall approach to the price control, including the application of Ongoing Efficiency and Real Price Effects, and other aspects of assessment of allowed Totex from 2024.

¹⁸ Special Condition 3.32.4

¹⁹ Special Condition 3.32.5

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For example, the drafting of *Special Condition 3.17 Specified Streetworks Costs Re-opener (STWt)* requires adjustment to accommodate the timing of scheme introduction by Local Authorities.

Specifically in this case, the October 2024 timing is also significant as it represents the point at which GD2 re-opener applications were submitted.

As highlighted in both our initial licence consultation response and DD response, maintaining the re-opener window date as April 2026 – March 2031 to align with the GD3 period will exclude schemes implemented beyond the point of re-opener and business plan submission, and leave no alternative mechanism for recovering those costs. In Ofgem's Aggregate Responses this point was noted, however no amendments have been made.

In SGN's Southern licence area alone, maintenance of the current drafting leaves £7.5m.²⁰ as un-recoverable costs incurred due to extraneous factors from the point of scheme implementation through to the end of the GD3 price control. These costs relate to schemes implemented (or expected to be implemented) in the GD2 period, beyond October 2024 when the business plan and original GD2 re-opener applications were submitted, for which there was no prior indication of adoption and therefore no reasonable ability to include forecasted costs. This cost covers schemes in East Sussex County Council (April 2025), Merton Council (January 2026) and Southampton City Council (March 2026), however there is a likely risk that further schemes will be implemented as all local councils have now completed the required permitting period, increasing this funding gap.

This funding gap is a clear demonstration of the current licence drafting failing to deliver the policy intention behind the inclusion of the re-opener in the GD3 regulatory framework. As discussed during the GD2 re-opener process and GD3 engagement, to align with the intention of the policy, the licence drafting should reflect an eligibility window which commences at the last point at which unexpected costs could have reasonably been forecast. – October 2024 is the most appropriate date as it represents the point at which GD3 business plans were locked down pre-submission and clearly tallies with the point at which the GD2 Specified Streetworks re-opener applications were made, maintaining a continuation of the recoverability of costs, in line with the re-opener's intent.

SGN recommends the following amendment to Condition 3.17:

An application under paragraph 3.17.4 must:

(a) relate to:

(i) permit schemes, lane rental schemes or requirements that have been imposed or are expected to be imposed on or after ~~1 April 2026~~ 1 October 2024; or

(b) costs incurred from the new Material Classification Protocol replacing the existing Environment Agency Regulatory Position Statements (RPS) 298 and 299 from 1st October 2025 to 31st March ~~2026~~ 2031;

(c) take account of any allowed expenditure which can be avoided as a result; and

(d) relate to costs incurred or expected to be incurred that exceed or are expected to exceed the Materiality Threshold.

It should be noted that the above text also includes an amendment to the eligible re-opener period in relation to the Material Classification Protocol. The new requirements came into place in October 2025 and as such were again incurred beyond the point at which they could be included in the GD3 business plans or GD2 re-opener. As such, the expenditure period should cover the full GD3 period, in order to ensure that costs incurred through this new legislative requirement are accurately recoverable.

²⁰ £7.5m in 23/24 prices, £6.0m in 18/19 prices

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It should be noted that amendment to the re-opener eligibility period to 1st October 2024 – 31st March 2031 should apply to all relevant re-openers. An example, non-exhaustive list, is as follows:

- 3.17 Specified Streetworks Cost Re-opener
- 3.7 Digitalisation Re-opener
- 3.15 Diversions and Loss of Development Claims Re-Opener

Restriction of Consultation Periods to 28 days

We note the presence of drafting throughout the licence which amends consultation periods (*“the period during which representations on the proposed direction may be made”*) from the GD2 position of *“not less than 28 days”* to *“up to 28 days”*. This applies in the licence and also the Associated Documents.

Non-exhaustive examples of this text appear in Special Conditions 2.2.7 (c), 3.15.8, 3.7.8, 3.20.8, 8.1.7 and 9.3.13(c).

It is not clear why Ofgem would wish to limit this period and restrict the optionality previously available to them. There have been instances where a topic which is acknowledged to be complex has warranted a longer consultation period and has doubtlessly improved the quality of representations and engagement received. Furthermore, the process for licensees to review, assess, engage relevant internal experts and seek senior approval in relation to material amendments can be necessarily lengthy, and constraining this process may inadvertently lead to inadequately assessed policy implementation, and thus an increase in the subsequent challenges received.

SGN recommends that the drafting is returned to its original state, of *“not less than 28 days”* in order to reduce the risk to licensees and allow for a robust consultation period where necessary, while retaining Ofgem’s optionality to set the period as appropriate.

Use of Best Endeavours

SGN has repeatedly flagged that the use of *“best endeavours”* is inappropriate in the context of the licence framework. From a legal perspective, the only incontrovertible limit of a *“best endeavours”* obligation is that the actions should not ruin the duty holder or be in utter disregard of its shareholders. As such, a best endeavours obligation conveys the expectation that compliance should be sought largely irrespective of costs or proportionality. Consequently, this standard is rarely used in a wider contractual context and as such is without wider precedent. This limit also means that best endeavours are particularly inappropriate in a regulatory context, where the funds available to achieve each regulatory aim are determined by the regulator and are expected to be used in an efficient manner.

Ofgem has maintained the position that *“best endeavours”* do not set the above threshold of expected compliance, and as such the drafting remains throughout the licence. As such, Ofgem should provide a definition of what is expected by *“best endeavours”* in order that licensees can assess the deliverability of the impacted licence conditions.

We note that where an obligation rests with Ofgem, this is typically on a *“reasonable endeavours”* basis, and as such Ofgem should also confirm why the differentiation to this lower threshold is appropriate for their own responsibilities.