

**The transitional generation, distribution and
supply licence conditions under BETTA**

**Ofgem/DTI conclusions and publication of
proposed designation text**

August 2004

Summary

This document follows the publication on 9 July 2004 of Ofgem/DTI's open letter on legal arrangements associated with the transition to BETTA affecting generation, distribution and supply licensees. The open letter:

- ◆ set out Ofgem/DTI's approach to the transitioning of the generation, distribution and supply licence conditions
- ◆ proposed the introduction of new transitional licence conditions that Ofgem/DTI considered were necessary for the transition to BETTA, and
- ◆ set out, at a high level, Ofgem/DTI's approach to the transitioning of the existing transmission licences and set out Ofgem/DTI's views on the transitioning of certain transmission licensee obligations which were of relevance to other licensees and interested parties.

This document considers responses received to the open letter and explains further changes that Ofgem/DTI have made to the transitional licensing arrangements for generation, distribution and supply licensees since the July 2004 open letter was published.

The proposed designation text for transitional licence conditions for electricity transmission, generation, distribution and supply licensees was published on 16 August 2004. It is anticipated that the changes to these licences will be designated by the Secretary of State such that they will take effect on 1 September 2004.

Table of contents

1. Background	4
2. July 2004 open letter regarding legal arrangements and transition for BETTA	7
3. Additional licence conditions proposed for all licensees for transition	11
BETTA implementation licence condition	11
Licence condition relating to arrangements for run-off	17
Transitional licence conditions in relation to connection and use of system	24

1. Background

- 1.1. The rationale for the British Electricity Trading and Transmission Arrangements (BETTA) reforms is set out in a consultation paper of December 2001¹ ('the December 2001 consultation paper') and a report of May 2002² ('the May 2002 report'). It is currently planned that these reforms will be introduced with full effect from 1 April 2005.
- 1.2. Since May 2002, Ofgem/DTI have published a number of consultation and conclusions documents on BETTA and its component parts. Copies of these papers and non-confidential responses to them can be found on the Ofgem website³.
- 1.3. On 30 January 2003 the DTI published a draft of the Electricity (Trading and Transmission) Bill (the E(TT) Bill) together with a Regulatory Impact Assessment (RIA), which explained the purpose and impact as well as the expected costs and benefits of the then proposed primary legislation to enable the BETTA reforms. The E(TT) provisions of that draft Bill have now been incorporated into the Energy Act which received Royal Assent on 22 July 2004.
- 1.4. Ofgem/DTI published a document on the approach to the transition to BETTA on 17 June 2004⁴. That document described the approach being adopted to develop the transitional legal framework and associated legal drafting to support the transition to and implementation of BETTA.
- 1.5. In the June document on the approach to transition Ofgem/DTI set out their expectation that:

¹ 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): A consultation paper', Ofgem, December 2001. Ofgem 74/01.

² 'The Development of British Electricity Trading and Transmission Arrangements (BETTA): Report on consultation and next steps' Ofgem/DTI, May 2002. Ofgem 38/02.

³ www.ofgem.gov.uk (see "BETTA publications").

⁴ "Legal arrangements for the transition to and implementation of the British Trading and transmission Arrangements, Ofgem/DTI statement of approach, June 2004, Ofgem 137/04.

- save for those of the BETTA enduring obligations which Ofgem/DTI determine should transfer to licensees earlier, the enduring BETTA obligations will not be imposed on licensees until BETTA go-live
- during the transition period, licensees' obligations under their pre-BETTA licences will be maintained, save to the extent that those obligations are amended by any transitional obligations imposed upon them⁵, and
- in addition to complying with their pre-BETTA obligations, licensees will be obliged to comply with any additional obligations which are imposed on them by the Secretary of State for the purposes of transition. The aim of these transitional obligations will be to facilitate the effective and timely implementation of BETTA.

1.6. On 9 July 2004⁶ Ofgem/DTI published an open letter consultation on legal arrangements associated with the transition to and implementation of BETTA that will affect holders of electricity generation, distribution and supply licences. The open letter set out:

- the timing of when the enduring BETTA changes to electricity generation, distribution and supply licences for BETTA will take effect (either at BETTA go-active or at BETTA go-live) and details of any further changes required as a result of such timing considerations
- additional licence conditions to support the transition to, and implementation of, BETTA which are proposed for inclusion in generation, distribution and supply licences, and

⁵ It should be noted that Ofgem/DTI do not consider that the utilisation of enduring licence conditions during the transitional period (amended as appropriate) is precluded by this approach.

⁶ "Legal arrangements associated with the transition to and implementation of BETTA that will affect holders of electricity generation, distribution and supply licences, Ofgem/DTI open letter, July 2004, Ofgem 155/04.

- information associated with the changes to electricity transmission licences in the run-up to BETTA go-live which may affect the holders of generation, distribution or supply licences.
- 1.7. The proposed designation text for these changes (including the insertion of new licence conditions) was published on 16 August 2004.
- 1.8. The purpose of this document is to consider the responses that were received to the July 2004 open letter on transition arrangements applying to generation, distribution and supply licensees (the July 2004 open letter on transition) and to explain further changes to the transitional licence conditions for generation, distribution and supply licensees that have been made since publication of the July 2004 open letter.

2. July 2004 open letter regarding legal arrangements and transition for BETTA

- 2.1 Ofgem/DTI explained in the July 2004 open letter that the approach that has been adopted in relation to the changes to generation, supply and distribution licence conditions is that changes required for BETTA will take effect at BETTA go-live (rather than BETTA go-active) unless there is a particular reason that a change is required earlier than that time.
- 2.2 A matrix was attached to the July 2004 open letter, as annex 1, which summarised the enduring changes that are to be made to the generation, supply and distribution licence conditions for BETTA and explained when those changes are intended to take effect. The table also identified the further changes that Ofgem/DTI considered were required to existing generation, supply and distribution licence conditions for the transition period as a result of such timing considerations.
- 2.3 Ofgem/DTI also noted that they had not previously considered, in consulting on changes to generation, supply and distribution licence conditions under BETTA, what changes, if any, might be required to licence conditions relating to the Settlement Agreement for Scotland (SAS) or the Trading Code⁷.
- 2.4 In the July 2004 open letter Ofgem/DTI explained that existing licence obligations for all electricity licensees relating to the Trading Code would be removed from BETTA go-live. In relation to the SAS Ofgem/DTI noted that it would be necessary for the existing obligations on all licensees relating to the SAS to continue after BETTA go-live to allow for SAS run-off (including special conditions I and H which apply to the two existing Scottish distribution

⁷ In relation to the SAS, Generation SLC C4, Distribution SLC B12 and Supply SLC B8. In relation to the Trading Code, Generation SLC C2, Distribution SLC 12A and Supply SLC 8A

licensees). Ofgem/DTI did, however, note that it might be appropriate to amend these obligations during the run-off period and as such proposed that amendments would be made to the licence condition to allow for the Authority, with the Secretary of state's consent, to relieve the licensee of its obligations under the licence condition (in whole or in part).

- 2.5 The July 2004 open letter noted that the matrix appended to it did not contain any transitional changes required to the existing distribution price controls. Ofgem/DTI set out their intention to consult directly with each distribution licensee on the small required changes that are necessary to the distribution price controls⁸.

Summary of responses

- 2.6 Ofgem/DTI received five responses to the above open letter consultation. Copies of the non-confidential responses are available on the Ofgem website www.ofgem.gov.uk.
- 2.7 Four respondents commented on the table included at Annex 1 and Ofgem/DTI's proposals in relation to the Trading Code and the SAS.
- 2.8 One of the respondents noted Ofgem/DTI's proposals in relation to the Trading Code and commented that any termination of the existing licence obligations should be without prejudice to accrued rights and liabilities.
- 2.9 The second respondent made a number of comments on the matrix included at Annex 1 to the July 2004 open letter. Most of these comments related to a number of referencing errors which were included in the matrix. One comment related to the possible need to retain references to the SAS in SLC 14 of the supply SLCs given that obligations relating to the SAS are to endure beyond BETTA go-live.

⁸ Ofgem/DTI concluded after 16 July that no changes were required to the existing distribution price control licence conditions for the transition to BETTA. The distribution licensees were advised of this by Ofgem/DTI and no changes have been made to these conditions.

- 2.10 A further respondent pointed out formatting errors in the draft special condition I for the existing Scottish distribution licensees which was included in Annex 2.
- 2.11 The final respondent agreed with Ofgem/DTI's view that licence obligations relating to the Trading Code should continue to apply until BETTA go-live. With regard to obligations relating to the SAS the respondent considered that the licence obligations should be amended to include a sunset clause which would remove the obligation one year after BETTA go-live.

Ofgem/DTI's view

- 2.12 With regard to one respondent's comment in relation to accrued rights and liabilities under the Trading Code, Ofgem/DTI does not understand and can see no reason why the respondent considers that the removal of the licence obligation to have in place and/or comply with the Trading Code would affect accrued rights and liabilities which arise up to BETTA go-live. Accrued rights and liabilities should be addressed in bilateral contracts entered into between parties and are not addressed in the Trading Code itself which is required to be produced pursuant to the licence condition.
- 2.13 All of the referencing errors pointed out by one of the respondents have been corrected and are not duplicated in the proposed designation text.
- 2.14 With regard to the comments made by the respondent relating to the SAS, Ofgem/DTI do not agree that these obligations need to continue in relation to the SAS beyond BETTA go-live. Ofgem/DTI consider that as the last settlement period under the SAS will be immediately prior to BETTA go-live it is not necessary for these ongoing provisions to apply.
- 2.15 With regard to the final respondent's comment relating to the introduction of a sunset provision into licence conditions relating to the SAS, Ofgem/DTI do not consider that it is appropriate, at this stage (when the detail of arrangements for the run-off of the SAS are still to be developed) for a time limit to be placed upon

these obligations. In Ofgem/DTI's view, the approach set out in the July 2004 open letter whereby the Authority is able to relieve the licensee of obligations placed upon it by the licence condition relating to the SAS, is the appropriate way forward.

3. Additional licence conditions proposed for all licensees for transition

BETTA implementation licence condition

3.1 In the June 2004 document⁹ on the approach to transition, Ofgem/DTI explained that they had given consideration to the new licence conditions that will be required specifically to support the transition to and implementation of BETTA. It was proposed that an obligation will be placed upon all electricity licensees (generation, transmission, distribution and supply) to:

- take such steps and do such things as are necessary or expedient to give full and timely effect to the modifications to their licences and industry codes required to implement BETTA
- cooperate with all other licensees (and such other persons as the Authority may determine) in the discharge by those other licensees of the aforementioned obligation, and
- provide the Authority with information, as requested, to enable the Authority to monitor compliance with the above obligations.

3.2 Annex 2 to the 9 July 2004 open letter¹⁰ contained a draft of this licence condition and invited comments from all electricity licensees.

3.3 Ofgem/DTI received five responses to the above open letter consultation, all five respondents commented on this proposed licence condition. Copies of these responses are available on the Ofgem website www.ofgem.gov.uk.

3.4 The comments relating to this licence condition are set out in the table below, together with Ofgem/DTI's responses.

⁹See footnote 4.

¹⁰ See footnote 6.

Respondents' comments	Ofgem/DTI's response
<p>One respondent sought clarification on whether the timing of designation required review/ whether the designations would take place on the same day and/ whether there would be further directions after go-active.</p>	<p>It is currently planned that this licence condition will be introduced into electricity licences by the Secretary of State such that it takes effect on 1 September 2004. There are no plans at present to make changes to electricity licence conditions using the BETTA powers after go-active. However Ofgem/DTI will keep the arrangements for the transition to and implementation of BETTA under review and should the need for further changes arise, these will be considered and consulted upon as appropriate at that time.</p>
<p>A number of respondents were concerned that paragraph 1 of this condition was too wide and imposes a strict or absolute obligation (as opposed to a reasonable endeavours obligation) on the generation/distribution/supply licensee in respect of not merely the modifications of licences and industry codes, but also the "other matters envisaged by such modifications". One particular respondent suggested in relation to the point above that paragraph 1 be amended to : <i>" The licensee shall, to such extent as is reasonable in all circumstances, take such steps as are necessary or expedient to give full and timely effect to"</i></p>	<p>Ofgem/DTI have, as a result of views expressed by respondents, made a number of changes to this licence condition in relation to the 'strength' of the obligation that it imposes. First, a paragraph has been inserted at the start of the condition which sets out the objective of the condition. This is intended to provide clarity as to the purpose of the condition. Second, the obligations which previously appeared in paragraph 1 have been separated out into two paragraphs and the strength of the obligation differs between those two paragraphs. In relation to modifications to the licence or user facing codes that have taken effect, the obligation remains as an absolute obligation to 'take such steps and</p>

	<p>do such things as are within [its] power and as may be necessary'. Ofgem/DTI consider this to be appropriate as, in essence, this represents an obligation to comply with licence conditions or changes to licence conditions that have taken effect within the licence of the licensee, or changes to codes which have taken effect and with which the licensee is required to comply. However in relation to modifications to the licences or user facing codes which have yet to take effect, the obligation has been changed to an obligation to 'take all reasonable steps and do such things as are reasonable...." to give full and timely effect to those modifications.</p>
<p>Two respondents felt that paragraph 2 included an unsatisfactory extension of the licensee's duties to "matters envisaged", it would be preferable if the licensee's duty was to only take reasonable steps to comply. Some respondents commented that it was not clear what was meant by 'matters envisaged'.</p>	<p>Ofgem/DTI would note that this wording was used in the NETA implementation licence condition, on which this licence condition was based. However given respondents' views, Ofgem/DTI have amended the licence condition drafting to require the licensee to take 'reasonable' steps in relation to the matters envisaged by such modification and to do such things as are reasonable.</p> <p>It should be noted that this text was shown in relation to paragraph 2 in the text of this licence condition published on 16 August 2004 but was omitted in error from the text of paragraph 3 of the condition. This</p>

	will be rectified in the final version of the proposed licence condition.
A number of respondents felt that the power of the Authority to direct the licensee under paragraph 2(b) ought to be constrained by a requirement to consult the licensee.	Ofgem/DTI note that the licence condition contains a requirement to consult the licensee and such other persons as the Authority considers appropriate.
One respondent stated that it believed that paragraph 2 as drafted involved the respondent in matters that other licensees should do themselves. Similarly this respondent was not clear how it would be made aware of other licensee's obligations.	<p>The drafting does not require the respondent to undertake activities that other licensees should do themselves. Rather it requires the licensee to cooperate with another licensee to enable that other licensee to discharge its own obligations. There may, for example, be a situation where, in order to comply with its licence obligation a licensee either needs to do something which would involve it in a lot of effort or time etc or to request another licensee to do something which that licensee can do relatively easily, quickly or cheaply (eg this may relate to information provision). In such a situation it may be considered reasonable that the 'other' licensee (ie the one which does not have the primary obligation) undertakes the required step. This would, in Ofgem/DTI's view be entirely reasonable and is part of what this condition is intended to require. Furthermore, the introduction of a reasonableness test would, in Ofgem/DTI's view, make it even less likely that it could be argued that the position the respondent</p>

	<p>raises concern about would occur.</p> <p>Ofgem/DTI do not consider that the licensee would be required to cooperate with other licensees where the need for such cooperation was not known to the licensee and it would not be reasonable for the licensee to know.</p>
<p>In relation to paragraph 2, one respondent commented that the scope of persons with whom co-operation was required needed to be defined and queried who the Authority envisaged would be caught other than licensees?</p>	<p>Other than the requirement to co-operate with electricity licensees, this provides for the Authority to determine other persons that the licensee might be obliged to co-operate with for the purpose of implementing BETTA. The Authority has no current plans to determine such other persons for these purposes, however to the extent that such a need is identified in the future, such a determination would, of course, be made known to electricity licensees.</p>
<p>A number of respondents raised concerns about the way in which the drafting gives precedence to the STC in that it obliges the generation, distribution and supply licensees to take steps to give full and timely effect to the provisions of the STC.</p>	<p>The condition proposed for inclusion in the generation, supply and distribution licences makes no reference to the STC, other than in relation to a requirement to cooperate with other licensees (where that other licensee is a transmission licensee) in enabling that other licensee to comply with its obligations under the STC. Further the drafting has been amended to only require the licensee to give effect to modifications to codes where the licensee is obliged to comply with such codes.</p>

<p>One respondent commented that transmission owners should have no obligations in respect of the CUSC and the BSC as they will not be party to them nor will they be required to comply with them.</p>	<p>As outlined above, the drafting has been amended to require the licensee to give effect to modifications to codes only where the licensee is obliged to comply with such codes.</p>
<p>One respondent commented that paragraph 3 could give rise to conflicts. In such circumstances a licensee acting in good faith should not be deemed to be in breach of their licence.</p>	<p>It should be noted that should the possibility of conflict arise, provision is included for such conflicts to be notified to the Authority and for the Authority to direct the licensee accordingly. To the extent that a licensee notifies the Authority of a conflict in accordance with its licence and complies with any direction of the Authority in relation thereto, it is inconceivable that the Authority would take enforcement action against that licensee in respect of the matters which are in conflict where that licensee has complied with that direction.</p>
<p>A number of respondents stated that they considered that paragraph 4 of this condition is unnecessary given the standard condition found in all licences relating to the provision of information to the Authority</p>	<p>Ofgem/DTI have assumed that the existing power to which reference is made is that set out in BETTA SLC B4 (Provision of information to the Authority). This gives the Authority the ability to require such information and reports as the Authority reasonably requires for the purposes of performing its functions under the Electricity Act, Utilities Act and/or Energy Act 2004. The Authority does not have a function under the Energy Act which would involve its monitoring the implementation of BETTA, but this is a role</p>

	<p>which the Secretary of State considers it would be appropriate to delegate to the Authority. It is, therefore, Ofgem/DTI's view that it is appropriate to provide in the BETTA transition provisions for the Authority to have the information gathering and monitoring powers described here.</p>
<p>A number of respondents felt that this condition ought to be subject to a realistic sunset clause.</p>	<p>This licence condition will cease to have effect from BETTA go-live.</p> <p>For the transmission licensees the condition is inserted into transmission licences through Section E of the SLCs for transmission licences. Save in respect of certain specific provisions which will endure beyond BETTA go-live, Section E will cease to have effect at BETTA go-live.</p> <p>For the generation, distribution and supply licensees the licence condition is inserted into the standard conditions for the transitional period and will be removed at BETTA go-live.</p>

Licence condition relating to arrangements for run-off

- 3.5 In the June 2004 approach document¹¹, Ofgem/DTI explained that consideration was being given to the need to create transitional obligations to support the run-off of the existing trading and transmission arrangements in Scotland.

¹¹See footnote 4.

Ofgem/DTI noted that it might be necessary to place specific obligations on parties to carry out activities such that existing agreements and documents, which are not necessary under the new arrangements are 'run-off' in an appropriate manner. The detail of such obligations will not be known prior to BETTA go-active. A draft licence condition was attached at annex 2 of that paper.

3.6 In the July 2004 open letter, ¹² Ofgem/DTI explained that they intend to place an obligation on all electricity licensees, during the BETTA transition period, to comply with the 'BETTA run-off arrangements scheme'. It is intended that this scheme will place obligations on those licensees (and any other parties that undertake to be bound by the scheme) in relation to particular agreements or documents, where such obligations may be required to ensure that the pre-BETTA arrangements do not prevent or hinder the BETTA arrangements.

3.7 Ofgem/DTI also indicated in July that:

- the BETTA run-off arrangements scheme will be designated by the Secretary of State at some point after BETTA go-active
- the scheme will be subject to further modification by the Authority (with the consent of the Secretary of State), and
- the scheme will provide for disputes (as specified in the scheme itself) to be referred to the Authority for determination

3.8 The July 2004 open letter also invited comments on this draft condition. All five respondents to the consultation provided comments on this proposed licence condition. The comments relating to this licence condition are set out in the table below, together with Ofgem/DTI's responses.

Respondents' comments	Ofgem/DTI's response
A number of respondents were concerned that the obligation on the licensee was	Although the obligation to comply with the run off arrangements scheme is

¹² See footnote 6.

<p>absolute (as opposed to reasonable endeavours) and were concerned about a breach of the Scheme being a breach of the licence.</p>	<p>absolute, as some respondents have pointed out, the extent of this obligation cannot really be measured until the scheme itself has been drafted. When considering specific obligations to be placed upon the licensees through the scheme, Ofgem/DTI will give due consideration to whether or not such obligations should be absolute or whether they should be qualified in some way, and will consult with affected parties as appropriate.</p>
<p>One of these respondents felt that it was unfair to be required to agree to a licence obligation to terminate such agreements before it was satisfied that the commercial implications have been dealt with. The respondent recommended that the power to amend the documents should be exercisable after consultation with the relevant licensee, as should the power to designate the scheme.</p>	<p>Ofgem/DTI have reflected in the licence condition the requirement that the Authority should consult where appropriate prior to any amendment of the run off arrangements scheme. Such a requirement applies also to the Secretary of State prior to the designation of the BETTA run off arrangements scheme.</p> <p>However, Ofgem/DTI note that it is not Ofgem/DTI's intention to require that agreements are terminated unless this proves to be necessary. What is intended is that where agreements relating to the existing trading and transmission arrangements might prevent or hinder the implementation of BETTA, appropriate action will be taken in relation to those agreements to avoid such a consequence (which could be the variation of those</p>

	agreements rather than their termination).
A number of respondents were concerned that the concept contained within paragraph 2 was too vague and could lead to confusion.	The wording in paragraph 2 draws upon wording used in the BETTA implementation licence condition which is considered above and will be included in the licence of each electricity licensee. This wording is intended to describe the legal arrangements which make up BETTA, essentially modifications to electricity licences and various codes as well as the introduction of the STC, all of which (it is proposed) will be effected using powers provided for in the Energy Act 2004.
A number of respondents noted that the Secretary of State is empowered to set out the steps to be taken/procured by the licensee to achieve the principal objective of paragraph 2. These respondents believe that the Secretary of State ought to be obliged to consult before designating the Scheme.	As set out above, a requirement to consult as appropriate before designating the BETTA run off arrangements scheme has been included.
One respondent commented that “running off” needs to be defined. (paragraph 2), Another respondent sought clarity on the concept of ‘partial end’.	A definition of ‘running off’ was included in the July 2004 open letter and should be considered in the context within which this phrase is used. A new definition has now been included which states that ‘running off’ means bringing to an end.
One respondent suggested that, in paragraph 2, rather than referring to the “non GB arrangements” that the text refers to “the arrangements for the trading and	The non GB trading and transmission arrangements has been defined to refer to, amongst other things, the separate arrangements for the trading and

<p>transmission of electricity applicable in Scotland and England and Wales prior to BETTA go-live.</p>	<p>transmission of electricity in Scotland and in England and Wales. Ofgem/DTI consider that this definition has an equivalent effect to that described by the respondent and is appropriate. As such no change has been made.</p>
<p>One respondent suggested that the objective required discussion as the objective must include the proper operation of current obligations which should be applied fully in respect of any period prior to BETTA go-live.</p>	<p>The objective of the run off arrangements scheme is to contain within it provisions relating to the non GB trading and transmission arrangements which are considered necessary to ensure that the effective implementation of BETTA is not prevented or hindered. Separately licensees will be required to comply with their licence obligations relating to the non GB trading and transmission arrangements up until BETTA go-live (although, as described in the July 2004 open letter, Ofgem/DTI have provided that the Authority may, where appropriate, relieve the transmission licensees of obligations relating to the non-GB trading and transmission arrangements during the transitional period in certain circumstances and following appropriate consultation and with the consent of the Secretary of State).</p> <p>Ofgem/DTI do not consider that these two sets of arrangements will conflict, However, to the extent that this were to be the case, provision has been included for such conflicts to be notified to the</p>

	Authority for resolution.
<p>A number of respondents raised concerns about the powers under paragraph 4, which could be used to secure the amendment of relevant documents and the power for the Authority to make determinations in respect of such matters. The respondents indicated that such powers could be used to vary documents against a licensee's own interests and could place legitimate contractual disputes arising under such agreements, with possibly significant commercial implications, within the final jurisdiction of the Authority in a quasi-judicial role. Respondents also commented that modification of relevant documents could have serious cost and systems implications for them and could raise issues of STC precedence.</p>	<p>Any arrangements to be contained within a run off arrangements scheme and any obligations that such a scheme may impose in relation to documents that make up the non GB trading and transmission arrangements will be consulted upon with affected parties prior to their inclusion within the scheme, as will the provision for matters to be referred to the Authority for determination. Thus, any adverse implication of such specific proposals can be made known by parties and considered at that time.</p>
<p>A number of respondents believed that this condition should be subject to a sunset clause.</p>	<p>Ofgem/DTI consider that it is possible that provisions contained within the BETTA run off arrangements scheme may need to endure beyond BETTA go-live. At this stage it is not possible to establish a finite time within which any such obligations might be fully discharged and as such Ofgem/.DTI do not consider that it would be appropriate to place a sunset clause in this licence condition. However the licence condition does provide that the power to make amendments to the scheme</p>

	will end upon BETTA go-live.
One respondent raised concerns about conflicting interests in paragraph 7.	The condition contains a requirement to notify the Authority of any conflicts between the requirements of this licence condition and those of its other licence conditions and to comply with any direction of the Authority in relation to the same. To the extent that a licensee notifies the Authority of a conflict in accordance with its licence and complies with any direction of the Authority in relation thereto, it is inconceivable that the Authority would take enforcement action against that licensee in respect of the matters which are in conflict where that licensee has complied with that direction
One respondent noted that some run-off matters may be required to be dealt with after go-live (paragraph 8).	Given the objective of the scheme, specifically to address any matters contained within the non GB trading and transmission arrangements that might prevent or hinder the effective implementation of BETTA, Ofgem/DTI consider that the content of the BETTA run-off arrangements scheme should be completed prior to BETTA go-live. As such it is appropriate that the power to make further changes to the BETTA run-off arrangements scheme should cease from BETTA go-live.
Annex 1 Definition of relevant documents	A number of changes have been made to the list of documents that was published in

<p>Several respondents commented on the documents listed in Annex 1, noting that some of the references to documents were too vague or contained minor errors. It was also queried whether or not certain documents should be included in this list.</p> <p>One respondent commented that any list should not be exhaustive.</p>	<p>July 2004. The list remains non-exhaustive. However the approach has been altered so that it refers to certain specific documents and then refers generically to agreements relating to:</p> <ul style="list-style-type: none"> • The establishment operation or trading of electricity across the Scottish interconnection • The use of, or connection to, the Scottish interconnection; and • The use of, or connection to, a distribution system in Scotland or a licensee's transmission system in Scotland.
--	--

3.9 A number of drafting comments were also received on this licence condition. These have been reflected in the revised condition where appropriate. Additionally Ofgem/DTI have made a number of other drafting changes which reflect the final wording in the 'BETTA Implementation' licence conditions, as this condition draws upon such wording.

Transitional licence conditions in relation to connection and use of system

3.10 Ofgem/DTI noted in the July 2004¹³ open letter that currently anyone connected to or using the transmission systems of NGC, SPT or SHETL will have in place

¹³See footnote 6.

(as appropriate) an agreement for connection to or use of that transmission system. However, under BETTA, NGC, as GB system operator, will be responsible for providing connection to and use of the system.

3.11 Ofgem/DTI issued a consultation paper on 6 July 2004¹⁴ on the transition to a GB CUSC that set out the process that NGC will be following in relation to putting in place GB connection and use of system agreements and associated licence conditions. This consultation contained a proposed licence condition for NGC in relation to the requirement to offer terms for connection to or use of the GB transmission system in the transitional period and a proposed licence condition to be included in generation, distribution and supply licences in relation to the requirement to enter into agreements for connection and use of the transmission system with NGC in the transitional period.

3.12 Ofgem/DTI received six responses to this consultation. Copies of these responses are available to view on the Ofgem website www.ofgem.gov.uk. Details of these comments and Ofgem/DTI's responses are contained in the recently published CUSC conclusions and publication of designation text paper¹⁵.

¹⁴ "Provisions for the transition to the GB CUSC, the GB Grid Code and GB connection and use of system agreements under BETTA; including associated licence conditions for NGC and for generation, distribution and supply licensees; changes to the CUSC Framework Agreement ; and transitional drafting for the GB CUSC and GB Grid Code", Ofgem/DTI consultation, July 2004, Ofgem 152/04.

¹⁵ "The CUSC under BETTA, "Ofgem/DTI conclusions and publication of proposed designation text", August 2004.