

To all interested parties

Email: RIIO2@ofgem.gov.uk

Date: 14 July 2020

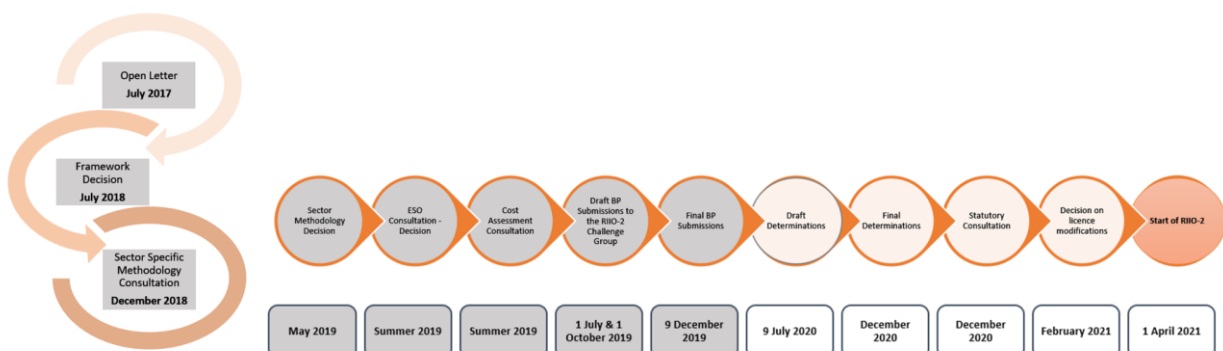
Dear Stakeholder

Contingency Plans for RIIO-2

On 9 July 2020, we published our consultation on draft determinations (DDs) for the RIIO-2 gas distribution and transmission, and electricity system operator, price controls.

In that consultation, we said we remain focussed on delivering the RIIO-2 programme to the existing timetable. The steps involved in the run up to final determinations (FDs) are set out in Figure 1 below. Following FDs, we aim to publish a statutory consultation on licence modifications in December 2020, and to direct the necessary changes to licences in February 2021, with the new controls starting on 1st April 2021 following the 56 day standstill period.

Figure 1: RIIO-2 timetable



However, COVID-19 continues to present some risks to delivery, and we noted in DDs that we should have contingency plans in place should impacts on Ofgem or company resources mean we cannot adhere to the existing timeline.

This open letter consults on our COVID-19 contingency plan for RIIO-2 (the proposal). Our proposal seeks to address the risk that there is some slippage in the RIIO-2 timetable, but aims to ensure that the price control takes effect from 1st April 2021.

Our proposal would involve modifying the existing RIIO-1 licence following a statutory consultation in the usual way to include a new licence condition, creating a change control framework which could be triggered to modify RIIO-1 licence conditions and introduce new RIIO-2 licence conditions that would give effect to our FDs from 1st April 2021.

Assuming the proposal was triggered, this licence condition would be used to give effect to RIIO-2 FDs by way of direction, so long as we are able to publish FDs by February / March 2021. This would allow us to accommodate a limited delay of up to 3 months, whilst preserving the RIIO-2 1st April 2021 start date. We refer you to Annex 1 which illustrates the contingency RIIO-2 timetable that would facilitate implementation of the draft licence condition in Annex 2¹ in the event that COVID-19 impacts our existing plans. For the avoidance of doubt, the licence condition would:

- only be available for a time-limited period;
- only be available in the strict circumstances detailed in the draft condition;
- only be used for limited purposes as provided for in the draft condition;
- be followed as soon as possible thereafter by a formal statutory licence consultation to implement the RIIO-2 licence conditions (latest by the specified date in the licence condition), with a formal direction to implement those licence changes to follow; and
- not affect appeal rights to the CMA against the eventual formal licence modifications.

¹ At this stage, the dates contained in both Annex 1 and Annex 2 are illustrative only.

We welcome feedback from stakeholders on the draft licence condition set out in Annex 2 to this letter. In particular, we would welcome responses by 12 August 2020 on the following questions:

1. Do you have any views on the proposal to give effect to FDs in this way? In particular, do you agree that it is a reasonable and proportionate way to accommodate a potential Covid-related delay of 3 months in such a contingency scenario?; and
2. Do you have any views on the draft licence condition as set out in Annex 2 to this letter?

Once again, in light of the steady improvement of the Covid-19 situation across the country, we do not currently anticipate delays and our baseline expectation remains that we will deliver the new RIIO-2 controls in time for 1st April 2021. If, following consideration of responses, we decide to proceed with this contingency plan, it would be subject to further consultation in the usual way, under section 11A of the Electricity Act 1989 and section 23 of the Gas Act 1986.

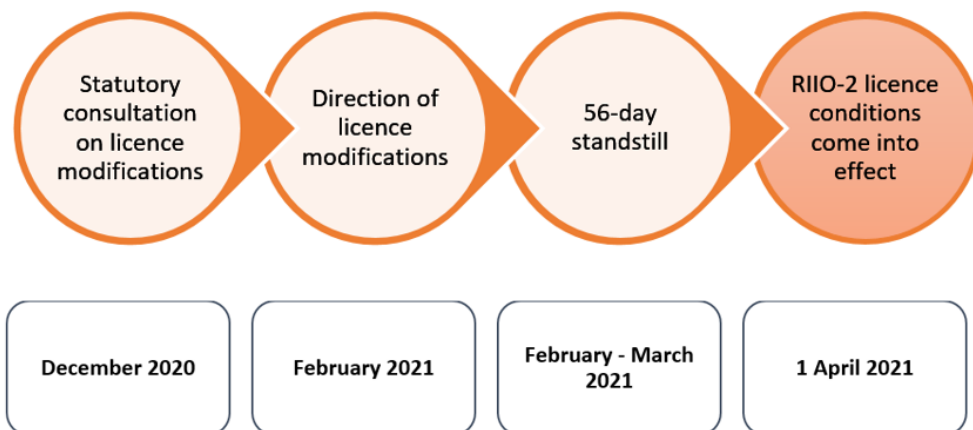
Kind regards,

Akshay Kaul

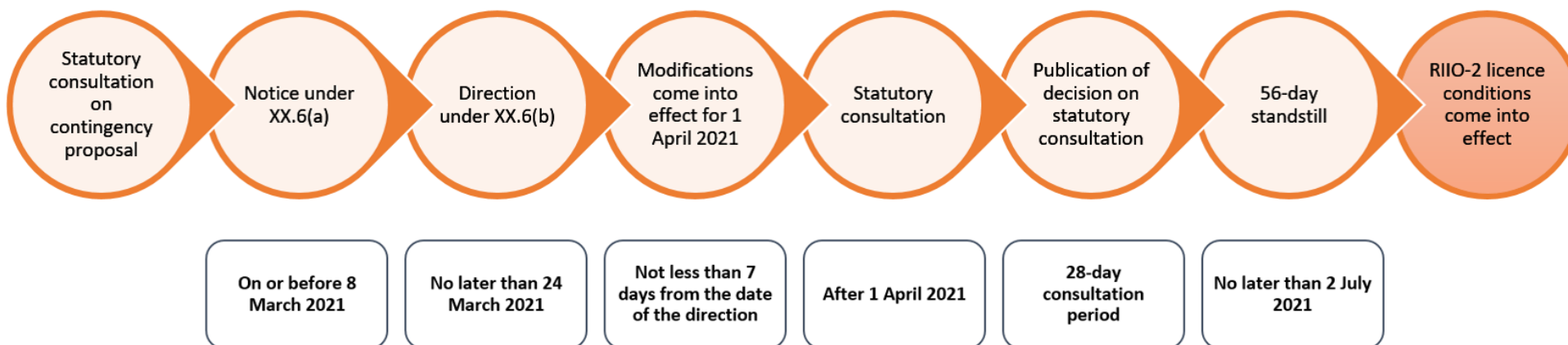
Director, Network Price Controls

ANNEX 1: CONTINGENCY RIIO-2 TIMETABLE FOLLOWING PUBLICATION OF FDS

Current RIIO-2 timeline



Contingency RIIO-2 timeline



ANNEX 2: DRAFT PROPOSED LICENCE CONDITION

Special Condition XX. Governance of RIIO-1 Licence Conditions in Emergency Circumstances

Introduction

XX.1 The purpose of this condition is to establish a change control framework, which can be triggered by the Authority in emergency circumstances to

(a) cause RIIO-1 Licence Conditions to cease to have effect; and

(b) modify RIIO-1 Licence Conditions in such manner as appropriate to give effect to the RIIO-2 Final Determinations.

XX.2 Parts A and B are without prejudice to the powers of the Authority to make modifications under sections [11A and 11B of the Electricity Act 1989 (EA89) / 23 and 23A of the Gas Act 1986 (GA86)].

XX.3 This licence condition will cease to have effect [on 31 March 2021]. Thereafter, the Authority will make licence modifications under sections [11A and 11B of the EA89 / 23 and 23A GA86] to give effect to the RIIO-2 Final Determinations, which will be published on the Authority's website no later than [2 July 2021].

Part A: When can modifications be initiated under Part B?

XX.4 Modifications under Part B may only be initiated where:

(a) the Authority is unlikely to be able meet its existing RIIO-2 timetable, as set out on its website;

(b) that delay arises from extraordinary circumstances;

(c) those extraordinary circumstances are not of the Authority's making;

(d) those extraordinary circumstances have had a significant impact on the Authority's normal activities; and

(e) the Authority could not make licence modifications under [sections 11A and 11B EA89 / sections 23 and 23A GA86] such that would come into effect before 1 April 2021.

XX.5 If paragraph XX.4 is fulfilled then the Authority will write to the licensee at the earliest opportunity setting out why it considers that to be the case, and informing it that it intends to proceed to issue a notice under Part B.

XX.6 The Authority may only

(a) give notice of proposed modifications on or before 8 March 2021; and

(b) direct modifications under Part B no later than **24 March 2021**.

Part B: What process will the Authority follow in making a direction?

XX.7 This Part ceases to have effect after a direction has been made under XX.10.

XX.8 If Part A is made out then the Authority can modify in accordance with paragraph [XX.9] to [XX.11] below.

XX.9 Before making any modifications under this Part, the Authority will publish on its website:

(a) the text of the proposed modifications and the date from which the Authority proposes that it should have effect;

(b) the reasons for the proposed modifications; and

(c) the time within which representations on the proposed modifications may be made, which will not be less than [7 days].

XX.10 The direction will set out:

(a) the modifications; and

(b) the date from which those modifications are to have effect, or the mechanism by which that date is to be determined, but which will not be less than [7 days] following the date of the direction, and in any event **no later than 1 April 2021**.

XX.11 Any direction made under XX.10 and any conditions added or modified by any such direction will cease to have effect following the earlier of:

(a) the coming into effect of the RII0-2 licence modifications; or

(b) 31 December 2021.

XX.12 The Authority may by direction modify the dates set out in:

(a) XX.3;

(b) XX.6;

(c) XX.10; and

(d) XX.11(a).