

CROSS SECTOR	
<b>REFERENCE NUMBER:</b>	<b>CATEGORY:</b> Amendment
<b>LICENCE CONDITION NUMBER:</b> <i>(if relevant):</i>	SpC 8.1
<b>TITLE:</b>	<b>Governance of Price Control Financial Instruments</b>
<b>RELEVANT LICENCE CONSULTATION QUESTIONS</b> <i>(if any):</i>	
<b>RELEVANT ISSUES LOG:</b>	
<b>POLICY ISSUES</b>	
<ul style="list-style-type: none"> <li>Self-modification process</li> </ul>	<p>The September 2019 version of the RII0-2 Licence Drafting Principles stated that the <i>“self-modification procedure for example the process we use to modify the PCFM (see SpC 2A in the GDN licence), ....would include the option for licensees to request the full licence modification process is used”</i>.</p> <p>This Principle has now changed to state <i>“self-modification procedure. This will not include the option for licensees to require the Authority to use the statutory process.”</i></p> <p>We are concerned by this change, the rationale for which is not explained in the licence drafting principles. The reasoning given in paragraph 4.37 of the consultation is that <i>“as an independent regulator we should be determining whether to use the self-modification process”</i>. It is not at all clear why this is considered to be the case or that Ofgem has considered the impact on networks of the change.</p> <p>The legislation sets out a framework for Ofgem to make modifications to licence conditions and includes a power for conditions to be self-modifying. That power must be used appropriately and in line with best regulatory practice. In particular, a self-modification procedure should only be included in the licence where there is a clear justification for this in the particular case (i.e. why it is appropriate for the licence to be modified other than through the statutory process) and having considered the impact on licensees (including any procedure which removes a right of appeal to the CMA).</p> <p>The particular procedure put in place should also align with the justification. The current change control framework for price control financial instruments for RII0-T1 acknowledges that there may be merit in a quicker and more flexible process for changes which have no significant impact but, noting that what is significant may not be clear cut, takes a proportionate approach by allowing licensees to require the statutory process to be followed where they have a reasonable view that there will be a significant impact. Licensees are best placed to give this view. Ofgem has not justified the proposed change to this procedure.</p>

<b>DRAFTING ISSUES</b>	
<ul style="list-style-type: none"> <li>• Status of the PCFI</li> <li>• Self-modification process</li> <li>• 8.1.5</li> </ul>	<ul style="list-style-type: none"> <li>• Existing licence drafting (e.g. ET Special Condition 5A.2) confirms that the PCFI form part of the licence condition. This is relevant and important given that the PCFI are modified by the statutory licence modification process in s11A EA and s23 GA in the absence of the self-modification process being used (as recognised by 8.1.5). We see no justification for this provision being removed and Ofgem has not consulted on the point. The existing provisions dealing with this point should be reinstated.</li> <li>• For the reasons stated above the existing provisions of the PCFI governance condition (e.g. ET Special Condition 5A.13) requiring the use of the statutory changes process where a licensee can demonstrate that a proposed modification would be likely to have a significant impact should be retained within the drafting of this condition.</li> <li>• In the ET version of the condition 8.1.5 should cross-refer to section 11A of the Act</li> </ul>
<b>FINANCE ISSUES</b>	
<b>SUPPORTING INFORMATION</b>	
<b>OFGEM ENGAGEMENT:</b>	