

CROSS SECTOR	
<b>REFERENCE NUMBER:</b>	<b>CATEGORY:</b> Addition
<b>LICENCE CONDITION NUMBER:</b> (if relevant):	<b>SLC B24</b> <b>SSC A56</b>
<b>TITLE:</b>	<b>Housekeeping</b>
<b>RELEVANT LICENCE CONSULTATION QUESTIONS</b> (if any):	
<b>RELEVANT ISSUES LOG:</b>	<b>Housekeeping issues log</b>
<b>POLICY ISSUES</b>	
<ul style="list-style-type: none"> <li>General</li> </ul>	<ul style="list-style-type: none"> <li>We have significant concerns over the introduction of this licence condition for a number of reasons: <ul style="list-style-type: none"> <li>First, the condition would remove licensees' right of appeal to the CMA in respect of any "<i>minor</i>" changes through the housekeeping condition – any such proposal needs serious consideration and should only be adopted with clear justification.</li> <li>Second, the reason for introducing the condition has not been fully explained. The consultation states that the intention of the provision is to reduce regulatory burden, but it is not explained what is burdensome about the statutory licence modification process such that it should be avoided or how the process in this licence condition will assist. The minimum consultation period is the same in each case. There is a statutory standstill period for statutory licence changes, but it is not explained how this causes burden. Ofgem generally carries out an informal consultation before a statutory consultation, but there is no requirement for this in every case.</li> <li>Third, the process turns on the meaning of what is a "<i>minor</i>" change, which is open to interpretation, meaning that it will not be clear when this may be applied. Our understanding is that this process is intended to apply to non-substantive changes, but that is not clear from the drafting or the consultation paper. There is clearly the scope for disagreement over whether a change is minor or not.</li> <li>Fourth, best regulatory practice should be considered. Ofgem should set processes in place, including having adequate resources and sufficient time for consultation and consideration of responses that it issues a licence with a high standard of drafting and does not direct licence modifications which contain errors.</li> </ul> </li> </ul>

<ul style="list-style-type: none"> <li>• XX.3</li> <li>• Defined Terms</li> <li>• Defined Terms</li> </ul>	<p>Further, interpretation provisions in the licence already deal with interpretation around changes to legislation (through the term of the licence incorporating the Interpretation Act 1978). Ofgem has moved away from the position, which we understood that Ofgem considered reasonable in the licence drafting working group meetings, that the process should not apply where the licensee reasonably objects to the categorisation of the change (similar to under the current change control framework for Price Control Financial Instruments). This change would remove many of our concerns and would align with Ofgem’s policy intention as we understand it.</p> <ul style="list-style-type: none"> <li>• In XX.3, if Ofgem adopts such a process, we suggest that it should be required to (actively) consult the working group on the issue. The current provision does not explain how the working group will be in a position to have and convey views on the issue.</li> <li>• If Ofgem adopts such a process, it should apply only to the types of changes listed in the sub-paragraphs of the defined term of Housekeeping Modification. In other words, the list should be stated expressly as being exhaustive (e.g. “<i>means any of the following changes...</i>”). This change would also lessen our concerns.</li> <li>• It is not clear from the drafting how the Housekeeping Modification Working Group will be set up. We presume that Ofgem would establish this, with members drawn from licensees.</li> </ul>
<b>DRAFTING ISSUES</b>	
<ul style="list-style-type: none"> <li>• XX.4</li> <li>• XX.6(a)</li> <li>• Defined Terms</li> </ul>	<ul style="list-style-type: none"> <li>• To align with the intention and clarify the paragraph, we suggest a number of changes: <ul style="list-style-type: none"> <li>○ Suggest “<i>proposed</i>” is more appropriate than “<i>intended</i>”.</li> <li>○ Suggest “<i>is a Housekeeping Modification</i>” (singular).</li> <li>○ Suggest “<i>..., it may modify the licence by direction to implement the proposed modification</i>”. The scope of any power to direct should be clear.</li> <li>○ There is no need for the second sentence, which has no substantive effect. If, contrary to this, it is included, it should be in the introduction. It is also against the general position as set out in the licence drafting principles to have a second sentence here.</li> </ul> </li> <li>• Suggest “the <u>modification</u>...” (singular).</li> <li>• In the definition of “Housekeeping Modification”, we note that there should be an “and” connecting the list.</li> <li>• In sub-paragraph (b), we suggest that this should refer to “<i>corrections of evident <u>drafting</u> mistakes...</i>” as we understand this is the intention.</li> </ul>

<ul style="list-style-type: none"><li>• General</li></ul>	<ul style="list-style-type: none"><li>• Some aspects of the paragraph numbering need to be reviewed.</li></ul>
FINANCE ISSUES	
SUPPORTING INFORMATION	
OFGEM ENGAGEMENT:	