
Licence Drafting Principles

These are the licence drafting principles that we have applied when developing the drafting for the licence conditions. These licence drafting principles build upon those used in RIIO-2 and aim to ensure a consistent approach to all the licence conditions for the FSO.

Definitions

- A1.1 Each licence will contain a definitions condition at the start of the conditions, which sets out all of the definitions used in those conditions. It will also set out which definitions in legislation or other documents such as industry codes apply to the conditions.
- A1.2 It is acceptable for a definition simply to refer to a definition in documents outside the licence and legislation e.g. in industry codes or the Price Control Financial Handbook. However, a decision will need to be made about whether that definition should be ambulatory e.g. “as from time to time amended” or static e.g. “version 2.3”.
- A1.3 In general, where Ofgem are the authors (e.g. RIGs), or have a degree of control (e.g. industry codes), especially if there are frequent updates, we recommend that the reference is ambulatory.
- A1.4 Defined terms should be capitalised throughout the licence conditions.

Structure of Conditions

Title

- A1.5 Each licence condition will have a title, which in general should be no more than one line.

Headings

- A1.6 Licence conditions that are more than a few paragraphs long should have headings, which should generally be no more than one line.

Paragraphs

- A1.7 Each paragraph should only deal with one idea and this means that generally it should only contain one sentence.

- A1.8 In terms of paragraph levels, we should stick to paragraphs and sub-paragraphs without going any further. We have retained sub-sub-paragraphs in some of the existing NGESO licence conditions where it would be difficult to redraft without changing the original policy intent. This makes the licence condition easier to read. In some cases a defined term has been created to resolve this.
- A1.9 If listing things, sub-paragraphs should be used for each item on the list, rather than one long sentence.
- A1.10 Multiple paragraphs should be referred to as "paragraphs 4, 5 and 7", rather than "paragraph 4, paragraph 5, and paragraph 7", and sub-paragraphs written as "paragraph 4(a) and (c)".

Introduction

- A1.11 Every licence condition should start with a section headed "Introduction". This should set out the purpose of the condition and should generally be no more than three paragraphs long.
- A1.12 It is possible to have a short introduction even for a long licence condition because it should not replicate anything that is in the main body of the licence condition. It should only explain the purpose of the licence condition.

A Logical Flow

- A1.13 After the introduction, a structure needs to be determined for the licence condition that ensures a logical flow. This includes:
- having basic concepts explained before any variations.
 - having any provisions dealing with uncertainty or how the licence will be changed set out after the provisions dealing with how things commence.
 - having any provisions on what happens if the licensee fails to comply with the condition set out after the provisions on what they are being required to do.
 - dealing with any procedural or minor points after the more substantive parts of the condition e.g. the establishment of Associated Documents.

Obligations

- A1.14 Obligations should be set out precisely and not simply reiterate the existing duty to act in an "economic and efficient" manner. If necessary, this can be done outside of the licence for example in industry codes or guidance.

- A1.15 In some cases, it may be appropriate to qualify the extent of the obligation. This can be done by specifying particular circumstances in which the licensee does not have to comply with the obligation in the licence or creating an uncertainty mechanism to remove the obligation in certain circumstances or at specific times.
- A1.16 Where an obligation is qualified by the level of effort, we will use “reasonable endeavours” or “best endeavours” and not “all reasonable endeavours”. As a starting point for new obligations we would expect to use “best endeavours”, since we have considered the obligation worth adding to the licence. However, there may in some contexts be a cost implication to this and the specifics of individual licence conditions and policy areas must be properly considered and may well warrant use of “reasonable endeavours”.
- A1.17 The licence could also specify the steps the licensee should take or at least the minimum steps as part of their “best endeavours” or “reasonable endeavours”.

Consistency Rules and Style Guide

- A1.18 Use plain English wherever possible.
- A1.19 Use “must” instead of “shall” for placing obligations on the licensee.
- A1.20 Use the active rather than the passive voice i.e. “the licensee must send a notice”, rather than “a notice must be sent by the licensee”.
- A1.21 Use sub-paragraphs to show items in a list for clarity. The Oxford comma may assist in the understanding of a provision by showing that the last two items in a list are separate, but consider whether it would be clearer to use sub-paragraphs instead.
- A1.22 “Licensee”, “condition”, “licence”, “special condition” and “standard condition” should be all lower case, unless at the beginning of a sentence.
- A1.23 Avoid cross references if possible. Where needed, the first cross reference to another condition should refer to the number and the title. Subsequent cross references should simply refer to the number. We have left most cross references in the existing NGESO conditions in place, but are considering whether to do further redrafting to remove them where they can be avoided.
- A1.24 “Pursuant to” should be used when making a reference to legislation, and “in accordance with” or “under” should be used for references to paragraphs or conditions within the licence.