



Smart Metering Implementation Programme
Regulatory Design Team
Department of Energy and Climate Change
3 Whitehall Place
London SW1A 2AW

RWE npower

1st June 2012

Dear SMIP Regulatory Design Team

DCC Licence and Licence Application Regulations Consultation

Thanks for the opportunity to respond.

We remain broadly in support of DECC's approach.

We do think that the drafting requires further work to ensure full clarity to all parties of what their own responsibilities are under the Data Protection Act (DPA).

Our belief is that since DCC is a licence holder then they are the Data Controller and as such have DPA obligations. The DCC's obligations are indeed discharged through its Service Providers and that they have direct DPA obligations (i.e. not through the DCC licence) as well as contractual obligations with the DCC that will ensure DCC compliance with the DPA.

In particular, we believe that the drafting of Condition 8 – Security controls for the authorised business - needs to be more specific on the security standards on the licensee and Condition 25 . Undertakings of the Ultimate Controller are unclear and should be reviewed.

Yours sincerely

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4.23 Question 1

Do you agree with the structure and content of parts 1 and 2 of the licence?

Yes, broadly.

Single document - We support the proposal to use a single document which constitutes a licence to carry out both gas and electricity related DCC activities and that a single set of terms and conditions should apply as we believe that this is the most straight-forward and appropriate initial approach.

Document review - We support the decision to ensure that this documentation is kept under review in order best to manage any change that comes to light as more detailed arrangements are progressed, as we believe that this is the most pragmatic approach to maintaining an appropriate licence that is 'fit-for-purpose' for a DCC who's role is set to develop during the early part of its tenure.

Licensee appointment phasing - The proposed time-scales for running the licence of 12 years with a provision for the Authority to extend up to a further 6 years also seems appropriate as it aligns the DCC function with the mass rollout. We do suggest that the Government avoids alignment of the duration of the licences of the DCC and Service Providers (i.e. ensure the terms are staggered) as wholesale replacement of licensees would be disruptive, and the benefits of any coordinated replacement would be hard to achieve.

Part 2:

The specification of revocation events and triggers are well defined and cover a wide range. However, due to the current environment in which we all operate we believe that one of the main considerations for licence revocation is likely to be with regard to the appropriate protection of data, particularly during the early development of the new roles and responsibilities and supporting systems and processes. We therefore suggest that consideration is also given to stipulating that appropriate contracts need to be drafted and enforced between the DCC and its Service Providers to ensure that DPA aspects are appropriately covered as we believe there is probably a joint and several legal responsibility in this matter that must be considered. It would also be very helpful if Suppliers could see these Service Providers contracts as soon as possible to ensure that they too comply with any consequential contractual arrangements.

We feel that we should be taking the opportunity now within the drafting of these licence conditions to ensure that we emphasise the fact that the DCC as Licence holder is, by default, a Data Controller under the definition given to it by the DPA and as such is responsible for data and continuity of service.

4.23 Question 2

Do you agree with the proposed list of licence revocation events, in particular do you agree with the inclusion of revocation triggers linked to:

- i) A failure of the DCC to comply with an enforcement notice issued under Section 40 of the Data Protection Act;
- ii) A contravention of the licence condition or statutory requirement in a manner so serious as to make it inappropriate for the licensee to continue to hold the licence;
- iii) A contravention of the Independence Condition 9; and
- iv) The licensee no longer being, or never having been, a fit and proper person to carry out the Authorised Activity?

Yes

Definitions - We agree with the proposed licence revocation events in general and the current triggers, as described.

Additional responsibilities - With regard to the more DCC specific revocation events there may be a requirement to add a new specific event to cover the situation where a DCC has not fully or appropriately developed its systems and processes to cover its changing role as it takes on additional responsibilities (Registration for example). We would therefore ask that consideration is given to ensure that this area is reviewed alongside the development of the licence to ensure that as the DCC Licensee's role develops the increasing responsibilities are captured accordingly.

Specifically we have the following comments and observations to make

- i) As the DCC licensee has DPA obligations that must be fulfilled at all times it follows that it must comply with section 40 of the Data Protection Act and as such we believe that this trigger for revocation is extremely important and must be included;
- ii) Serious contraventions of the licence conditions or statutory requirements must be included as a trigger for the revocation of the DCC Licence;
- iii) It is imperative that the DCC operates (and is seen to operate) in a truly independent way we therefore support this trigger; and
- iv) If the licensee has 'never been fit' then this suggests that the tender process was flawed.

4.23 Question 3

Do you agree that the DCC licence should be issued for a fixed-term only?

Yes, in principle, but would support a review of Ofgem's suggested approach of granting a Licence in perpetuity.

The fixed term contract approach provides a process with clearly defined and readily understood time-scales. It also allows for arrangements to ensure that the DCC would be required to operate for a minimum of 2 years which would ensure a more robust handover of roles and responsibilities, should one be required during the early years of the Smart Programme. However, it does not cater for a situation where the incumbent DCC either resigns or has their licence revoked, but no successor DCC has been found during these early years. Ofgem's suggested alternative approach (4.23) to issue a licence in perpetuity with a fixed term income stream may alleviate this potential problem and we suggest that this approach should be investigated further.

NB: Impacts to DCC Licence including a review and possible redrafting of the defined term 'Licence Term' may be required.

4.29 Question 4

Do you have any comments on Chapter 1 of the licence conditions, in particular do you have any comments on the drafting of the definitions?

Yes

Npower have no issues with the drafting of Chapter 1 or the defined terms that it contains, consisting as it does of the more standard rules of interpretation and definitions. We do however note that some of the definitions currently provided may require amendment as and when certain related decisions are made. Example: If fixed-term DCC Licence is amended to become a Licence granted in perpetuity, as per Ofgem's suggested approach, then the Licence Term definition may need to be reviewed. In addition, we would however ask that consideration is given to ensuring that all defined terms are included within Condition 1 and not defined within the particular Condition to which they relate as this will ensure consistency with the drafting of other industry documentation, ease of use and reference and ultimately avoid any potential confusion arising.

4.56 Question 5

Do you have any comments on Chapter 2 of the licence conditions, in particular do you have any views on:

- i) The general objectives of the DCC;
- ii) The way in which the Mandatory and Permitted businesses of the DCC have been constructed;
- iii) The interaction between the mandatory and permitted businesses;
- iv) The proposed general and security controls for the DCC?

Yes, with caveats expressed below...

We are generally in agreement with the content and drafting of Chapter 2 and also support the concept that Smart Grids should be considered at the outset. However we would wish to see those industry parties that benefit from this approach to be the ones that provide the necessary funding. Please note there appears to be a typographical error in the drafting of Condition 8 – 8.2 (b) that should be referencing Condition 10 and not Condition 9, as stated. Finally, we would like to see a tighter drafting of Condition 8, Part A, 8.4 (a) as we believe that reference to 'commentary in the main consultation document' is insufficient and that specific drafting is required to ensure compliance with DPA protocols by all parties including the DCC Licensee and to avoid the possibility of causing confusion or inconsistent interpretation;

- i) Whilst we are supportive of the general objectives as drafted we ask that consideration is given to redrafting section 4.31 so that they better align with the proposed obligations i.e. Go-Live and Mass Roll-out, in order to provide greater focus and clarity. Suggest that Bullets 5-6 become 1-3 and Bullets 1-4 become 4-7. In addition, chapter 2 should clearly show how those objectives proposed within 4.31 are anticipated to be covered. For example, General objectives covered under Condition 5, but Security, Data Privacy and Roll-out covered under Conditions 8, 10 and 13 respectively. If these objectives are more clearly referenced to the covering conditions the document will be more easily used and readily understood;
- ii) and iii) - We support the way in which the Mandatory and Permitted Businesses interact and are comfortable that consideration has been given to the potential impact that increased 'Permitted Business' could have on those Mandatory items and support the propose 'cap' approach to ensure that Permitted Business is appropriately managed (ref. 4.51 - < £0.5m p.a. turnover and no 'material impact'). We suggest that further consideration is given to better define what is meant or envisaged by 'material impact' on the Mandatory Business in order to avoid confusion or misinterpretation should such a situation arise in the future; and
- iv) We acknowledge that adherence to the UK Corporate Governance Code (4.53) is good to have but would suggest that this is not the only form of Governance that should be considered within Condition 7 (Part A) as reference to the SEC Panel may also be appropriate, for example.

4.78 Question 6

Do you have any comments on Chapter 3 of the licence conditions, in particular do you have any comments on:

- i) the independence requirements of the DCC and the interaction with the revocation provisions;
- ii) the broad condition on protection of confidential information;
- iii) the scope and nature of the role of the compliance officer?

Yes, generally with a few comments for consideration.

Although we generally agree with the independence arrangements for the DCC as drafted and how these interact with the revocation provisions, this chapter covering Licensee Independence does raise certain questions with regard to the relationships between the DCC and its users. We are of the opinion that in order to best ensure that no undue influence on the DCC is possible from any user who may choose to own shares in the DCC, that all users whether licensed or otherwise should have the same limits and constraints applied to their level of share holding. In addition, we support the condition covering the protection of confidential information but ask that this area is continually reviewed to ensure full compliance as the DCC and the Industry continue to develop under the new Smart arrangements

Condition 9 - Independence and autonomy of the Licensee:

- i) We believe that this condition is thorough in its coverage of independence requirements and is appropriately linked to the possibility of DCC Licence revocation in instances of serious breach. With regard to the drafting in Part D we understand and support the need to make provision for flexibility and to be able to develop alternative arrangements for independence, with Authority consent. However we suggest that additional drafting is provided to ensure that aspects of both risk assessment and transparency are also covered. We agree with and support the concept of Independent Directors and the provisions for their independence, as drafted, seem robust. However, for the avoidance of doubt we believe that the term 'Independent Director' should be defined with proper reference to clause 9.15 and the subsequent Independence Requirements as specified in Condition 9, Part E;

Conditions 10 and 11 - Protection of confidential information:

- ii) We believe that these broad conditions adequately cover the need for the DCC to have in place the necessary systems and processes to ensure that Confidential Information is appropriately managed. However, we would ask that consideration is also given to referencing the DPA within Part B when specifying matters to which the General Prohibition does not apply, as this forms the over-arching control with regard to the protection of Confidential Information; and

Condition 12 - Scope and nature of Compliance Officer:

- iii) We support the introduction of a Compliance Officer to undertake duties as required to report and manage compliance of the DCC Licensee with its Licence obligations and to do so in an open and transparent manner. To this end, as the DCC Licensee will be a signatory to the SEC and that the Compliance Reports that the Compliance Officer is responsible for are likely to contain more than just security of Confidential Information, we believe that these reports should also be

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provided to the SEC Panel for their consideration prior to the wider, general release.

4.93 Question 7

Do you have any comments on Chapter 4 of the licence conditions, in particular do you have any comments on the drafting of:

- i) the transitional obligations on the DCC, possibly as part of a wider transition scheme;
- ii) the proposals for how the DCC would set out its future business development objectives;
- iii) the proposed inclusion of a licence condition that would facilitate future transfer of registration to the DCC?

Yes

We are generally supportive of the proposed transitional arrangements, but wish to clarify the definition of Scheme Objective in section 13.2 and how this should be interpreted as although the scheme objective is to complete ultimately the roll-out of smart metering across the country by 2019, the transition period that has currently been used covers installations that have been undertaken (for a variety of reasons) prior to any commencement date and as such includes meters and metering arrangement that have still to be approved. The DCC currently has no incentive to adopt these meters with an early, pre-commencement date. This impact needs to be considered as part of transition arrangements to ensure that no stranding of assets occurs.

- i) The transitional arrangements as specified within Condition 13 cover a wider range of anticipated existing and new requirements and as such appear to be generally 'fit-for-purpose'. However section 13.7 (d) needs to state that requests for timely and regular provision of specified information from the Secretary of State and Authority should be compliant with the Data Protection Act;
- ii) We support the approach outlined in Condition 14 to cater for the determination and management of any future developments via the DCC obligation to provide a 5-year rolling Development Plan and note that this is a tried and tested approach. However, there may be a requirement to consult and liaise with the SEC Panel etc in order to ensure that consideration is given to the impacts of any developments on the SEC and changes to the SEC are understood and agreed by all parties concerned and/or impacted; and
- iii) We fully support the inclusion of Condition 15, 'future-proofing' as it does the Industry's intention to further develop the DCCs roles and responsibilities in terms of Registration. We believe that true economies can be made when the DCC can provide central Registration Services to the industry ultimately providing one view of key data items that are fundamental to the smooth running of the Energy Industry. We would however ask that consideration is given to the fact that the DCC will have only been 'live' for 6 months by this time and that its primary core objective is to support roll-out, we would therefore suggest that a later date may be preferable to ensure that these changes were only introduced once the DCC Platform was stable and that in any event the SoS must consult with parties for at least 28 days before making such a direction.

4.145 Question 8

Do you have any comments on Chapter 5 of the licence conditions, in particular do you have any comments on:

- i) The procurement obligations, including the balance between what the DCC must competitively procure and what it may self provide;
- ii) The most appropriate role, if any, for the Authority in influencing how the DCC should balance various competing public interests, when preparing for future procurements of Fundamental Service Capability;
- iii) Do you have any evidence from other sectors about how the public interest is taken into account by regulated bodies when making major procurement decisions;
- iv) The obligations on the DCC in relation to provision of services, recognising that these conditions will need to be reviewed in light of a more detailed definition of services; and
- v) The charging methodology provisions, particularly the objectives of the methodology?

Yes, but require clarification on the meaning/ intent of 17.14.

We are in general agreement and support of the intent and content of the chapter covering the general agreements for services, but would ask that consideration is given to any proposed re-forecasting frequency and the impact that this may have on all parties involved. Condition 16, Part G – covers the requirement of the Licensee to hold records and particulars of procurement strategies for at least five years. We would ask that these time-scales are considered in line with the intended tenure of DCC Licence to ensure that any such records are readily available, at all times.

In addition, we have some specific points that we would like to raise here that are covered below:

- i) Although we fully support the general arrangements for procurement of services, as drafted, we suggest that a further procurement objective of the DCC is to ensure Service Provider obligations with respect to the Data Protection Act are thoroughly drafted within the bi-lateral contracts that will be required. In addition, we would like to see clear views on risk and scope management, with these linking back to an overall impact assessment;
- ii) We do not believe that it is appropriate for the Authority to influence how the DCC balances its public interests in any way as it may be asked to become the arbiter in later disputes as defined in Condition 20;
- iii) We note the Network Rail example of a consultation process model but would suggest that we need to be clear as to who the stakeholders are before we can develop a consultation process that is acceptable to all;
- iv) Whilst we acknowledge and generally support the approach to Core, Elective, Other SEC and Value Added Services the provision and management of these, particularly with DPA in mind seem complicated and as such may prove confusing to implement. We have the following points for consideration and clarification:
 - (4.124) – Value Added Services provided outside of the SEC in bi-lateral contracts between DCC and User, however DCC can provide these services to SEC parties. Other parties can receive these Value Added Services with approval of the Authority, but may not have to accede to the

SEC. 'Value Added' Services are usually additions to existing Services and as such Users are likely to be signatories to the SEC etc. The proposed arrangements are overly complicated and could easily lead to confusion and lack of control over sensitive information. Suggest approach would be for all recipients of Services covered under the SEC to have to accede to it (albeit in part in some instances) or under bi-lateral agreements where appropriate and that these should be developed to ensure that a range of issues are covered consistently, particularly DPA and approved by the Authority;

- Although we understand that further consideration is being given to how services are to be approved and regulated we would ask that the fundamental concept that if the Authority approves any bi-lateral arrangement to ensure regulatory assurance, that it must then ensure that any subsequent dispute that may arise is appropriately dealt with under an approved form of regulatory process. This may be particularly relevant where a dispute is raised by an impacted third party who is not a signatory to a Service Provider Contract. An alternative process to be considered is to manage disputes under existing Contract Law; if this is the case then such an approach should be referenced for clarity. And finally, we would ask that consideration is given to the potential proliferation of bi-lateral agreements and the impact that this may have. The DCUSA was developed to remove some 400+ bi-lateral agreements that had been developed over time and had become unmanageable; and
- Condition 17, Part C 17.14 – Makes provision for the DCC to be able to offer an Agreement for Services to enable it to reconfigure or modify a metering system that for whatever reason does not qualify to be enrolled. This is effectively providing the DCC with the ability to ensure that all SMS are made compliant which is not our understanding of the role and responsibility of the DCC Licensee and as such we would ask that this condition is reviewed to better understand its intent and ensure that appropriate and agreed drafting is developed;
- v) We support the objectives of the DCC charging methodology as specified in section 4.130, but would add that we wish to see an additional objective of 'transparency' included in order to ensure that these charges can be accurately forecast and in a timely manner.

4.177 Question 9

Do you have any comments on Chapter 6 of the licence conditions, in particular do you have any comments on:

- i) The scope of the SEC as set out in the SEC condition and the SEC objectives;**
- ii) Whether the DCC should have a licence obligation to maintain and keep in force the SEC;**
- iii) The proposal to allow the Secretary of State to block SEC modifications in the period up to 31 October 2018; and**
- iv) The way in which interoperability should be addressed through the SEC objectives?**

Yes, with some considerations.

We are in general agreement with the drafting of this chapter and its content. We do however have some concern over the inclusion of section 4.176 dealing as it does with the longevity of the Secretary of State (SoS) powers. As we understand it the SoS would have extremely broad powers that would, in effect, avoid any consultation process. This introduces an additional and potentially considerable risk to parties that must be managed. We therefore suggest that if these powers are to remain we would require some form of justification for such an objection and as reasoned argument as to why they would need to be invoked for a particular modification.

- i) Broadly agree with the scope of the SEC, as specified within Condition 22;
- ii) If we believe that the DCC should have a licence obligation to be a party to, and comply with the SEC then it follows that the Licensee must help to maintain and keep in force the SEC. If this is the case then there may not be a need to also impose a specific licence obligation to do so. In addition, it would be helpful at this stage to understand the scenario(s) envisaged that would require Condition 21 Part E, to be invoked that will effectively relieve the Licensee of all of its obligations under the SEC and any other Core Industry Document. We therefore suggest a re-draft to specify the need to provide the reason for such a derogation, the clause(s) impacted and the time-scale of the derogation;
- iii) We do not fully support the suggestion that the SoS should be able to block modifications to the SEC and particularly not for the period up to October 2018, as lessons learnt from foundation, mass roll-out and enduring stages are fed back there may be a requirement to amend the SEC in order to cover an unforeseen shortfall; and
- iv) Although we consider that interoperability through SEC objectives does seem to be important and make sense, we currently have no further comments to make with regard to the way in which interoperability should be addressed through the SEC objectives. We would however prefer to rely upon practical experience and the SEC Change Control process to drive out appropriate development to improve interoperability over time.

4.177 Question 10

Do you have particular comments on how best to ensure the consumer interest is met in the SEC Objectives, in particular:

- i) Can you identify any potential scenarios where a modification might be proposed which would be in the interests of consumers but which would not be supported by the objectives set out for the code; and**
- ii) If you think the objectives could be set out to better capture the interests of consumers, as opposed to the proposed approach for SEC objectives to be balanced in the round with due regard for energy consumers' interests, how do you think this could be done?**

We believe that consumers' interests are achieved through the effective setting of SEC objectives, but not that the objectives should be specifically consumer facing.

- i) Whilst we agree that it is difficult to identify specific scenarios where a modification might be raised in the consumers interest but would not be supported by the code objectives there are situations that highlight the tensions between the DCC Licence and the Licence Conditions as drafted. For example, the development of new products to support consumer usage patterns would facilitate the licence condition objective to promote or facilitate competition in energy efficiency (4.147 f), but that these developments would be constrained by the necessary fifth relevant SEC objective to protect data; and
- ii) We cannot think of a better approach than that outlined in 22.15 where reference to change control for the SEC should mean that changes are automatically managed with consumer interests being considered as part of this process as they currently are within existing industry change control processes designed to manage existing industry codes and agreements. We believe that the SEC should not widen its jurisdiction to capture consumer interests but remain focussed on its objectives to cover the objectives for the professional counterparts, as these wider social objectives would be more clearly and more adequately catered for under the consumer facing objectives currently managed by Ofgem. We believe that it would lead to confusion if such objectives were to be enshrined with both Ofgem and within the SEC.

4.177 Question 11

Do you have comments on the proposed condition allowing the Authority to put forward code modifications and for this power to be limited to specific areas defined in the SEC?

Yes, some

If the Authority were to propose change we would like to see clarification on the scope of what the Authority could propose modifications on and that if any such change subsequently required a determination, who would determine this?

Clause 23.7 is drafted to allow a number of parties to propose modifications, who may not be impacted by such proposals or who do not have any associated licence or financial obligation imposed on them. This approach introduces considerable risk to remaining parties. In addition, whilst part a) allows for the Authority to raise change, part b) does not include reference to the Authority which suggests that if change is proposed by the Authority the merits of these proposals cannot be consulted on. If this is the intention of the drafting it introduces considerable process and financial risk, if not then re-drafting is required to add 'The Authority' to the list in 23.7 b).

4.193 Question 12

Do you have any comments on Chapter 7 of the licence conditions, in particular do you have any comments on:

- i) The proposals in relation to financial security, in particular the requirement to provide a performance bond in addition to financial security?

Yes

We generally agree with and support the proposed approach to the DCC provisions in respect of financial security and have some additional queries and points for clarification as detailed below:

- (4.179 – 4.180) - Consideration needs to be given to the fact that the DCCs financial exposure will increase over time, during transition and roll-out. This exposure will be further increased as the DCC takes on Registration activities and develops further Value Added Services. The cover provided should therefore adequately reflect these changes over time and could possibly refer back to the DCC's Development Plan(s). In addition, we support the concept that the DCC should provide a proportion of the costs of appointing a new DCC in the event that the incumbent's licence was revoked;
- (4.181) – We would ask for clarification as to why there would be a need to put in place a special administration regime, if either the Government or the Authority approve the security arrangements and that there is sufficient governance in place, e.g. Condition 30 – Regulatory Accounts;
- Condition 24, Appendix 2, D2, A4 – this clause makes provision for the Licensee to provide information that may cast doubt on the Licensee's ability to continue its authorised business, with reference to a 'description of factors'. It is suggested that examples of such factors be provided for reference; and
- Condition 25 – Firstly, we believe that as there is already a DPA Forum in existence to ensure that the principles of the Act are correct and suitably maintained, there is no benefit in attempting to strengthen DPA requirements within the drafting of Licence Conditions, but that these Conditions should be used, where appropriate, to add clarity. With this in mind we believe that the current drafting of this condition is confusing as it is not clear who is a controller of what data and when. Our current view is that the DCC is data controller (and data processor where it manipulates data on behalf of and at the direction of another party) of the data that it receives from the meters. The DCC must therefore ensure that the relevant consents and access controls etc have been obtained before it releases any such data to the party requesting it and that those receiving parties then become a data controller (in their own right) once they have received the requested data. We request that this Condition is redrafted to ensure that it provides this clarity and avoids the introduction of new and confusingly defined roles of Ultimate Controller and Covenantor, covers the dual role of the DCC as both Data Controller and Processor and provides clarity of all parties responsibilities with regard to the DPA

4.252 Question 13

Do you have any comments on Chapter 9 of the licence conditions, in particular do you have comments on:

- i) The need for the revenue restriction conditions in the DCC licence to evolve as the DCC's role changes;
- ii) The need to incentivise the DCC to concentrate on achieving programme milestones at the beginning;
- iii) The proposal that the DCC's internal costs should be passed through with a (£/annum margin applied;
- iv) That incentives on reduction in the DCC's internal costs and on output measures should be applied later;
- v) That the DCC should be subject to an element of bad debt risk unless it takes reasonable measures to recover such debt; and
- vi) Particular KPIs that could be applied to the DCC after it starts to deliver services?

Yes

We generally agree and support the ideas and concepts outlined in Chapter 9. We do however ask that consideration is given to Condition 35, Part B and that the list of definitions it contains be part of wider set of definitions at the front and not specific to this condition. The content of Condition 36 covering the calculations of price control conditions for Allowed Revenue, Baseline Margin, adjustments and correction factors seem fine but as appendix tables have yet to be completed we may wish to reserve full judgement on the impact of these calculations. We note that the K factor approach is already used, with some success, and has been for some time and as such we are supportive of this approach. However, as a result of practical experience, we would like to see consideration given to the transparency and frequency of applying this adjustment and suggest that annually may strike the correct balance in order for all parties to better manage their finances.

- i) We agree that revenue restriction conditions should evolve to ensure that the correct incentives are always in place to meet obligations, targets and KPIs as necessary for the prevailing conditions, e.g. set-up, support of roll-out, ongoing activities including registration and value added services. However we may need to give consideration as to how these changes will be established, agreed, set, monitored and signed-off and who takes overall responsibility;
- ii) Agree that correct incentives are required and that these are different at the beginning during set-up and to support roll-out etc. Again consideration needs to be given to establish the correct incentives for all stages of the programme and these should be closely monitored especially during the initial stages of developments to ensure that they are correctly aligned;
- iii) Pass-through with an applied margin is the most appropriate and straight-forward cost model to develop and manage during the early stages and as such we support this approach on the understanding that if this proves to be inappropriate during later stages that provision is made for review and amendment where necessary;
- iv) Internal cost reduction incentives will only prove both measurable and meaningful once the DCC has established its systems and processes and has begun to provide a full service, so we support the approach to apply any such incentives at a later date, once a more stable platform for the DCC has been established;

- v) If the DCC is subject to an element of bad debt risk then we believe that this forms an appropriate incentive to ensure effective and efficient systems and processes are developed and maintained; and
- vi) We believe that it is appropriate to consider the development of KPIs to cover the DCCs service delivery performance later in the DCCs development when the system and processes have been developed and a greater understanding has been established.

4.271 Question 14

Do you have any comments on Chapter 10 of the licence conditions, in particular do you have any comments on:

- i) The proposed arrangements applying to Management Orders, including the scope of the powers of the Authority in such circumstances;
- ii) The arrangements proposed in relation to the Business Handover Plan and the process for resolution of matters between the outgoing and incoming DCC;
- iii) The scope of matters that the Business Handover Plan should provide for;
- iv) The scope of the matters that may need to survive for a period of time to continue to ensure a smooth handover to the DCC's successor and whether the two year timeframe is appropriate; and
- v) The proposed approach to Intellectual Property Rights?

Yes

- i) Condition 41 – We cannot see anything wrong with the intent or scope of the drafting that covers aspects of serving management orders and as such we therefore agree and support this approach;
- ii) Condition 42 – we approve of the approach detailed that provides for a business handover plan to be provided after 12 months. However, is there any requirement to ensure adequate cover the first year?;
- iii) Scope of handover plan should include but not be limited to:
 - o overview of all systems, processes and IT architecture;
 - o detailed working instructions;
 - o copies of all agreements entered into with Service Providers;
 - o resources available to ensure smooth handover;
 - o View of handover timescales and workload involved;
 - o Any additional provision for support that may be necessary;
- iv) We agree that a two-year timeframe seems appropriate, in order to facilitate a smooth handover of DCC Roles and responsibilities. If there is a requirement to extend beyond this timeframe maybe an arrangement whereby old DCC can charge for its ongoing services should be considered (taking into account that they are not responsible for slowing proceedings down); and
- v) Condition 43 deals with Intellectual Property Rights (IPR) – if a DCC Licence is revoked then it could be argued that there may be little value in any intellectual property, however we do not believe that the outgoing DCC should have any rights of ownership as the systems and processes that it will have developed will almost certainly be as a result of detailed industry discussions taking into account industry parties views and requirements.