

## DCP 412 Working Group Meeting 33

20 August 2024 at 10:00 - Web-Conference

Attendee	Company
<b>Working Group Members</b>	
Edda Dirks	SSE Generation
Simon Vicary	EDF
Joe Boyle	SPEN
Victoria Burkett	SSE
Sally Musaka	SSE
Lee Stone	E.ON
Dave Wornell	NGED
Nik Wills	Stark
James Jones	SSE
Ryan Farrell	NPg
Mark Jones	SSE
David Fewings	Inenco
Monique Pereira	Indigo
<b>Observers</b>	
Thomas Holderness	Ofgem
Iain McKie	Ofgem
<b>Code Administrator</b>	
Craig Booth	Secretariat
Richard Colwill	Chair
<b>Apologies</b>	
Diandra Orodan	BUUK
Matt Cullen	E.ON

## 1. Administration

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### Recording

- 1.1 The Chair asked members if they were comfortable for this Working Group to be recorded. No members objected to this request. The purpose of this recording is purely to aid the Technical Secretariat in producing an accurate report of the meeting. The recording will be deleted upon the approval of these draft minutes, or after 60 days.

### Competition Law Guidance and Terms of Reference

- 1.2 The Working Group reviewed the “Competition Law Guidance”. All Working Group members agreed to be bound by the Competition Law Guidance for the duration of the meeting.

## 2. Previous Meeting Minutes

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- 2.1 The Chair asked for any comments on the accuracy of the previous meeting minutes. No comments were recorded.

## 3. Open Actions

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- 3.1 The Chair reviewed the outstanding actions.
- 3.2 The Chair confirmed that the only open action was completed, resulting in the issuing of the consultation following engagement with Matt Cullen. This action is now closed.

## 4. Purpose of the Meeting

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- 4.1 The Chair advised that the purpose of the meeting was to review the consultation responses and agree necessary next steps.

## 5. Consultation Review Approach

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- 5.1 The Chair explained that a new approach to reviewing the consultation would be used, in the hopes that this would make the conversations more focused and negate the need for a line-by-line review of the consultation responses, by identifying the key themes for discussion.
- 5.2 The Chair noted that Working Group members had been asked to identify any additional themes not already identified by the Secretariat and asked the Working Group if any had been missed. No additional themes were identified by the Working Group.
- 5.3 The Chair explained that each theme had boxes that had been colour-coded according to whether:
  - 5.3.1 a further discussion was needed on the theme;
  - 5.3.2 a consensus could not be reached, and the varying views needed to be articulated within the change report, led by the Proposer’s view;
  - 5.3.3 further work was required to develop the solution (e.g., drafting/amending the legal text); or

5.3.4 a decision had been made, for articulation in the change report.

- 5.4 The Working Group discussed whether the wording on the themes was subject to change, with a Working Group member noting that the word “discriminatory” had a very negative connotation. The Working Group agreed that the wording should not be changed as the themes were the summary of consultation responses, not Working Group positions, and that it was for the Working Group to discuss these and, if necessary, respond to them.
- 5.5 The Working Group discussed whether customers’ views, having responded to the consultation, were included in the themes. The Chair and Secretariat explained that they were not, citing concerns that these views could skew the themes strongly. The Secretariat gave an example that asking customers if they would like their prices reduced by some proxy would inevitably result in a strong positive response. However, in asking industry the same question about whether these prices should be reduced by some proxy, the responses would be based on knowledge of industry arrangements and the potential consequences on Parties, the network, other network users, etc., and would therefore be more nuanced.
- 5.6 The Chair further explained that the intention was to articulate the responses of responding customers in the change report, in a section dedicated to their responses, to put the customer at the heart of the change report and ensure voting Parties understand the situation these customers find themselves in.

## Lessons Learned

- 5.7 The Secretariat took away feedback on improving the process for the second meeting (and future meetings of other CPs):
- 5.7.1 to include an introduction slide explaining the concept and approach;
  - 5.7.2 to include the numbers of respondents resulting in a majority to allow an assessment of how strong a majority there is; and
  - 5.7.3 to ensure that themes requiring a response from the Working Group are clearly identified.

## 6. Consultation Responses Review

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- 6.1 The Working Group reviewed the themes from the consultation responses document. These themes, which have been updated with the progress of the review thus far, can be found attached to these minutes as attachment 1. In addition, where beneficial, some elements of the review are articulated in these minutes, which may form the basis of the paragraphs for the change report.

### Regulation (EU) 2019/943 (also referred to as “the regulation”)

- 6.2 The Chair explained, by way of an example, that he believed the views received from consultation respondents mirrored the diverse views expressed in the Working Group. As such, the Chair suggested that the Secretariat has enough information to draft some paragraphs for inclusion in the Change Report, articulating the Proposer’s view and the views of the Working Group and consultation respondents.

*Question 1 – Do you believe there are any risks of non-compliance against Regulation (EU) 2019/943 if this CP is implemented? If so, please provide your reasoning for your answer.*

- 6.3 The Working Group noted there were split views from respondents on whether there was a risk of non-compliance against the regulation, with a small majority of respondents raising concerns.
- 6.4 The Working Group noted that respondents with concerns around the risk of non-compliance identified the following potential issues:
- 6.4.1 customers could argue that, by separating them based on performance, it is not in keeping with the requirements that *“charges applied by network operators for access to networks, including charges for connection to the networks, charges for use of networks, and, where applicable, charges for related network reinforcements, shall be cost-reflective, transparent, take into account the need for network security and flexibility and reflect actual costs incurred insofar as they correspond to those of an efficient and structurally comparable network operator and are applied in a non-discriminatory manner”*;
- 6.4.2 reducing residual charges for sites with a particular utilisation pattern could be considered to be discriminatory;
- 6.4.3 it could be argued to violate the requirement that network charges shall be cost-reflective (in that residual charges are linked to a site’s TCR-specific characteristics (e.g., its Maximum Import Capacity) as per Schedule 32 of the DCUSA;
- 6.4.4 charges would no longer be reflecting what the TCR considered to be their fair contribution;
- 6.4.5 the Authority had determined in its TCR decision that the arrangements were fair and non-discriminatory;
- 6.4.6 it is likely that the re-banding would apply to certain ‘groups’ of customers at a cost to other ‘groups’ of customers; and
- 6.4.7 as only a limited type of Customer would be eligible for this change due to the way they operate, this would risk discriminatory charging.
- 6.5 The Working Group also noted that some respondents did not believe there was a risk of non-compliance against the regulation, with one respondent stating that:
- 6.5.1 they did not perceive this CP to discriminate against any specific user group(s) on the network; and
- 6.5.2 there are already two arrangements within the DCUSA that offer a similar ‘carve out’ of standard cost allocation (e.g., Non-Final Demand and Eligible Services), which must be applied for, and which are granted on the basis that certain conditions are met.
- 6.6 The Working Group noted that the views expressed by respondents mirrored the views expressed by Working Group members and that it was unlikely that a general consensus on this could be reached.

- 6.7 The Working Group also noted that whilst several respondents had requested waiting for the legal advice sought by the DCP 420 Working Group, being that it is similar in nature to this CP and that any findings may apply here as well, the DCUSA Panel had made the decision not to seek further legal advice. The DCUSA Panel's decision can be found attached to these minutes as attachment 2.
- 6.8 The Proposer reiterated his position that he does not believe that the regulation affects this CP, and that this CP does not discriminate against any specific user group(s) on the network. In addition, the Proposer stated, as per one of the consultation responses, that the approach to this CP is aligned with Non-Final Demand and Eligible Services, which are existing precedents set out in the DCUSA.
- 6.9 The Working Group agreed that the diverse views above should be fully articulated in this change report for the benefit of voting Parties and, once voting has completed and final feedback collated, for the benefit of the Authority in its decision making.

## **Re-banding approach**

*Question 2 – Do you agree with the proposal to re-allocate customers to the next lowest TCR band instead of applying some form of a discount?*

- 6.10 The Working Group noted the majority of respondents agreed with the approach to re-band customers instead of applying some form of discount.
- 6.11 The Working Group noted that one respondent had suggested that a fixed percentage discount may be an alternative, additionally noting that the current proposed use of re-banding customers would not allow band 1 customers to benefit from this.
- 6.12 The Working Group discussed that applying discounts had already been discussed, noting that it would require the creation of new tariffs and be more complicated to administer than using an existing re-banding process.
- 6.13 The Working Group noted that one respondent had requested analysis to confirm that the assumption that a one-band move would have a lesser impact on the wider residual charging base than a move by more than one band.
- 6.14 The Working Group discussed that it is usual, and highly likely, that charges for TCR bands increase as the band increases (i.e., the charges for band 2, being a higher band, are higher than the charges for band 1). As such, it was agreed that any such analysis would be a forgone conclusion that moving only one band would be less impactful than moving more than one band.
- 6.15 The Working Group noted, however, that there are some niche instances where this may not be true, being:
- 6.15.1 negative residual charges in some areas; and
  - 6.15.2 some higher bands having lower charges than the lower bands, due to the way these are calculated.
- 6.16 The Working Group noted that the Authority was investigating ways to resolve the issue of negative residual charging.

- 6.17 The Working Group discussed that whilst it was possible for some higher bands having lower charges than the lower bands, this was a niche situation that would only arise where there was a low number of users, or low consumption, within a TCR band. One Working Group member noted that in the four DNO areas his company was responsible for, this situation had never arisen.
- 6.18 The Working Group agreed that its position had not changed, and that re-banding remained its preferred approach.

## **Customer Opt-Out**

*Question 3 - Do you believe HCULU customers should be able to opt out and be returned to their previous band if the charges in the lower band are higher?*

- 6.19 The Working Group noted that the majority of respondents were not in favour of the customer being able to opt out, stating that:
- 6.19.1 this would not be considered for any other Final Demand Customer;
  - 6.19.2 this presents unnecessary and unpredictable volatility in banding; and
  - 6.19.3 customers must accept that there is a risk that charges increase.
- 6.20 The Working Group discussed that, as per its discussion under question 2 above, there are scenarios where a lower band may have higher charges than a higher band.
- 6.21 The Working Group considered that the aim of this CP was to provide relief from the TCR charges and that to prevent the customer from opting out of this would seem to go against the principle of this CP.
- 6.22 A Working Group member suggested that, as phrased, the question alludes to customers being able to opt out only in a specific situation, and that it would be more pragmatic to allow these customers to simply be able to opt out at any time (e.g., a customer could opt out because they consider themselves to no longer be peaky).
- 6.23 The Working Group agreed that, whilst a majority of respondents were in favour of a customer not being able to opt out, that it would allow a customer to opt out at any time, rather than just in specific instances.

## **Review Periods and Process**

*Question 4 – Should customers have their eligibility re-assessed at each price control period or more frequently?*

- 6.24 The Working Group noted that a strong majority of respondents favoured customers' eligibility being re-assessed at each price control period, citing reasons such as:
- 6.24.1 aligning with the general review of charging boundaries;
  - 6.24.2 providing long-term stability for sites, which would help businesses with planning;

- 6.24.3 sites could otherwise be switching bands on a yearly basis; and
- 6.24.4 a more frequent review period would result in additional burdens on DNOs.
- 6.25 The Working Group noted that one respondent stated that the review should be in advance of the price control period.
- 6.26 The Working Group noted that a small number of respondents favoured a more frequent review period, due to:
  - 6.26.1 sites utilisation changing a lot over a short period of time; and
  - 6.26.2 ensuring fairness.
- 6.27 The Working Group discussed that the question did not allow for a consideration of whether a re-assessment of eligibility could be performed less frequently than at the price control periods. The Working Group discussed that in the case of Non-Final Demand customers, once a declaration had been made, this remained in perpetuity until there was a cause to revoke it, which was usually the result of a re-declaration made by the customer.
- 6.28 The Working Group considered its position to this question in conjunction with its review of the responses to questions 5 and 7, articulated below, and concluded that the eligibility would be reviewed at the price control period.

*Question 5 – If the review is performed at the price control period, should customers have to reapply, or should they retain their HCULU eligibility status?*

- 6.29 The Working Group noted that a small majority of respondents favoured the customer retaining eligibility at the price control period review, rather than requiring customers to re-apply. These respondents stated that:
  - 6.29.1 customers are not Parties to the DCUSA and are not obliged to adhere to any timescales stated within the DCUSA;
  - 6.29.2 customers would not know when they needed to apply;
  - 6.29.3 retaining eligibility reduced the level of bureaucracy for both customers and DNOs; and
  - 6.29.4 the analysis performed by the DNO for the price control period would already be able to confirm ongoing eligibility.
- 6.30 The Working Group noted that some respondents favoured customers needing to re-apply, so that:
  - 6.30.1 it removes the need for DNOs to maintain a register of eligible customers; and
  - 6.30.2 it ensures customers to prove their situation has not changed.
- 6.31 The Working Group had noted, as per paragraph 6.27 above, in the case of Non-Final Demand customers, once a declaration had been made, this remained in perpetuity until there was a cause to revoke it, which was usually the result of a re-declaration made by the customer. A Working Group

member noted that to assess a site's eligibility for Non-Final Demand would require the DNO to visit the site and check its use, which was not feasible to do in an efficient manner.

- 6.32 A Working Group member noted that on some charging statements that had been checked, there were clauses included in the charging statements around the scenarios where a Non-Final Demand site's certification could be revalidated or revoked, including:
- 6.32.1 where the DNO has reason to believe that the property no longer qualifies as a Non-Final Demand Site;
  - 6.32.2 significant time has passed since the certification was submitted; or
  - 6.32.3 there is a change to the connection characteristics (i.e., capacity change.)
- 6.33 The Working Group discussed that, unlike the Non-Final Demand process which relied on a customer declaration to avoid the need for site visits, this CP relied on data the DNO already holds, which could be used to reassess eligibility at specified times.
- 6.34 The Working Group considered this question in conjunction with question 4, articulated above, and question 7, articulated below, and concluded that, where the DNO analysis of the previous 12 months of data shows that a customer remains eligible, they would retain their eligibility status.
- 6.35 The Working Group noted that one respondent had stated that the obligations and timescales needed to be stated clearly in the legal text. The Working Group agreed to further develop the legal text to clearly state these.

*Question 6 – If the review is more frequent, do you agree that customers who are no longer eligible for HCULU status should be allocated to their previous charging band?*

- 6.36 The Working Group noted that, in the event the review period was to be more frequent, respondents had agreed unanimously that sites which are no longer eligible should be returned to their previous bands.
- 6.37 The Working Group noted, however, that as per its discussions under question 4 above, it had concluded the reviews would be conducted at the price control periods.
- 6.38 The Working Group noted that one respondent had stated there needed to be a communication of any change of band from the DNO to the Supplier, so that the Supplier could communicate this to the customer. A Working Group member further noted that it was less likely that the DNO would hold up-to-date contact information for the site, meaning that without Supplier involvement in the communication of the band change, customers' charges could increase without explanation.

*Question 7 - Do you agree that the DNOs should have the ability to review sites where their behaviours have changed in a significant way?*

- 6.39 The Working Group noted that a strong majority of respondents were in favour of the DNO having the ability to review sites where their behaviours have changed in a significant way.

- 6.40 The Working Group noted that one respondent had cited concerns around fairness, whereby some sites may be reviewed whilst others may not. The Working Group discussed that to ensure fairness, it could be necessary to ensure every site is reviewed as least once in every price control period.
- 6.41 The Working Group also noted that one respondent had stated that the ability to review a site should be a right of the DNOs and not an obligation on them, to avoid additional DNO burden.
- 6.42 The Working Group discussed that if, under questions 4 and 5, articulated above, customers were not reviewed and instead retained their eligibility status on an ongoing basis, this could mean that sites would remain eligible on an enduring basis, potentially benefitting for a prolonged period where they would otherwise have been deemed to not be eligible, had they been reviewed, at a cost to other customers.
- 6.43 The Working Group agreed that, as a compromise, it would therefore be a *right* of the DNOs to review sites at any time, rather than an obligation to do so, on the basis that sites would be reviewed at each price control period.

## Changing Capacity

*Question 8 - Do you agree that customers who change their capacity whilst classed as a HCULU customer will remain on their current band until they are reassessed?*

- 6.44 The Working Group noted that a strong majority of respondents favoured leaving customers who change capacity in their current band, stating that:
- 6.44.1 this works alongside the existing exceptional circumstances process; and
  - 6.44.2 capacity changes do not currently trigger a review of a customer's band.
- 6.45 The Working Group reviewed Schedule 32 of the DCUSA relating to the exceptional circumstances. Whilst it was not stated that the exceptional circumstances cannot be triggered by the DNOs, it was discussed that this is usually a customer-triggered process.
- 6.46 The Working Group noted that if a customer increased their capacity at a site, it is possible that they will increase activity in such a way that remains peaky in nature, and they remain eligible. The Working Group also noted that in such cases, it would not be possible to reassess their eligibility for another 12 months against the new capacity, as 12 months of usage against the new capacity would be required.
- 6.47 The Working Group agreed that customers who change their capacity would remain on their current band.

*Question 9 - Should customers be limited in how many times they can apply for HCULU status over a given period, and if so, what should the limit and period be?*

- 6.48 The Working Group noted that a strong majority of respondents favoured a limit on the number of applications that a customer could make, stating that:
- 6.48.1 there was a risk of customers submitting repeat applications, increasing the burden on DNOs;

6.48.2 there are costs associated with each application;

6.48.3 that once a year, in advance of the charging year, would be appropriate; and

6.48.4 a limit would allow the build-up of new, recent consumption data.

6.49 The Working Group discussed whether the application should be for or at the start of a new charging year or could be made at any time within the charging year. The Working Group considered that if the timescales were bound to charging years, there would be a bottleneck of applications aligning with the start of each charging year.

6.50 The Working Group agreed that allowing one application every 12 months would provide the necessary mitigation against repeat applications causing issues for the DNO whilst avoiding the potential for a backlog of applications to build up.

## 7. Work Plan

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7.1 The Chair stated that the work plan for this CP would be updated once the Working Group had concluded its review and all additional actions had been identified.

## 8. Next Steps

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8.1 The next meeting will be on 2 September 2024 at 10:00.

## 9. Any Other Business

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9.1 No other business was raised.

## New and Open Actions

Action Ref.	Action	Owner	Update

## Closed Actions

Action Ref.	Action	Owner	Update
11/02	The Secretariat to reach out to DNOs to see if they have experienced any cases where there may be a potential blocker to net zero (in relation to DCP 420)	Chair	Closed. No update as of yet. Working Group agreed that this can be picked up as part of the Action list for DCP 420 as opposed to DCP 412.
11/03	The Chair to respond to Ofgem to state that due to confidentiality risks of DNOs, the Working Group would prefer to state the impacts of this CP on TNUoS Customers only (not DUoS)	Chair	Closed. Ofgem agreed that the analysis should be completed.
12/01	LS to provide a proposers view of the impacted DUCSA objectives	Lee Stone	Closed. The Consultation document has been updated accordingly.
12/02	The Chair to share the panels steer on when to assess CPs against charging objectives, general objectives, or both	Chair	Closed. This was circulated to the Working Group.
12/03	The Chair to share updated versions of the legal text and consultation document prior to the next meeting	Chair	Closed. This was circulated to the Working Group.
14/04	The Chair to seek clarification on Ofgem's decision criteria based on the urgency status of the change.	Chair	Closed
10/01	Request half hourly data for the 95% threshold customers from DNOs to allow an assessment of how the bands change based on average daily or monthly maximum demand	Chair	Closed. Complete data set has now been received by all DNOs. Analysis has started, and the number of

			Customers within the 95% threshold for 2022 has increased.
10/02	Perform the same analysis on the customer data provided in action 10/01 above.	MC	Closed. Complete data set has now been received by all DNOs. Analysis has started, and the number of Customers within the 95% threshold for 2022 has increased.
10/03	Show the reduction in DNO income.	MC	Closed. Complete data set has now been received by all DNOs. Analysis has started, and the number of Customers within the 95% threshold for 2022 has increased.
11/06	LS to seek further information around the Distribution Licence in relation to DCUSA Objective 1.	Lee Stone	Closed. No update as of yet.
11/07	The Chair to seek further understanding of where customer fairness fits in, in relation to the DCUSA Objective	Chair	Closed. Internal view is that this is not a DCUSA issue to fix and is a licence issue. The Chair will discuss with Ofgem that they may want to look at this in the future.
14/01	The Chair to transfer the current Action 11/02 in DCP 412 action log over to the DCP 420 action log.	Chair	Closed
14/02	The Working Group to review paragraphs 6.4H (option 1 and option 2) and make a decision as to whether this should be removed from the draft legal text during the next meeting on 25 July 2023.	Working Group	Closed

14/03	The Chair to make a visual of the examples for the better understanding for the reader – once added within the Consultation document, the original written examples can be deleted.	Chair	Closed
17/01	Working Group members to share the illustrations with colleagues who hadn't had visibility of DCP 412 to check the made sense	All	Closed
18/01	Add definition of HCULU customer in consultation 2.	Chair	Closed
18/02	Simplify how the retrospective treatment process and reassessment process is explained with the consultation document	Chair	Closed
19/01	MC to review and update the paragraph that deals with shared capacity and the forward-looking access SCRs	Matt Cullen	Closed
19/02	MC to check in with LS on what the obligations are on suppliers to return any financial benefits received from distributors back to customers.	Matt Cullen	Closed
19/03	RF to report back to the Working Group on the outcome of a call taking place after this Working Group discussing how financial benefits are returned to customers and what obligations are in place to make sure customers receive the benefits.	Ryan Farrell	Closed
20/02	The Chair to map the processes as they currently stand for presentation at a future Working Group meeting.	Chair	Closed
20/03	BO to map the scenarios he has identified for the enduring retrospective re-banding.	BO	Closed
20/04	Chair to review the data and determine the number of customers that changed from year 1 to year 2.	Chair	Closed
21/05	Chair to share the council responses with the Chair of DCP 420.	Chair	Closed
22/01	Chair to contact respondent and clarify if they would be happy to have their response published in an anonymised form.	Chair	Closed

21/01	Chair to contact respondent to seek clarification on the two responses received.	Chair	Closed
23/01	Chair to update the minutes of meeting 22 to add a reference to the aforementioned documents.	Chair	Closed
26/02	MC to undertake additional analysis to understand the cost impact on other customers if the threshold is lowered (i.e 90%, 85%, 80%).	MC	Closed
27/01	Proposer to provide their current thinking on preferred approach.	MC/ LS	Closed
20/01	Working Group to consider questions it would like Ofgem to consider (this action will remain on hold until after the review of consultation 1 responses has been completed.)	Working Group	Closed
21/02	Working Group to consider what additional analysis is required after the consultation 1 responses review is completed.	Working Group	Closed
21/03	Working Group to discuss additional re-banding considerations after the consultation 1 responses review is completed.	Working Group	Closed
21/04	Chair to add the split criteria to the analysis as variables.	Chair	Closed
21A/01	Chair to locate or create a 'statement of facts' document that concisely summarises the principles and decisions implemented under the TCR.	Chair	Closed
21A/02	Working Group to add clarification/justification for how customers become eligible for HCULU status and for spreading the remaining residual charges over other customers.	Working Group	Closed
22/02	Chair to facilitate the expansion of the impact assessment to cover customers who exceed their MIC by 5% and 10% respectively.	Chair	Closed
26/01	Working Group to conclude on how customers who have exceeded their MIC will be treated.	All	Closed
26/02	MC to draft a process for how this second step (DNO discretion) could work.	MC	Closed

28/01	Produce legal text based on proposer's preferred approach.	LS	Closed
28/02	Update consultation document in relation to discussions to date.	Secretariat	Closed
30/01	Take change of intent to Panel and ask Panel to consider whether the change of intent is necessary.	Chair	Closed
31/01	Secretariat to update the title and intent of the CP on the DCUSA website.	Secretariat	Closed
31/02	Secretariat to add a paragraph to the consultation to explain the change of title and intent (as paragraph 1.2)	Secretariat	Closed
31/03	Secretariat to update the consultation to summarise the issue.	Secretariat	Closed
31/04	Secretariat to add a question to the consultation around the customer being able to opt out.	Secretariat	Closed
31/05	Secretariat to review the consultation to ensure definitions are in the correct place in the document.	Secretariat	Closed
31/06	Secretariat to update the consultation to expand on the explanation for the two-part process.	Secretariat	Closed
31/07	Secretariat to update the draft legal text.	Secretariat	Closed
31/08	Secretariat to add the summary of the issue around customers paying higher charges in the lower band.	Secretariat	Closed
31/09	Secretariat to add outcome of the above conversation in the consultation and add a question around 5.16 above.	Secretariat	Closed
31/10	Secretariat to add clarification around the impact to TNUoS charges as a result of the current proposed solution to re-band HCULU customers.	Secretariat	Closed
32/01	Secretariat to book in meeting to review analysis with Matt Cullen.	Secretariat	Closed