

Modification proposal:	DCRP/21/07 Distribution Code EU Exit Modifications - Modifications to The Distribution Code and Associated Documents to reflect the terms of the UK's departure from the EU		
Decision:	The Authority ¹ has decided to approve ² this modification		
Target audience:	Distribution licensees, Distribution Code Review Panel (DCRP) ³ , distribution network users and other interested parties		
Date of publication:	01 July 2022	Implementation date:	04 July 2022

Background

The UK's departure from the European Union (EU) became effective on 31 January 2020, at which point the UK entered a transition period which was in effect until IP (Implementation Period) completion day, 31 December 2020. During the transition period, the UK remained subject to most EU law. Following IP completion date, the European Union (Withdrawal) Act 2018 (as amended by the European Union Withdrawal Agreement) Act 2020 (EUWA) created a new body of UK law known as 'retained EU law', based on the EU law that applied to the UK on 31 December 2020. The EUWA gives Ministers powers to create statutory instruments to help with a range of legal issues caused by the UK's exit from the EU, including deficiencies in legislation which may occur from the UK's exit.

In February 2018, Ofgem published a consultation⁴ on the potential implications for licences and industry codes of the UK's exit from the EU. Initial analysis accompanying that consultation identified potential modifications needed to the Distribution Code and linked industry code provisions.

¹ References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ The DCRP is established in accordance with SLC 21 of the Electricity Distribution Licence.

⁴ <https://www.ofgem.gov.uk/publications/preparing-eu-exit-implications-licences-and-industry-codes>

The modification proposal

DCRP/21/07⁵ was proposed to ensure that retained EU law functions effectively in the context of the Distribution Code. It will ensure that the Distribution Code takes into account the provisions of relevant statutory instruments that have been prepared under the EUWA. The proposed modification consists of amendments to the current version of the Distribution Code and associated documents. A list of these documents is shown below:

- Distribution Code Issue 49 - March 2022;
- The Constitution And Rules Of The Distribution Code Review Panel Of Great Britain Version 8 - April 2019;
- Engineering Recommendation G83 Issue 2 Amendment 3 - June 2019;
- Engineering Recommendation G98 Issue 1 Amendment 6 - September 2021; and
- Engineering Recommendation G99 Issue 1 Amendment 8 - September 2021.

This modification proposal was subject to a consultation between 10 December 2021 and 14 January 2022. The two consultation respondents were supportive of the modification proposal.

Distribution Code Review Panel comments and licensee recommendation

DCRP/21/07 was submitted to the Distribution Code Review Panel (DCRP) at a meeting held on 06 April 2022 for approval. At the meeting, approval was granted to submit the FMR dated 11 April 2022 to the authority for decision. The DCRP consider that objective (c) is better facilitated by the modification and that it has a neutral impact on objectives (a), (b) and (d).

Our decision

We have considered the issues raised by the modification proposal and the Final Report dated 11 April 2022. We have considered and taken into account the responses to the consultation on the modification proposal which are included in the Final Report. We have concluded that:

⁵ Distribution Code proposals, final reports and representations can be viewed at: <http://www.dcode.org.uk/areas-of-work/> and <http://www.dcode.org.uk/consultations/>

- implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the Distribution Code;⁶ and
- approving the modification is consistent with our principal objective and statutory duties.⁷

Reasons for our decision

We consider this modification proposal will better facilitate Distribution Code objectives (c) and (d) and has a neutral impact on the other applicable objectives.

(c) efficiently discharge the obligations imposed upon distribution licensees by the distribution licences and comply with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

We believe this proposal better facilitates this objective because it updates the Distribution Code to reflect retained EU law. The proposed changes principally remove and/or amend references to EU Regulations as appropriate, such that they reflect that the UK is no longer an EU Member State. We consider this will assist distribution licensees to ensure ongoing compliance with legal obligations stemming from retained EU law.

(d) promote efficiency in the implementation and administration of the Distribution Code.

We note the DCRP considers this modification to have a neutral impact on this objective. However, we believe the modification proposal better facilitates this objective because it ensures that the Distribution Code and affected documents accurately reflect retained EU law thus avoiding erroneous references or ambiguity following the UK's exit from the EU.

⁶ As set out in Standard Condition SLC 21.4 of the Electricity Distribution Licence available at: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Distribution%20Consolidated%20Standard%20Licence%20Conditions%20-%20Current%20Version.pdf>

⁷ The Authority's statutory duties are wider than matters which the Panel and licensees must take into consideration and are largely provided for in statute, principally in this case the Electricity Act 1989.

Decision notice

In accordance with SLC 21.11 of the Electricity Distribution Licence, the Authority hereby directs that the modification to the Distribution Code set out in the Final Report to the Authority of 11 April 2022 be made.

Martin Queen

Head of Engineering Systems & Policy, Analysis & Assurance

Signed on behalf of the Authority and authorised for that purpose