

Code Governance Review Final Proposals Licence Drafting Consultation

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Target audience: Gas and electricity industry participants, consumer representatives, code administrators, Competition Commission and other interested parties.

Overview:

This document sets out our updated views on the changes to the licence conditions that are necessary to make our proposals for the Code Governance Review effective. The proposed modifications are consistent with our Final Proposals which were published today. This consultation follows the: (i) open letter consultation on the Code Governance Review Initial Proposals illustrative licence modification drafting (27 October 2009); and (ii) open letter consultation on Environmental Assessment and Code Objectives licence drafting (16 June 2009) (together the "**Initial Licence Drafting Consultations**"). This will be the final consultation on the licence conditions prior to the statutory licence consultations expected in late May.

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Context

The Authority is committed to policies and processes that are consistent with better regulation principles and that reduce administrative burden on business while maintaining effective consumer protection.

As part of that commitment, in November 2007, we announced the Review of Industry Code Governance. We considered that such a review was timely given the changes that have occurred in the market, where the nature of participation is evolving, particularly for new entrants and smaller players. The Authority's role in relation to code modifications has also changed with the introduction of additional statutory duties and the right of appeal to the Competition Commission.

In summer 2009, we consulted separately on our initial proposals for each of the Code Governance Review work strands.

Today we published our Final Proposals for the Code Governance Review setting out our final proposals on:

- (i) Significant Code Review and Self-governance;
- (ii) Role of Code Administrators and small participant and consumer initiatives;
- (iii) Charging Methodologies; and
- (iv) Environmental Assessment and Code Objectives.

This consultation follows on from the Initial Licence Drafting Consultations and focuses on the modifications to a number of network companies' licence conditions which are (or may be) necessary and/or appropriate to give effect to the Final Proposals. It invites comments on that licence drafting, as well as welcoming alternative or better ways of giving effect to the Final Proposals. We do not seek comments on the policy underpinning and giving rise to those potential licence modifications.

Further statutory consultations on licence changes will be required following this consultation. A wide range of industry code modifications will also be necessary to bring effect to the Final Proposals. We expect these to be raised this spring/summer with full effect to be given to these proposals by autumn 2010.

Associated Documents

- [Open letter announcing review of industry code governance - Ofgem Ref: 284/07](#)
- [Corporate Strategy and Plan 2008-2013 - Ofgem Ref: 34/08](#)
- [Review of industry code governance - scope of review - Ofgem Ref: 92/08](#)
- [Code Governance Review: Charging methodology governance options - Ofgem Ref: 132/08](#)

- [Review of Industry Code Governance – Environment and Code Objectives, Ofgem open letter, 21 November 2008](#)
- [Review of Industry Code Governance – role of code administrators and small participant/consumer initiatives - Ofgem Ref: 173/08](#)
- [Review of Industry Code Governance – Code Administrators' Working Group - Ofgem open letter, 20 April 2009](#)
- [Review of Industry Code Governance - Environment and Code Objectives - Ofgem Ref: 66/09](#)
- [Code Governance Review – role of code administrators and small participant/consumer initiatives – initial proposals - Ofgem Ref: 85/09](#)
- [Code Governance Review: Major Policy Reviews and Self-Governance - Initial Proposals - Ofgem Ref: 84/09](#)
- [Code Governance Review: Governance of charging methodologies: Initial proposals - Ofgem Ref: 108/09](#)
- [Codes Governance Review Initial Proposals - illustrative licence modification drafting - Ofgem Ref: 133/09](#)

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Summary

Many of the rules and commercial and technical obligations that govern participation in Great Britain's gas and electricity sectors are set out in multilateral codes. These codes significantly impact on the shape and development of the gas and electricity sectors and, by extension, on our ability to deliver markets that best protect the consumer interest while addressing the need to secure energy supply and contribute to the achievement of sustainable development.

In November 2007, we announced the Review of Industry Code Governance. This document sets out Final Proposals from this review. These Final Proposals are the culmination of two years' work and have been developed in consultation with industry through a number of separate work strands.

The Review has identified a number of deficiencies in the existing code arrangements which this package of proposals seeks to remedy. There are a wide range of proposals set out in this document and a table summarising these proposals is provided below. At a high level, we consider the proposals fall into two main areas. First, the proposals seek to reduce unnecessary barriers and red tape in the existing industry codes governance arrangements. Where possible we have sought to simplify existing change processes, making them more consistent between industry codes, more transparent and more accessible. For instance there will be more common, user-friendly and accessible templates for raising modifications across the codes. We are also requiring Code Administrators to take a more active 'critical friend' role, particularly in providing assistance to smaller parties and consumer representatives who may otherwise be restricted in their ability to fully participate in the process. This package of reform is valuable to all market participants but particularly so for small parties or new entrants and also consumer groups.

Second, whilst we recognise that the existing code governance arrangements have worked well in providing incremental change to industry codes, they have not been effective in supporting larger scale and more complex change. From the case studies that we have undertaken we consider that these inefficiencies have led to significant potential consumer detriment, perhaps of the order of £100m. Given the need for the industry to rise to the challenge of the Government's social and environmental energy goals and given the possibility of change which is required as a result of European legislation, we consider it critical that significant code changes can be facilitated more quickly and effectively. As part of these Final Proposals we are defining a role for Ofgem to lead Significant Code Reviews (SCRs) to address these issues. Our Final Proposals will also provide for us to step away from code modifications that have minimal customer impact and provide a much greater role for the industry to govern itself in such areas. We consider that this will deliver significant efficiencies.

We propose to open up the network companies' charging methodologies by giving network users and other materially affected parties the right to raise proposals to modify those methodologies. We will do this by inserting charging methodologies into the relevant industry codes and utilising the existing (soon to be improved) code modifications procedures. Finally, we propose to clarify the requirement to assess

the environmental impacts when considering code proposals in accordance with Ofgem guidance.

Way Forward

This consultation focuses on the modifications to a number of network companies' licence conditions which are (or may be) necessary and/or appropriate to give effect to the Final Proposals. It presents **Ofgem's interpretation** of those potential modifications and **invites comments on that licence drafting**, as well as **welcoming alternative or better ways of giving effect to the Final Proposals**. We do not seek comments on the policy underpinning and giving rise to those potential licence modifications.

We intend to hold a workshop to discuss the proposed licence modifications on 23 April 2010. We then expect to issue a series of statutory consultations on licence changes in late May 2010.

Overview of our Final Proposals

Work strand Key Changes	Summary	Codes Affected
Significant Code Review ('SCR') <ul style="list-style-type: none"> Significant Code Review (previously 'Major Policy Review') 	<ul style="list-style-type: none"> New role for Ofgem to lead SCRs Licensees to raise modifications (where appropriate) following a SCR. Unless Ofgem approves otherwise, non-urgent modifications on related matters will be incorporated within the SCR. Alternatives to SCR modifications proposals can be raised during the working group stage. 	UNC, CUSC, BSC
Self-Governance ('SG') <ul style="list-style-type: none"> New process for non-material changes 	<ul style="list-style-type: none"> New modifications path where proposal is likely to have non-material impacts. Panel determines if proposal suitable for SG. Ofgem power to override Panel filter decision. Industry to develop voting arrangements. Equal rights for all parties to appeal self-governance modifications decisions to Ofgem 	UNC, CUSC, BSC
Role of Code Administrators ('CA') <ul style="list-style-type: none"> 'Send back' powers Obligation to assist parties Code of Practice KPI Voting consumer rep Independent Panel Chair 	<ul style="list-style-type: none"> Ability to 'send back' final modification report to Panel if Authority considers it is deficient. 'Critical Friend' obligation on CAs to assist where requested. Code of Practice standard process and templates for key stages in modifications. Adoption of and reporting on KPIs by CAs to be catered for in the Code of Practice. Consumer rep on UNC Panel able to vote. Requirement for independent Panel Chair appointed by licensee(s) subject to approval by Authority. Panels to provide reasons for their recommendations and decisions. 	UNC, CUSC, BSC
Charging Methodologies <ul style="list-style-type: none"> Transfer of charging methodologies into relevant industry codes (Open Governance) 	<ul style="list-style-type: none"> Inclusion of specific charging methodologies in industry codes - allows materially affected parties to propose changes. Proposal window to facilitate effective management of modification process. Authority ability to designate a non-code party as a materially affected party. 25 day KPI for decisions (longer if doing IA). Requirement to maintain forums. 	UNC (distribution limited to Use of System charges only), CUSC
Environment / Objectives <ul style="list-style-type: none"> Panels to have regard to greenhouse gas emissions 	<ul style="list-style-type: none"> Panels to assess (where applicable) economic impact of greenhouse gas emissions when considering modification proposals. 	BSC, CUSC, UNC, IGT UNC, DCUSA, STC, Grid Code, Dist. Code

1. Introduction

This chapter sets out the purpose of the document, lists the relevant licensees, and explains the interaction between Final Proposals and licence amendments. This chapter also explains how the document is organised and the next steps.

There are no specific questions in this chapter.

Purpose of this document

1.1. With the publication of Final Proposals, our proposed policy for Code Governance Review has been finalised. This consultation document is intended to propose all of the licence drafting we currently consider necessary to give effect to the Final Proposals.

1.2. Industry stakeholders have provided valuable input through responses to earlier illustrative drafting consultations, meetings and discussions. The appended proposed licence drafting takes into account comments received in response to our Initial Licence Drafting Consultations and through informal meetings and discussions.

1.3. Comments are invited on our proposed licence drafting only (terms, form, structure, etc). Comments on policy will not be considered. As noted above, our proposed policy for Code Governance Review has been finalised in our Final Proposals.

1.4. The new arrangements set out in our Final Proposals will apply to the relevant licensees listed below. However, they will also affect other industry parties, including code parties and parties that are required to comply with codes, code administrators, code panels (particularly in relation to the BSC, CUSC and UNC but, in relation to the Environmental Assessment and Code Objectives, this extends to the Grid Code, STC, DCUSA, Distribution Code and IGT UNC) and consumer representatives. **In addition to the relevant licensees, we invite views of other parties on the proposed licence amendments.**

Relevant licensees

1.5. The proposed licence modifications and relevant licensees are set out below in tables below.

Table 1.1 Significant code review and self-governance

Affected code	Modified licence condition	Relevant licensee
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Affected code	Modified licence condition	Relevant licensee
BSC	Electricity Transmission Licence SLC C3 (Balancing and Settlement Code)	Electricity Transmission Licensee: National Grid
CUSC	Electricity Transmission Licence SLC C10 (Connection and Use of System Code)	
UNC	Gas Transporter SSLC A11 (Network Code and Uniform Network Code) and A12 (Joint Office)	Gas Transporter (NTS and GDNs): National Grid Gas plc (NTS and GDN licences); Northern Gas Networks Ltd, Scottish Gas Networks plc, Southern Gas Networks plc, Wales and West Utilities Ltd

Table 1.2 Charging Methodologies

Affected code	Modified licence condition	Relevant licensee
CUSC	Electricity Transmission Licence SLCs C4 (Charges for use of system), C5 (Use of system charging methodology), C6 (Connection charging methodology) and C10 (Connection and Use of System Code)	Electricity Transmission Licensee: National Grid
UNC	Gas Transporter Licence SLC 4B (Connection Charging Methodology)	National Grid Gas plc (NTS) – please note that we expect that this SLC will be modified only in relation to National Grid's NTS licence (by Special Condition).

Affected code	Modified licence condition	Relevant licensee
	SSC A5 (Obligations as Regard charging Methodology) and SSLC A11 (Network Code and Uniform Network Code)	Gas Transporter (NTS and GDNs): National Grid Gas plc (NTS and GDN licences); Northern Gas Networks Ltd, Scottish Gas Networks plc, Southern Gas Networks plc, Wales and West Utilities Ltd

Table 1.3 Code administrators, small participants and consumer representative initiatives

Affected code	Modified licence condition	Relevant licensee
BSC	Electricity Transmission Licence SLC C3 (Balancing and Settlement Code)	Electricity Transmission Licensee: National Grid
CUSC	Electricity Transmission Licence SLC C10 (Connection and Use of System Code)	
UNC	Gas Transporter Licence SSLC A11 (Network Code and Uniform Network Code) and A12 (Joint Office)	Gas Transporter (NTS and GDNs): National Grid Gas plc (NTS and GDN licences), Northern Gas Networks Ltd, Scottish Gas Networks plc, Southern Gas Networks plc, Wales and West Utilities Ltd

Table 1.4 Environmental Assessment and Code Objectives

Affected code	Modified licence condition	Relevant licensee
BSC	Electricity Transmission Licence SLC C3	Electricity Transmission Licensee: National Grid
CUSC	Electricity Transmission	

Affected code	Modified licence condition	Relevant licensee
	Licence SLC C10	
Grid	Electricity Transmission Licence SLC C14	
STC	Electricity Transmission SLC B12	Electricity Transmission Licensee: National Grid, Scottish Hydro Electric, SP Transmission
DCUSA	Electricity Distribution Licence SLC 22	Electricity Distribution Licensees: Central Networks East plc, Central Networks West plc, EDF Energy Networks (EPN) plc, EDF Energy Networks (LPN) plc, EDF Energy Networks (SPN) plc, EDF Energy (IDNO) Ltd, Electricity North West Ltd, Northern Electric Distribution Ltd, Yorkshire Electricity Distribution plc, Scottish Hydro electric Power Distribution plc, Southern Electric Power Distribution plc, SP Distribution Ltd, SP Manweb plc, Western Power Distribution (South Wales) plc, Western Power Distribution (South West) plc, Energetics Electricity Ltd, Independent Power Networks Ltd, ESP Electricity Ltd, The Electricity Network Company Ltd, ECG (Distribution) Ltd
Distribution	Electricity Distribution Licence SLC 21	
UNC	Gas Transporter Licence SSLC A11	Gas Transporter (NTS, GDNs): National Grid Gas plc (NTS and GDN licences), Northern Gas Networks Ltd, Scottish Gas Networks plc, Southern Gas Networks plc, Wales and West Utilities Ltd

Affected code	Modified licence condition	Relevant licensee
IGT UNC	Gas Transporter Licence SLC 9	Gas Transporter (IGTs) ¹ : British Gas Pipelines Ltd, Energetics Gas Ltd, ES Pipelines Ltd, ESP Connections Ltd, ESP Networks Ltd, ESP Pipelines Ltd, Fulcrum Pipelines Ltd, GTC Pipelines Ltd, Independent Pipelines Ltd, INEOS Enterprises Ltd, Quadrant Pipelines Ltd, SSE Pipelines Ltd, The Gas Transportation Company Ltd, Utility Grid Installations Ltd, Severn Gas Transportation Ltd.

Structure of this document

1.6. Chapter 2 explains the proposed changes to licence conditions, highlights key issues and invites comments relating to the proposed changes.

1.7. Chapter 3 summaries responses to the Initial Licence Drafting Consultations, together with our initial views on those comments.

1.8. Different versions (mark-up, clean and comparison with earlier versions) of the proposed licence drafting are then provided in Appendices 5 to 9.

1.9. A full list of the Appendices to this document is provided at the end of Chapter 3.

Next steps

1.10. We intend to hold a workshop to discuss the proposed licence modifications on **23 April 2010**. The workshop is intended to be a chance to work through and provide for group discussion, in particular from relevant licensees, of the proposed licence changes. If you would like to attend please confirm your interest by emailing: industrycodes@ofgem.gov.uk by **12 April 2010**.

¹ Note that the following IGT licensees do not currently have SLC 9 in effect in their licence either by direction of the Authority, under the terms of their licence or by virtue of amended standard conditions of their licence: Wyre Gas Transportation Ltd, WINGAS Storage UK Ltd, Star Energy Gas Storage Services Ltd and Caythorpe Gas Storage Ltd.

1.11. Following comments received in response to this consultation, we intend to issue a statutory consultation on draft licence modifications in late May 2010 and we intend to publish Statutory Notice of the licence modifications in late June 2010.

1.12. In the event that licensees do not accept the licence modifications set out in the statutory consultation, we will need to consider whether to refer the matter to the Competition Commission.

1.13. A wide range of industry code modifications will also be necessary to give effect to the Final Proposals. Code modification proposals will need to be raised in accordance with the implementation timescales contained in the licence provisions. We expect that these modifications will go through the normal industry process with full effect to be given to these proposals by autumn 2010.

1.14. The licence drafting timetable is summarised in table 1.5 below. Please note that some of these dates could be subject to change.

Table 1.5 Licence drafting milestones - April to autumn 2010

Date	Milestone
12 April 2010	Interested parties to express interest in participating in workshop
23 April 2010	Workshop - opportunity for relevant licensees and other interested parties to meet/discuss the proposed licence drafting with Ofgem
12 May 2010	Responses to Final Proposal Licence Drafting Consultation
Late May 2010	Statutory licence consultation starts
Late June 2010	Publication of notice of licence modifications
Spring/Summer 2010	Licence modifications take effect and modifications to codes to be progressed
Autumn 2010	Code modification implementation

2. Proposed changes to licence conditions

This chapter sets out all of the amendments to the standard licence conditions and, where applicable, standard special licence conditions (now collectively referred to as “standard licence conditions”) that we consider necessary to implement our Final Proposals. At the end of the chapter we also highlight certain further changes or steps we consider necessary in order to finalise the licence conditions modifications.

Question 1: Is the amending nature of the proposed changes appropriate?

Question 2: Where the licence drafting differs between different licence conditions, because of intrinsic differences as between those licence conditions, but where the underlying policy position is identical, do you agree that the substantive effect is materially the same?

Question 3: Do you agree with our preservation of existing condition provision numbering?

Question 4: Do you agree with our approach to existing “house style”?

Question 5: Do you agree with the order and placement of the new provisions?

Question 6: Do you agree with the references to panel consultation on the availability of the self-governance route?

Question 7: What are your views on the appropriateness of replicating the provisions relating to the UNC in SSLC A11(6)(d)(ii) for the CUSC and BSC?

Question 8: Do you agree with the appropriateness of the proposed deletions of provisions superseded by the code modification rules (as amended) and have you identified any potential unintended or unforeseen consequences?

Question 9: What are your views on the interaction of the charging-specific timing restrictions and obligations?

Question 10: Do you agree with the wording of the licensee obligation to provide information/assistance to affected parties?

Question 11: Do you agree with the proposed deletion of the word ‘financial’ and the phrase ‘on society’ in respect of the proposed drafting for Environmental Assessment and Code Objectives?

Question 12: Do you agree with the treatment of connection charging methodologies in the gas transporter licences.

Question 13: Do you agree that the modification of Standard Special Condition A11 will not affect the application of the Special Conditions pertaining to the NTS operator licence?

Question 14: Are the lead-in times and implementation timescales proposed appropriate?

Question 15: Are any transitional measures required?

Question 16: Have you identified any other or consequential changes not highlighted in this chapter that we should make to the licence conditions to reflect our Final Proposals?

Question 17: Are there any definitions in the standard licence conditions that are now redundant or need updating?

Question 18: Do you consider it appropriate to repeat the condition-specific definitions in the global definition conditions?

Question 19: Do you consider the new defined terms are appropriate?

Question 20: Do you agree with the proposed house-keeping amendments? Do you propose any additional house-keeping amendment?

Question 21: Have you identified any unintended consequences of the licence drafting?

Question 22: Do you agree with the proposed approach and detail of the potential alignment, accuracy and clarification amendments?

Question 23: Do you have any other (non-policy related) comments on the proposed licence drafting?

Question 24: Are there any aspects of the drafting that you do not understand or that you consider inappropriate?

Question 25: Are our substantive proposed changes appropriate in order to give effect to the underlying policy of the Final Proposals?

Introduction

2.1. We explain in this chapter the specific licence conditions that will be affected by our Final Proposals, and provide a key to reading the proposed amendments and understanding the effect of the proposed changes. We also identify at the end of this chapter other changes we may need to make to the licence conditions, which we will make in time for the statutory licence consultation, principally house-keeping amendments and verification of definitions and cross-references.

2.2. For detail on the policy conclusions that these licence conditions are intended to implement, we refer interested parties to our Final Proposals.

Proposed licence amendments

2.3. We refer to the following Appendices:

- Appendix 5 sets out our proposed changes to the licence conditions listed in Chapter 1 in a consolidated form, with the changes for each element of the Code Governance Review colour-coded and underlined.
- Appendix 6 sets out the proposed changes in Appendix 5 in a “clean” format.
- Appendix 7 highlights the changes made to the proposed licence drafting since the Initial Licence Drafting Consultations, although the change from standalone to consolidated drafting is not represented.
- Appendix 8 sets out our proposed changes in respect of code objectives and environmental impacts for the Grid Code, the STC, the DCUSA, the Distribution Code and the IGT UNC. Changes are coloured in violet and double underlined.
- Appendix 9 sets out the proposed changes in Appendix 8 in a “clean format”.

2.4. Given the nature of the Final Proposals, which build on existing frameworks, we consider it generally most appropriate to amend existing licence conditions rather than introduce entirely new licence conditions. We are, however, mindful of the interaction between Special Conditions and other licence conditions in the Gas Transporter Licence, and the implications of this are discussed further below. We consider that, if we sought to introduce new conditions, the existing conditions would still require amendment to avoid contradiction and inconsistency. **We welcome views on this approach. Particularly, on whether the amending nature of the proposed changes is appropriate.**

2.5. For the most part, the wording used in the licence drafting is largely the same for each of the affected licence conditions – although the placement of those amendments may vary. Where wording proposed is not identical, we consider that the substantive effect of the licence drafting is materially the same.

2.6. We welcome views on the consistency between licence conditions and invite comment on whether any differences in the text give rise to seemingly unintended and/or materially different legal effect(s). Particularly, where the licence drafting differs between different licence conditions, because of intrinsic differences as between those licence conditions, but where the underlying policy position is identical, do you agree that the substantive effect is materially the same.

2.7. We have preserved existing condition provision numbering, so as to maintain the validity of all existing cross-references. **We welcome views on our approach to preservation of existing condition provision numbering.**

2.8. We have sought to preserve the existing "house style" of the affected licence conditions as much as practicable, and have followed, for example, the existing phraseology (or idiom), definitions and terminology. For example, we continue to represent defined terms with lower case. **We welcome views on our approach to existing "house style".**

2.9. When structuring the new licence condition provisions we have sought to place new drafting where it appears most logical and fits most naturally within the existing drafting. **We welcome views on the order and placement of the new provisions, particularly the questions highlighted in bold in Table 2.1 below.**

2.10. We set out below a high level explanation of the core features of the proposed licence amendments and their nexus with the Final Proposals. The following tables are intended to provide a key to the main elements of proposed licence drafting and related issues for the principal elements of the Final Proposals. Text that was previously included but has now been removed to reflect Final Proposals is not included in these tables. However, certain changes to the licence drafting as against earlier published versions are highlighted.

2.11. **We welcome views on any aspects of the licence drafting but also highlight (in bold) particular areas for consideration and comment.**

Table 2.1 Significant code review

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
Inclusion of significant code review process: Proposals to be made by the licensee following an Authority direction.	Electricity Transmission - BSC	SLC C3 (1(c), 1(d) and 4(a, aA, aC, b))	'significant code review', 'significant code review phase 1' (see also existing definition of 'licensee')	Included to ensure code modification procedures take into account the new licence provisions. Note in particular the new inclusion of a reference to the Authority's obligations arising under EU law in the definition of significant code review. Note also the revision to the sequence of potential events after the Authority has conducted significant code review.
	Electricity Transmission - CUSC	SLC C10 (2(b), 6(a, aA, aC, b))		
	Gas Transporter - UNC	SSLC A11 (6(b), 9(a, b, bA, 10(a, aA)) SSLC A12 (4(a)(iii))		
Treatment of modification proposals which fall within scope of	Electricity Transmission - BSC	SLC C3 (4A, 4B)	'significant code review', 'significant code review	Partial restriction on the making of modification proposals which fall within the scope of "live" significant

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
a "live" significant code review.	Electricity Transmission - CUSC	SLC C10 (6A, 6B)	phase 1' (see also 'small participants')	code review. Note in particular the new detail regarding the role of the panel and related process to be accommodated by the codes. Note also that the specific treatment of defined periods of time and certain stages of the significant code review process have been modified, following Final Proposals. The defined terms play an important function in this regard. We note that paragraphs 4A and 4C of SLC C3, 6A and 6C of SLC C10 and 15A and 15C of SSLC A11 could be placed in reverse order and invite comments on this point.
	Gas Transporter - UNC	SSLC A11 (15A, 15B)		
Issue of directions by the Authority following significant code review.	Electricity Transmission - BSC	SLC C3 (4C)	'Significant code review'	Authority to issue directions regarding the making of modification proposal(s) within the scope of the relevant code following significant code review. Such directions will identify the code(s) that the Authority considers require amendment to reflect its conclusions and who is to raise the modification(s) in respect of each code. Note in particular the timed nature of directions, the restriction on the licensee's freedom to withdraw a proposal and adjusted wording referring to the panel report or recommendation procedures. We note that paragraphs 4A and 4C of SLC C3, 6A and 6C of SLC C10 and 15A and 15C of SSLC A11 could be placed in reverse order and invite comments on this point.
	Electricity Transmission - CUSC	SLC C10 (6C)		
	Gas Transporter - UNC	SSLC A11 (15C)		
Facilitation of consistency between codes.	Electricity Transmission - BSC	SLC C3 (12)	Existing definition of 'core industry document', new definition	Obligation to ensure that any consequential amendments necessary to related code documents are raised.

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
			of 'industry code'	
	Electricity Transmission - CUSC	SLC C10 (12)	Existing definition of 'core industry document', new definition of 'industry code'	
	Gas Transporter - UNC	SSLC A11 (20A)	New definition of 'industry code',	

Table 2.2 Self-governance

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
Inclusion of existence of self-governance process.	Electricity Transmission - BSC	SLC C3 (4(aB), 4(b) and 4(c))	'self-governance route', 'self-governance criteria', 'self-governance notice period' and 'self-governance statement'	Included to ensure/enable modification procedures take into account new licence provisions. Note the revisions to include additional references to panel consultation on the availability of the self-governance route. We welcome views, in particular, on this.
	Electricity Transmission - CUSC	SLC C10 (6(aB) and 6(c))		
	Gas Transporter - UNC	SSLC A11 (9(b), 9(e), 13(c), 15, 15(a)(iv) and 15(b))		
Inclusion detail regarding availability of self-governance process.	Electricity Transmission - BSC	SLC C3 (13A and 13B)	'self-governance criteria', 'self-governance statement', 'self-governance route', 'self-governance notice period' and 'applicable BSC objective(s)'/ 'applicable CUSC objective(s)'/ 'relevant objectives' (the latter being in respect of the UNC)	Procedure to enable the relevant panel to modify the code without the requirement of Authority consent. Note that the self-governance criteria are contained in a defined term and that the term 'trivial' has been replaced with 'material'. Note also the introduction of a suggested time period in respect of the self-governance notice period.
	Electricity Transmission - CUSC	SLC C10 (13A and 13B)		
	Gas Transporter - UNC	SSLC A11 (15D and 15E) SSLC A12 (4(a)(vA))		
Distinction between self-	Electricity Transmission -	SLC C3 (5(a))	N/A	Dovetailing of self-governance and standard

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
governance and standard modification process.	BSC			modification process.
	Electricity Transmission - CUSC	SLC C10 (7(a) and 7(e))		
	Gas Transporter - UNC	SSLC A11 (9(a))		
Right of appeal concerning self-governance decision.	Electricity Transmission - BSC	SLC C3 (13A(d), 13B))	'self-governance route' and 'applicable BSC objective(s)'	Sets out parties' appeal rights in respect of decisions under the self-governance route. Note also the impact of an appeal on the implementation of a modification proposal that has been approved by the panel. The code rules will also need to be developed to provide additional procedural steps/detail, as may be appropriate.
	Electricity Transmission - CUSC	SLC C10 (13A(d), 13B)		
	Gas Transporter - UNC	SSLC A11 (15D(d), 15E)		

Table 2.3 Code administrators and small participant and consumer representative initiatives

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
To introduce a code administrator and for the code procedures governing the role of the code administrator to be consistent with the Code of Practice.	Electricity Transmission - BSC	SLC C3 (1(e))	'Code of Practice', (embedded definition of 'code administrator')	Requires the licensee to have in force a code that governs the functions of the code administrator having regard to, and consistent with the principles of, the Code of Practice maintained by the code administrator which sets out (in high level) the role of the code administrator. Further, the code rules to have regard to the Code of Practice and also be consistent with the principles of the Code of Practice.
	Electricity Transmission - CUSC	SLC C10 (2(e))		
	Gas Transporter - UNC	SSLC A11 (6(c))		
Independent panel chairperson.	Electricity Transmission - BSC	SLC C3 (1(f)(i))	(Embedded definition of 'panel').	Introduces the independent chairperson as a formal requirement of the code.
	Electricity Transmission - CUSC	SLC C10 (2(f)(i))		

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
	Gas Transporter - UNC	SSLC A11 (6(d)(ii))		
To ensure consumer representative(s) included in panel composition.	Electricity Transmission - BSC	SLC C3 (1(f)(ii))	'affected parties'	Note that where this is already a formal requirement in the code, this is included for consistency/ alignment purposes. Note also, the different provisions relating to the UNC. We welcome in particular views on the appropriateness of replicating the provisions relating to the UNC in SSLC A11(6)(d)(ii) for the CUSC and BSC for consistency/ alignment purposes.
	Electricity Transmission - CUSC	SLC C10 (2(f)(ii))		
	Gas Transporter - UNC	SSLC A11 (6(d)(ii))		
Provision of assistance by code administrator.	Electricity Transmission - BSC	SLC C3 (4(aD), 4(b)(i), 4(b)(ii))	'small participant'	Note the additional detail regarding what assistance is expected of the code administrator and the revised definition of small participant. Note the broader availability of assistance of this kind. Note also that the terms 'small participant' and 'consumer representatives' are introduced in a number of places in respect of the code modification procedures.
	Electricity Transmission - CUSC	SLC C10 (6(aD), 6(b)(i) and 6(b)(ii))		
	Gas Transporter - UNC	SSLC A11 (9(aA), 9(d) and paragraph 9(f)) SSLC A12 (1 (a))		
Alignment with CAWG findings.	Electricity Transmission - BSC	SLC C3 (4(b)(iv))	N/A	Sets parameters for progressing alternative modifications and treatment of timing.
	Electricity Transmission - CUSC	SLC C10 (6(b)(iv))		
	Gas Transporter - UNC	SSLC A11 (10(b))		
Heightened requirement in respect of the panel decision and reporting process.	Electricity Transmission - BSC	SLC C3 (4(b)(v) and 4(b)(vi))	'applicable BSC objectives', 'applicable CUSC objectives', 'relevant objectives (the latter being in respect of the UNC.)	Amends requirements of panel report to Authority (including reasoning for decision).
	Electricity Transmission - CUSC	SLC C10 (6(b)(v) and 6(b)(vi))		
	Gas Transporter - UNC	SSLC A11 (9(h)) SSLC A11		

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
		(15(a)(iv))		
Send back provisions.	Electricity Transmission - BSC	SLC C3 (5(aA))	N/A	Establishes ability of Authority to send back (for improvement) to the panel a report which the Authority considers is such that it is unable to form an opinion.
	Electricity Transmission - CUSC	SLC C10 (7(aA))		
	Gas Transporter - UNC	SSLC A11 (15(b)(ii)) SSLC A12 (4(a)(iv))		

Table 2.4 Charging methodologies

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
To revise charging methodologies modification process to enable affected parties to raise modification proposals and move charging methodologies into code.	Electricity Transmission - CUSC	SLC C4 (1(b) and 2, 7 (b)). SLC C5 (2, 3, 4, 5, 6 and 7) SLC C6 (1(b), 3, 9, 10, 11, 13)	'relevant objectives'	Note changes to charging-specific licence conditions and introduction of references to standard condition C10 and standard special condition A11 (CUSC and UNC respectively). Note deletion of provisions that have now been superseded by the Code Modification rules (as amended). We welcome in particular views on the appropriateness of these deletions and any potential unintended or unforeseen consequences of these deletions. Note the preservation of the existing charging methodology specific 'objectives'.
	Gas Transporter - UNC	SLC 4B (4(b), 6 and 7) SSLC A5 (1, 2,5)	'relevant objectives' 'relevant methodology objectives'	

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
		SSLC A4(8(b))	N/A	We highlight and welcome views, in particular, on the potential deletion of SSLC A4(8(b))
Charging methodologies to be placed in the code.	Electricity Transmission - CUSC	SLC C10 (2(d))	'charging methodologies'	Adds requirement for licensee to include the charging methodologies in the CUSC and the UNC (as applicable).
	Gas Transporter - UNC	SSLC A11(6)(e)	'UNC charging methodologies'	
Code modification procedures to be adapted to accommodate proposed changes to be made in respect of charging methodologies	Electricity Transmission - CUSC	SLC C10 (6(a))	'affected parties', 'charging methodologies', 'connection charging methodology' and 'use of system charging methodology'	Introduces requirement for licence to establish/operate specific charging methodology modification procedures. Note the specific meaning of 'affected parties'. Note also the charging methodology-specific modification procedures that will need to be put in place (mitigation measures)
	Gas Transporter - UNC	SSLC A11 (9 (aB), 10(aB))	'affected parties', 'UNC charging methodologies'	
Role of charging methodology forum	Electricity Transmission - CUSC	[SLC C10 (6(aE)(i))]	'affected parties', 'charging methodologies', 'charging methodology forum', 'connection charging methodology' and 'use of system charging methodology' 'UNC charging methodologies'	Requires periodic convening of a charging methodology forum to facilitate the development of modification proposals and also to facilitate the consideration and evaluation of any such proposal raised.
	Gas Transporter - UNC	[SSLC A11 (9 (aC)(i))]		
Preservation of existing licence provisions governing timing of charging	Electricity Transmission - CUSC	SLC C10 (6(b)(ivA), 6(b)(vi) and 6(c))	'charging methodologies', 'connection charging methodology'	Introduces reference to existing conditions provisions. The code modification rules must be amended

Final Proposal	Reference to Licence - Code	SLC/SSLC (para)	Related defined term	Related commentary
methodology changes.	Gas Transporter - UNC	SSLC A11 (9 (aB))	and 'use of system charging methodology' 'UNC charging methodologies'	to accommodate the licensee's existing obligations. We welcome views in particular regarding the interaction of the charging-specific timing restrictions and obligations.
Information and assistance to be provided by the licensee in relation to the charging methodologies in order to facilitate affected parties proposing changes to those charging methodologies	Electricity Transmission - CUSC	SLC C10 (6(aE)(iii))	'charging methodology' 'UNC charging methodologies'	Note the addition of an obligation on the licensee to provide information and assistance to affected parties. We welcome views, in particular, on this wording.
	Gas Transporter - UNC	SSLC A11 (9(aC)(iii))		

Table 2.5 Environmental Assessment and Code Objectives

Licence/Code	Reference to licence condition	Related commentary
Electricity Transmission/BSC	Standard Condition C3 (paragraph 4(b)(ivA and v))	Requirement on panel when reporting to Authority on modification proposal to include (where the impact is likely to be material) an assessment of the impact of GHG emissions in accordance with Authority-issued guidance. We welcome views, in particular, on the proposed deletion of the word 'financial' and the phrase 'on society' in respect of the proposed drafting for Environmental Assessment and Code Objectives.
Electricity Transmission/CUSC	Standard Condition C10 (paragraph 6(b)(ivB and v))	
Electricity Transmission/Grid	Standard Condition C14 (paragraph 2B and 2C(a))	
Electricity Transmission/STC	Standard Condition B12 (paragraphs 6(b)(vA and vi))	
Electricity Distribution/Distribution	Standard Condition 21 (paragraph 8A and 9(a))	
Electricity Distribution/DCUSA	Standard Condition 22 (Part C, paragraph 9A)	
Gas Transportation/IGT UNC	Standard Condition 9 (paragraph 12(a)(iv)(bb))	
Gas Transportation/UNC	Standard Special Condition A11 (paragraph 15(a)(iv)(bb))	

Drafting notes relating to Gas Transporter Licence

Charging methodologies

2.12. The Final Proposals state that the gas distribution connection charging methodologies will not be modified at this time and that the independent gas transporter arrangements are outside the scope of the Final Proposal. As such, Standard Condition 4B will only be modified in respect of National Grid's NTS licence. We propose to give effect to this by means of an NTS operator-specific Special Condition only.

2.13. In addition, the modification of standard special condition A11 includes a distinction between charging methodologies in respect of the NTS operator and in respect of DN operators (as defined in the licence).

2.14. **We welcome views on this method of giving effect to the distinction. Particularly, whether you agree with the treatment of connection charging methodologies in the gas transporter licences.**

2.15. Please also note that Chapter 3 of the appended licence drafting contains DN operator-specific licence drafting, which incorporates the wording inserted by special condition D11. The substantive amendments, however, are no different to that of the NTS operator licence.

Standard Special Condition A11

2.16. Please note it is our intention that the modification of Standard Special Condition A11 will not affect the application of the Special Conditions pertaining to the NTS operator licence². **We welcome views on this.**

Implementation provisions

2.17. We have set out the implementation provisions that we consider appropriate to allow the relevant licensees sufficient lead-in time to give effect to the new licence provisions in each of the affected codes. **We welcome views on this provision, especially the suitability of the date specified and whether a single date for**

² Please note that that Standard Special Conditions A11 and A12 have been replicated in Chapter 3 of the appended licence drafting for completeness. They have not been amended previously specifically for DN operators. Standard Special Condition A11 has been amended specially in respect of the NTS operator by special conditions of NGG NTS licence as illustrated in Chapter 2.

all provisions is appropriate. Particularly whether you consider any transitional measures are required.

Other and consequential changes

2.18. While this document contains all of the amendments to licence conditions that we currently consider necessary to give effect to the Final Proposals, we note that there may still be some further changes to be made. For the most part, these changes are likely to be consequential ones (e.g. amending, removing or consolidating definitions, checking cross-references, or updating or revising paragraph numbering).

2.19. We will progress these changes and reflect them in the statutory licence consultation. **We also welcome your views on additional consequential changes that could be made.**

Definitions

2.20. The “global” definitions that accompany the standard licence conditions are set out in Standard Licence Conditions A1, B1 and C1 SLC of the Electricity Transmission Licence and Standard Condition A1 and Standard Special Condition A3 of the Gas Transporter Licence. We have drafted the proposed licence amendments having regard to these definitions and have avoided changing global definitions.

2.21. Definitions contained in the individual standard licence conditions have been amended and added to. Please note that, at times, this has an indirect effect on certain of the global definitions (for example, where the global definition refers to the condition-specific definition). We will undertake a further review of the definitions in the licence conditions in due course to ensure that all relevant terms are defined and any redundant terms are removed. There may also be scope to move condition-specific definitions into the global definition sections (as applicable).

2.22. **We welcome your views on whether any global definitions are now redundant.**

2.23. **We welcome your views on whether any condition-specific defined terms should be set out in the global definition conditions.**

2.24. **We welcome views on the appropriateness (or otherwise) of the new defined terms.**

House-keeping and changes in the interest of accuracy

2.25. We are taking the opportunity to consult on proposed minor changes, where appropriate, for the purposes of improving presentation and correcting typographical

errors, for example, and to remove text which is merely historic. For example, we propose deletion of references in the affected Electricity Transmission Licence Conditions to special condition J (NETA) and to the Master Connection and Use of System Agreement (MCUSA).

2.26. The table below lists the licence condition provisions that we initially consider to be potential candidates for house-keeping deletion.

Table 2.6 House-keeping potential amendments

Licence / condition	Paragraph	Reference
Electricity Transmission / SLC C3	4, text in parenthesis	NETA
	5(c)	Changes designated by Secretary of State on or before 8 September 2004
	5(d)	NETA
	7	NETA
Electricity Transmission / SLC C10	7(c)	Changes designated by Secretary of State on or before 8 September 2004
	11	MCUSA
	13	Correction of cross reference to paragraph immediately above
Electricity Transmission / SLC C14	7	Changes designated by Secretary of State on or before 8 September 2004

2.27. We welcome views on the appropriateness of these and other potential house-keeping changes.

2.28. We are also taking the opportunity to consult on proposing certain changes to the licence condition provisions relating to modification procedures where this would lead to clarification, better alignment with the relevant code modification rule(s) and/or where such changes are complementary to and facilitate the implementation of the Final Proposals. The table below lists the licence condition provisions that we propose to delete for alignment and accuracy reasons.

Table 2.7 Alignment, accuracy and clarification potential amendments

Provision	Licence reference	Explanation
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Provision	Licence reference		Explanation
Licensee obligation to secure and implement (and not to unduly delay) modifications to industry codes/documents where those changes are appropriate in order to give full and timely effect to and/or in consequence of any modification that has been made to an associated code.	Electricity Transmission SLC C3(12), SLC C10(12)	Gas Transporter SSLC A11(20A)	In respect of the Electricity Transmission Licence, this provision builds on existing provisions relating to 'core industry document'. This expands the scope of the provision to documents which are not designated by the Secretary of State but, nevertheless intersect with or overlap with the BSC or CUSC and where inconsistency or conflict would be undesirable. In respect of the Gas Transporter Licence, this provision is new but builds on an existing code principle under code governance that codes should not conflict with one another.
Reference to time periods as specified in the relevant codes only being extended with Authority approval.	Electricity Transmission SLC C3(4(b)(vi)), SLC C10(6(b)(vi))	Gas Transporter SSLC A11(15(a))	This provision aligns with work undertaken by the CAWG and the Code of Practice. Since certain codes have time limits on the various stages of the entire modification process (e.g. workgroup stage, industry consultation stage), CAWG considered that there should be normal time periods for the different stages of the modification process (e.g. workgroup stage, industry consultation stage) but subject to extension by Ofgem.

2.29. We welcome views on this approach and the detail of the potential changes.

Additional opportunity to comment

2.30. We invite any additional comments on the proposed licence drafting which may not have been captured by the questions set out in this chapter. Particularly;

- 2.30.1. whether our substantive proposed changes are appropriate in order to give effect to the underlying policy of the Final Proposals; and**
- 2.30.2. whether there are any aspects of the drafting that you do not understand or that you consider inappropriate.**

3. Responses to Initial Licence Drafting Consultations

This chapter summarises the drafting-related responses received from interested parties to questions posed in the: (i) Code Governance Review Initial Proposals illustrative licence drafting consultation (open letter published in October 2009); and (ii) Environmental Assessment and Code Objectives illustrative drafting consultation (open letter published in June 2009) (and collectively the “Initial Licence Drafting Consultations”). This chapter also sets out our views in relation to those comments. This chapter does not address the policy-related comments submitted in relation to the Initial Licence Drafting Consultations. Policy-related comments have been taken into account and have informed the development of Final Proposals.

Question 1: Are there any comments that are still valid but you consider have not been addressed by us, either in our reply or in the revised licence drafting?

Question 2: Are there any aspects of this chapter regarding which you seek additional clarification or to which you would like to respond?

3.1 This chapter deals with the drafting-related responses received from interested parties to questions posed in the Initial Licence Drafting Consultations and Ofgem’s views in relation to those comments.

3.2 This chapter only addresses respondents’ comments on the proposed licence *drafting*. A number of respondents took the opportunity to comment on policy underpinning the illustrative licence drafting provided in relation to the Initial Licence Drafting Consultations, which was welcomed by Ofgem. However, this chapter does not address any comments made by respondents concerning the Code Governance Review *policy*.

3.3 Policy-related comments submitted in response to separate consultations on policy and/or in response to the Initial Licence Drafting Consultations have been considered by Ofgem and have informed the Final Proposals document. Our policy has now been confirmed in our Final Proposals. Comments on policy, therefore, are outside the scope of this consultation.

3.4 Please note that the description of responses below represent a high level summary and may not, therefore, capture every discrete comment made by a particular respondent and considered by Ofgem.

Code Governance Review

3.5 In the Initial Licence Drafting Consultation document, we stated that:

“We invite comments on the annexed licence drafting [...] In particular, we welcome comments on whether the drafting accords with your understanding of the initial proposals, whether it is sufficiently clear, and whether you

consider it effective in meeting the expressed intention of a particular proposal/option.”

3.6 We received 10 non-confidential responses from the following organisations:

- Association of Electricity Producers
- Centrica
- Consumer Focus
- EDF Energy
- E.ON UK
- International Power First Hydro
- National Grid
- Northern Gas Networks
- Scottish and Southern Energy
- Wales and West Utilities

3.7 Responses are available on Ofgem’s website:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=281&refer=LICENSING/INDCODES/CGR>

Responses to format and presentation

3.8 We received a number of comments on the format of the licence drafting. First, parties requested that the licence amendments be presented in a consolidated format, which we have done for this consultation. Second, a small number of respondents suggested that entirely new licence conditions may be a better way of introducing the new provisions. We note that there may be certain presentational advantages of drafting new licence conditions. However, we are also of the view that the existing licence conditions would, in any event, need to be amended both in terms of cross-references and also substantive content. We consider that such an approach increases the risk of confusion and/or inconsistency as between the existing and new licence conditions. We also consider that the matters for which this drafting is prepared are inextricably linked to the existing licence conditions such that stand-alone conditions are likely to be impracticable and/or unhelpful in the long-term. **We welcome views on our approach to format.**

Responses to Annex One: Significant code review (previously Major Policy Review) and self governance

Views of network operators and transporters

Comments on the significant code review (previously Major Policy Review) process

3.9 One respondent felt that the proposed drafting did not cater for the situation where no direction is made after significant code review conclusions. That

respondent also felt that the definition of the review was not sufficient to fully capture the criteria in paragraphs 3.23 and 3.24 of our consultation of July 2009.

3.10 Another respondent sought: (i) clarification of the process by which a decision to initiate review is taken; (ii) and inclusion of a specific statement that modifications raised after such a review are subject to standard modifications processes.

3.11 A third respondent commented that the definition of the review was not detailed enough.

Comments relating to 'self-governance'

3.12 One respondent stated that they supported Ofgem's proposals on 'self-governance'.

3.13 Another respondent: (i) pointed out that 'self-governance statement' should only be defined once in each licence; (ii) said that they were unclear as to which 'self-governance' procedures were to be reflected in the codes; and (iii) felt that the threshold should be 'materiality' and not 'triviality'.

3.14 A respondent felt that the proposed drafting did not reflect the initial proposal for consumers/code parties to request modifications to be re-directed from Path 3 into Path 2.

Housekeeping and similar points

3.15 One respondent suggested deletion of: (i) references to Special Condition J (to reflect BETTA); and the definition of 'transition modification provisions' in Electricity Transmission standard licence condition C3.

3.16 Another respondent suggested the inclusion of the word 'with' in paragraph 4(a) of Condition C3 and the removal of the phrase '(as may be specified in the BSC)' from paragraph 4B(i) of Condition C3.

3.17 A third respondent suggested that Gas Transporter Licence Standard Special Condition A11, paragraph 15A should read as 'drafted and/or raised' and not 'made'.

General comment

3.18 Two respondents felt that the effect of the Final Proposals should be to revise the relevant code and not the standard licence conditions.

Views of other respondents

Comments on the significant code review (previously Major Policy Review) process

3.19 One respondent felt that the phrase 'sufficiently developed' in paragraph 4(b)(iv) of Electricity Transmission standard licence condition C3 was insufficiently clear.

3.20 Respondents also requested: (i) further and more detailed information concerning the review process; and (ii) clarification of what would trigger a review and what the timescales would be.

3.21 One respondent suggested that it was unclear under what circumstances a party could or could not raise modifications during the review process.

3.22 Another respondent recommended a more detailed definition of the review.

Comments relating to 'self-governance'

3.23 Two respondents requested a definition of the term 'trivial'.

3.24 Another respondent recommended that the panel be required to consult with industry before making its 'self-governance statement'.

Housekeeping points

3.25 One respondent suggested insertion of 'better' before 'facilitate' in Electricity Transmission Standard Licence conditions C3 and C10, 13B(b).

General comment

3.26 Respondents generally confirmed that the illustrative licence drafting was consistent with their understanding of Ofgem's initial proposals.

3.27 A number of respondents asked for some form of additional detail and/or guidance from Ofgem.

Ofgem's view

3.28 We note that respondents' comments focused, to a large extent, on the underlying policy that was being given effect by the illustrative licence drafting. Ofgem's final policy position (having taken regard to respondents' comments) is set out in the Final Proposals and we do not intend to cover them here. However, we do

indicate where policy developments have meant that certain of the comments on licence drafting no longer apply.

3.29 We address each of the comments summarised above in turn.

Significant code review (previously Major Policy Review) process

3.30 If no direction is issued after review conclusions: We refer to the definition of “significant code review phase 1” (in the revised licence drafting – see Appendices), which defines the period for which the restriction on modification proposals relating to a significant code review applies. If the Authority states that that no direction will be issued, the significant code review phase 1 period ends on the date on which that statement is made. Following the end of the significant code review phase 1 period, parties (so-entitled) are free to propose modifications and/or alternatives under the relevant code’s usual modification procedure.

3.31 Definition of significant code reviews (previously Major Policy Review): We refer to the Final Proposals. In exercising its discretion in this regard, Ofgem will have regard to its stated list of significant code review characteristics or criteria, which we do not propose, at this stage, to contain in the licence drafting.

‘Self-governance’

3.32 Repetition of defined terms: To reflect the respondent’s comments, the drafting has been revised so that the definition of ‘self-governance statement’ only appears once in each licence.

3.33 Clarity as to necessary code amendments: It is for code parties to raise modifications to implement ‘self-governance’ in the manner most suited to their particular code. However, the drafting of the licence provisions are such that the code amendments must contain certain core elements. We refer to the implementation provisions in the revised licence amendments.

3.34 Triviality: We refer to the Final Proposals for the policy decision in relation to the appropriate threshold for self-governance. However, whatever the threshold applied, it is anticipated that assessment will be undertaken on a case-by-case basis, and with Ofgem involvement, so that the concerns raised are expected to be addressed as decisions are taken over time. We refer also to the licence drafting which regulates self-governance, as some procedural steps have been incorporated to deal with this issue. Lastly, we refer to the revised definition of “self-governance criteria”.

3.35 Panel consultation on availability of self-governance route: We note this comment. We also refer to the earlier drafting with included a reference to the self-governance route in the relevant provision where the code modification procedures are described. However, we have revised the drafting in order to clarify the panel’s

duties in relation to consultation on the availability of the self-governance route and have invited comments on this drafting in the previous chapter.

3.36 The request for re-direction of modification proposals from Path 3 into Path 2: This ability is intended to be an informal one and, therefore, is not specifically provided for in the licences.

Housekeeping and other points

3.37 Special Condition J etc: The request for deletion of out of date references/definitions is a housekeeping point that relates to existing text and not the proposed drafting to implement significant code reviews and 'self-governance'. However, we are considering and consulting on whether to make these deletions, as suggested.

3.38 The two phrases where it was suggested that we add 'with' and delete '(as may be specified in the BSC)' have been replaced.

3.39 Make or raise proposals: In Ofgem's current view, adopting of the term 'draft' or 'raise' rather than 'make' as suggested would lead to interpretative ambiguity, as the licences already specifically use the word 'make' rather than 'raise'.

General comments

3.40 Code modifications: Ofgem agrees that the section(s) of the affected codes dealing with modification procedures will need to be amended to accord with the amendments to the relevant licence provisions. By amending the licence provisions, we seek to ensure that the necessary code modifications are raised and progressed expeditiously, and that the changes across different codes are largely consistent with one another. We refer also to the implementation provision in the revised drafting.

Responses to Annex Two: Code administrators and small participants/consumer initiatives

Views of network operators and transporters

Code administrators

3.41 One respondent sought comfort that existing CUSC and UNC arrangements are accommodated by the definition of code administrators.

3.42 Two respondents felt that there was some duplication in requiring the code administrator to facilitate the UNC modification procedures when this is covered by the Joint Office and queried why the UNC-related licence conditions were being amended instead of existing Joint Office duties/responsibilities.

3.43 One respondent requested clarity regarding the new assistance that the code administrator was required to provide.

Consumer representative

3.44 One respondent suggested that a definition of 'consumer representative' be included.

Definition of 'small'

3.45 Respondents commented on the definition of 'small' and that, in particular, it could allow inclusion of larger companies in certain circumstances.

Views of other respondents

Definition of 'small'

3.46 A number of respondents commented on the proposed definition of 'small', believing that this may give rise to inclusion of larger companies in certain circumstances or inappropriate exclusion of relatively small companies.

General

3.47 One respondent requested a definition of 'detailed' in the requirement on panels to report the rationale of a modification decision.

Ofgem's view

Code administrators

3.48 Code administrators: The introduction of the code administrator is designed to reflect the current arrangements, rather than create a requirement for a new body. The licence drafting has been revised to clarify this. We agree that Joint Office duties will need to be amended to reflect the revised licence conditions. Standard Special Condition A12 has been revised to reflect industry feedback on the correlation between code administrators and the Joint Office. We have revised the wording designed to introduce the 'critical friend' role in response to the request for additional clarity.

3.49 Consumer representative: At this stage, we are minded not to include a definition of 'consumer representative'. Note that the references to consumer representatives have been revised and that the National Consumer Council (ie, Consumer First) is now referenced.

3.50 Definition of 'small': The definitions of 'small' have been subsumed within a new, less prescriptive definition of 'small participant'.

3.51 'Detailed reasons': Our view, at this stage, is that the dictionary definition of 'detailed' should be sufficiently clear.

Responses to Annex Three: Charging Methodologies

3.52 There were a number of responses to Annex 3 that have informed the policy underpinning Final Proposals and we do not, therefore, respond to them here.

3.53 There were also a number of responses submitted relating to 'Option 2', which is not being taken forward, although they were noted and, where applicable, considered in relation to 'Option 3'.

3.54 One respondent felt that the illustrative drafting differed from their understanding of Ofgem's initial proposals. Their reasoning however, is policy-based and therefore will not be expanded on here. Please refer to the Final Proposals in this regard.

3.55 One respondent felt that the definition of 'affected parties' was insufficiently clear, sought clarity regarding the timescales for designation and noted that the definition of affected parties was 'very wide' in respect of gas distribution.

3.56 Another respondent sought further clarity on when parties could raise modification proposals and commented that the relevant objectives and applicable code objectives were not aligned.

3.57 One respondent sought revisions to the intersection with existing charging methodology obligations as to timing.

3.58 One respondent commented whether the licence conditions required the licensee to provide sufficient information to potential proposers.

Ofgem's view

3.59 Affected parties: Please refer to the Final Proposals for an explanation of the policy in relation to the designation of affected parties.

3.60 When parties can raise modification proposals: Please refer to Final Proposals. We have invited comments on the potential variants as to how the underlying policy may be implemented.

3.61 Relevant objectives: Please refer to Final Proposals. The definition of "applicable CUSC objectives" in respect of the CUSC and "relevant objectives" in

respect of the UNC incorporate the existing charging methodology-specific relevant objectives as defined in the charging-specific licence conditions. The overarching objectives framework, therefore is unaffected. The CUSC and the UNC will need to be amended to reflect this.

3.62 Existing obligations as to timing: We have noted these concerns and invited comment in Chapter 2 on this issue.

3.63 Provision of information: We refer to the existing licence conditions relating to the publication of methodologies and statements but also to the revised wording in respect of the role of the charging methodology forum.

Code Objectives and Environmental Impacts

3.64 In this consultation document, we invited views on both the policy proposals and the accompanying legal text.

3.65 We received 12 non-confidential responses from the following organisations:

- Centrica
- Consumer Focus
- EDF Energy
- Elexon
- E.ON
- International Power First Hydro
- Joint Office
- National Grid
- National Grid on behalf of the CUSC Panel
- Northern Gas Networks
- REA
- Wales and West Utilities

3.66 Responses are available on Ofgem's website:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=197&refer=Licensing/IndCodes/CGR>

Responses on Code Objectives and Environmental Impacts

Views of Panels

3.67 The BSC Panel felt that the proposed drafting 'would go a long way to providing the necessary clarity [...] requested'.

3.68 The CUSC Amendments Panel acknowledged that the proposed drafting 'recognises that the evaluation of greenhouse gas ("GHG") emissions should not be mandatory but, rather, applied where relevant'.

Views of other respondents

3.69 Two respondents felt that the draft text was not sufficiently clear and was open to interpretation. They suggested guidance be issued on materiality of impact and assessment of 'relevance'.

3.70 Another respondent was supportive of the proposed licence modifications requiring the code panels for the BSC, CUSC and UNC to take account of GHG emissions.

3.71 Four respondents felt that the proposed licence changes were unnecessary. The common theme to such responses was that the relevant code objectives and code modification panels/working groups already allow for and may already undertake assessment of the impact of GHG emissions.

3.72 One respondent welcomed the inclusion of the words 'where relevant'.

3.73 Another respondent suggested replacing the word 'applicable' with 'possible'.

3.74 Respondents have also raised concerns with the word 'financial' in relation to 'impacts' and the phrase 'on society'.

Ofgem's view

3.75 Ofgem issues guidance on the treatment of carbon costs and the evaluation of GHG, which will be updated from time to time. Please refer to Final Proposals in relation to this guidance.

3.76 Please also refer to Final Proposals as to the need, in principle, for licence modifications.

3.77 We have revised the proposed licence drafting in response to the feedback received. In particular, in response to additional feedback, we are minded not to include terms 'on society' and 'financial' in the licence drafting. The removal of the phrase 'on society' is not intended to limit the kind of impacts that are relevant for the purposes of the assessment. The phrase's removal does not imply the relevant impacts are only those which are felt by the licensee or by industry – the impacts are expected to be as broad as society. Ofgem will clarify this distinction, if necessary, in its guidance. The relevance of measuring the financial impacts of GHG emissions, and any other means of quantifying impacts of GHG emissions is likely to be set out in guidance.

Appendices

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7	Comparison with Initial Proposals Illustrative Licence Drafting Consultation (excluding Environmental Assessment and Code Objectives)	See Additional Appendices.
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9	Environmental Assessment and Code Objectives – proposed changes to licence conditions in respect of Grid Code, STC, DCUSA, Distribution Code, and IGT UNC - clean	See Additional Appendices.

Appendix 1 - Consultation Response and Questions

1.1. Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document.

1.2. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter heading and which are replicated below.

1.3. Responses should be received by 12 May 2010 and should be sent to:

Jonathan Dixon

Head of Industry Codes and Licensing
9 Millbank
London
SW1P 3GE
020 7901 7354
jonathan.dixon@ofgem.gov.uk

1.4. Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.5. Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

1.6. Any questions on this document should, in the first instance, be directed to:

Mark Cox

Associate Partner, Industry Codes and Licensing
Ofgem
9 Millbank
London
SW1P 3GE
Tel: 020 7901 7458
industrycodes@ofgem.gov.uk / mark.cox@ofgem.gov.uk

CHAPTER: One

There are no specific questions in this chapter.

CHAPTER: Two

Question 1: Is the amending nature of the proposed changes appropriate?

Question 2: Where the licence drafting differs between different licence conditions, because of intrinsic differences as between those licence conditions, but where the underlying policy position is identical, do you agree that the substantive effect is materially the same?

Question 3: Do you agree with our preservation of existing condition provision numbering?

Question 4: Do you agree with our approach to existing "house style"?

Question 5: Do you agree with the order and placement of the new provisions?

Question 6: Do you agree with the references to panel consultation on the availability of the self-governance route?

Question 7: What are your views on the appropriateness of replicating the provisions relating to the UNC in SSLC A11(6)(d)(ii) for the CUSC and BSC?

Question 8: Do you agree with the appropriateness of the proposed deletions of provisions superseded by the code modification rules (as amended) and have you identified any potential unintended or unforeseen consequences?

Question 9: What are your views on the interaction of the charging-specific timing restrictions and obligations?

Question 10: Do you agree with the wording of the licensee obligation to provide information/assistance to affected parties?

Question 11: Do you agree with the proposed deletion of the word 'financial' and the phrase 'on society' in respect of the proposed drafting for Environmental Assessment and Code Objectives?

Question 12: Do you agree with the treatment of connection charging methodologies in the gas transporter licences.

Question 13: Do you agree that the modification of Standard Special Condition A11 will not affect the application of the Special Conditions pertaining to the NTS operator licence?

Question 14: Are the lead-in times and implementation timescales proposed appropriate?

Question 15: Are any transitional measures required?

Question 16: Have you identified any other or consequential changes not highlighted in this chapter that we should make to the licence conditions to reflect our Final Proposals?

Question 17: Are there any definitions in the standard licence conditions that are now redundant or need updating?

Question 18: Do you consider it appropriate to repeat the condition-specific definitions in the global definition conditions?

Question 19: Do you consider the new defined terms are appropriate?

Question 20: Do you agree with the proposed house-keeping amendments? Do you propose any additional house-keeping amendment?

Question 21: Have you identified any unintended consequences of the licence drafting?

Question 22: Do you agree with the proposed approach and detail of the potential alignment, accuracy and clarification amendments?

Question 23: Do you have any other (non-policy related) comments on the proposed licence drafting?

Question 24: Are there any aspects of the drafting that you do not understand or that you consider inappropriate?

Question 25: Are our substantive proposed changes appropriate in order to give effect to the underlying policy of the Final Proposals?

CHAPTER: Three

Question 1: Are there any comments that are still valid but you consider have not been addressed by us, either in our reply or in the revised licence drafting?

Question 2: Are there any aspects of this chapter regarding which you seek additional clarification or to which you would like to respond?

Appendix 2 – The Authority's Powers and Duties

2.1 Ofgem is the Office of Gas and Electricity Markets which supports the Gas and Electricity Markets Authority ("the Authority"), the regulator of the gas and electricity industries in Great Britain. This Appendix summarises the primary powers and duties of the Authority. It is not comprehensive and is not a substitute to reference to the relevant legal instruments (including, but not limited to, those referred to below).

2.2 The Authority's powers and duties are largely provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from directly effective European Community legislation. References to the Gas Act and the Electricity Act in this Appendix are to Part 1 of each of those Acts.³

2.3 Duties and functions relating to gas are set out in the Gas Act and those relating to electricity are set out in the Electricity Act. This Appendix must be read accordingly⁴.

2.4 The Authority's principal objective when carrying out certain of its functions under each of the Gas Act and the Electricity Act is to protect the interests of existing and future consumers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes, and the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

2.5 The Authority must when carrying out those functions have regard to:

- the need to secure that, so far as it is economical to meet them, all reasonable demands in Great Britain for gas conveyed through pipes are met;
- the need to secure that all reasonable demands for electricity are met;
- the need to secure that licence holders are able to finance the activities which are the subject of obligations on them⁵;
- the need to contribute to the achievement of sustainable development; and
- the interests of individuals who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.⁶

³ Entitled "Gas Supply" and "Electricity Supply" respectively.

⁴ However, in exercising a function under the Electricity Act the Authority may have regard to the interests of consumers in relation to gas conveyed through pipes and vice versa in the case of it exercising a function under the Gas Act.

⁵ Under the Gas Act and the Utilities Act, in the case of Gas Act functions, or the Electricity Act, the Utilities Act and certain parts of the Energy Act in the case of Electricity Act functions.

2.6 Subject to the above, the Authority is required to carry out the functions referred to in the manner which it considers is best calculated to:

- promote efficiency and economy on the part of those licensed⁷ under the relevant Act and the efficient use of gas conveyed through pipes and electricity conveyed by distribution systems or transmission systems;
- protect the public from dangers arising from the conveyance of gas through pipes or the use of gas conveyed through pipes and from the generation, transmission, distribution or supply of electricity; and
- secure a diverse and viable long-term energy supply.

2.7 In carrying out the functions referred to, the Authority must also have regard, to:

- the effect on the environment of activities connected with the conveyance of gas through pipes or with the generation, transmission, distribution or supply of electricity;
- the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles that appear to it to represent the best regulatory practice; and
- certain statutory guidance on social and environmental matters issued by the Secretary of State.

2.8 The Authority has powers under the Competition Act to investigate suspected anti-competitive activity and take action for breaches of the prohibitions in the legislation in respect of the gas and electricity sectors in Great Britain and is a designated National Competition Authority under the EC Modernisation Regulation⁸ and therefore part of the European Competition Network. The Authority also has concurrent powers with the Office of Fair Trading in respect of market investigation references to the Competition Commission.

⁶ The Authority may have regard to other descriptions of consumers.

⁷ Or persons authorised by exemptions to carry on any activity.

⁸ Council Regulation (EC) 1/2003

Appendix 3 - Glossary

A - B

BSC

Balancing and Settlement Code

C

CUSC

Connections and Use of System Code

D

DCUSA

Distribution Connections and Use of System Agreement

E - F

Final Proposals

Code Governance Review Final Proposals published on 5 February 2010

G

GHG

Greenhouse gas

H- I

IGT UNC

Independent gas transporter uniform network code

Initial Licence Drafting Consultations

The (i) open letter consultation on the Code Governance Review Initial Proposals illustrative licence modification drafting (27 October 2009); and (ii) open letter consultation on Environmental Assessment and Code Objectives licence drafting (16 June 2009)

J – L

M

MCUSA

Master Connection and Use of System Agreement

N

[NETA](#)

Arrangements in place under paragraph 7 of special condition J (NETA implementation) of the electricity transmission licence.

O-S

[SLC](#)

Standard licence condition

[SSLC](#)

Standard special licence condition

[STC](#)

System operator – transmission owner code

T-U

[UNC](#)

Uniform network code

V-Z

Appendix 4 - Feedback Questionnaire

4.1 Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

4.2 Please send your comments to:

Andrew MacFaul
Consultation Co-ordinator
Ofgem
9 Millbank
London
SW1P 3GE
andrew.macfaul@ofgem.gov.uk