



Code Administrators, Industry
participants and other interested parties

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value for all customers*

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Dear Colleague

Open letter consultation on Code Modification Urgency Criteria – 30/11

Industry codes provide the contractual arrangements that underpin the gas and electricity markets. Industry parties are able to propose changes to the existing industry codes through code modification proposals. These modification proposals are normally subjected to detailed industry assessment to ensure the impact of the change is fully considered.

From time to time, industry parties may consider that a code modification should be treated as urgent as its introduction cannot wait for the normal industry process to be completed. Ofgem¹ has a role² in agreeing to the urgent status of a code modification.

Given the importance of careful industry consideration of code modifications and the risks from short cutting these processes, urgent code modifications are infrequent. However, to improve transparency we are consulting on criteria that we expect to use when asked to consider if a code modification should be treated as urgent. The purpose of this letter is to seek your views on the proposed criteria that we intend to publish on our website³.

As detailed in Appendix 1, there are 7 electricity codes and 3 gas codes in Great Britain. For some of the codes the Authority, having considered the Modification Panel's recommendation, decides whether a modification proposal should be considered urgent or not. For other industry codes, the Executive Committee⁴ makes this decision. By publishing

¹ The terms 'the Authority', 'Ofgem' and 'we' are used interchangeably in this document. Ofgem is the Office of the Gas and Electricity Markets Authority.

² For the following Codes Ofgem decides whether a modification proposal should be considered urgent and/or determines the timetable to follow where a proposal is deemed urgent: Balancing and Settlement Code ('BSC'), Connection and Use of System Code ('CUSC'), System Operator-Transmission Owner Code ('STC'), Uniform Network Code ('UNC'), Independent Gas Transporters Uniform Network Code ('IGT UNC'), Distribution Connection and Use of System Agreement ('DCUSA').

³ Please see Appendix 1 for the full guidance we intend to publish.

⁴ In the case of the Distribution Connection and Use of System Agreement ('DCUSA') the proposer can state that its change proposal ought to be treated as urgent.

the criteria that we are likely to use in our decision making we consider that this will aid consistency across codes.

Background

Through our Codes Governance Review ('CGR') we established the Code Administration Code of Practice ('CoP'). The CoP facilitates a common and transparent code modification process. It also helps to protect the interests of small participants and consumers. The CoP sets out a standard modification process that includes standard pro-forma code modification documents, processes and timescales currently applying to the Balancing and Settlement Code ('BSC'), Connection and Use of System Code ('CUSC') and Uniform Network Code ('UNC'). However, there may be circumstances when a modification proposal may be urgent and the modification process/timescale may be revised to take this into account. As urgency is outside of the standard process, we do not intend that it should form part of the CoP.

Reasons for publishing new guidance

Ofgem has previously published guidance for code modification urgency criteria on its website⁵ but we have now decided to review those criteria for the following main reasons:

- to make them clearer and more transparent;
- for consistency reasons, given that the present criteria were only set out to apply to the 'Network Code';
- to recognize the possibility that changes in circumstances may create opportunity to revoke an urgency status and revert to a normal modification timetable;
- to avoid the risk of overuse of the urgency status, which could potentially lead to a modification proposal not being sufficiently analysed; this is especially important for those modification proposals that are complex and that would therefore require careful and detailed consideration.

Final considerations

The criteria defined in Appendix 1 are guidance. The Authority will have regard to this guidance in making a decision on urgency status but there may be situations where, in accordance with our statutory duties, we do not follow it. In these instances we will provide clear reasons.

Also, although the Authority takes the final decision on urgency only for some of the codes⁶, we would like to encourage the Executive Committee of the other codes (and the Proposer in the case of DCUSA) to apply the same criteria.

We welcome the views of all interested parties regarding the proposed guidance. Please send any responses to: industrycodes@ofgem.gov.uk by 26 April 2011. We then intend to publish a summary of all responses and the final guidance on our website.

If you have any questions regarding this letter, please contact me on the above number or email.

Yours sincerely

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Industry Codes and Licensing Manager

⁵ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=20&refer=Licensing/IndCodes/Governance>

⁶ In particular: Balancing and Settlement Code ('BSC'), Connection and Use of System Code ('CUSC'), System Operator-Transmission Owner Code ('STC'), Uniform Network Code ('UNC'), Independent Gas Transporters Uniform Network Code ('iGT UNC').

Appendix 1 – Ofgem Guidance on Code Modification Urgency Criteria

Who decides a modification proposal is “urgent” and/or determines its timetable?

There are 7 electricity codes and 3 gas codes in Great Britain.

- ❖ For the following codes the Authority decides whether a modification proposal should be considered urgent and/or can determine its timetable:
 - **Balancing and Settlement Code ('BSC')**
 - **Connection and Use of System Code ('CUSC')**
 - **System Operator-Transmission Owner Code ('STC')**
 - **Uniform Network Code ('UNC')**
 - **Independent Gas Transporters Uniform Network Code ('IGT UNC')**
 - **Distribution Connection and Use of System Agreement ('DCUSA')**⁷
- ❖ For the following codes the respective Executive Committee decides whether a modification proposal should be considered urgent and determines its timetable:
 - **Master Registration Agreement ('MRA')**
 - **Supply Point Administration Agreement ('SPAA')**
- ❖ The **Distribution Code** and the **Grid Code** contain no specific rules on urgency.

Though each Code has slightly different rules we would expect the urgency criteria below to be applied in deciding that a modification proposal should be treated as “urgent”.

What criteria would the Authority use to determine urgency?

There is no set answer as it depends on the circumstances of each proposal. However, it is currently our view that in general, an urgent modification should:

1. Be linked to an **imminent date** related event

AND exhibit at least one of the following characteristics:

2. Have a **potential significant commercial impact** upon at least one code party or consumers if not considered urgent;
3. Have a **potential significant impact on the safety and security** of the electricity and/or gas systems if not considered urgent;
4. Needs to be treated as urgent to comply with an **imminent legal requirement** which could not have reasonably been foreseen by the proposer.

⁷In the case of the DCUSA the Proposer specifies whether the modification proposal should be considered “urgent”; the Panel then determines the timetable to follow. However, the Authority can direct that an alternative, ‘urgent’ timetable applies in place of that set by the Panel.

However, there may be situations when we would not allow “urgency” for a modification regardless of whether the above circumstances are met. An example would be where the modification is complex and therefore requires careful and detailed consideration.

On the other hand, there may be situations in which the above criteria are not met but, in accordance with our statutory duties, we would still decide that a modification proposal would be treated as urgent.

Do “send back”⁸ provisions also apply to “urgent” proposals?

Yes, if we think that we cannot properly form an opinion based on the final modification report.

If a modification proposal was declared “urgent”, can the status be changed to “non-urgent”?

Yes, the urgency status can be changed to “non-urgent” if the reasons for granting it in the first place do not exist anymore.

For example, the imminent date mentioned in question 1 could have been postponed and the modification proposal would subsequently be considered “non-urgent”, and revert to the normal timescales.

Can a modification proposal that follows the Self-Governance path be considered urgent?

Following recent changes to the BSC, UNC and CUSC, a modification proposal raised to one of these codes can be considered as Self-Governance if it has a non-material impact on: competition; consumers; safety and security of supply; sustainable development and the operation of the relevant gas and electricity system; code governance; and, if it is unlikely to discriminate between classes of users (the “Self-Governance criteria”).

Given the pre-requisites for Self-Governance and urgency require opposing levels of impact (non-material for Self-Governance and significant for urgency), it is unlikely that a modification proposal could fulfil both sets of criteria.

Can a decision on an urgent modification proposal be appealed?

The granting of urgency does not in itself exempt the Authority’s decisions on urgent proposals from the right of appeal under The Electricity and Gas Appeals (Designation and Exclusion) Order 2005 (SI 2005/1646) and The Electricity and Gas Appeals (Designation and Exclusion) Order 2009 (SI 2009/648). However, the Authority can exclude decisions if the delay caused by holding an appeal against that decision is likely to have a material adverse effect on the availability of electricity or gas.

⁸ Through our Code Governance Review we introduced ‘send back’ powers to the BSC, UNC and CUSC, which allows the Authority to formally return reports to the panel where we consider the analysis, legal text, or any other aspects of the report is deficient and inhibiting our ability to make a robust decision.