



Consultation Response

By email to industrycodes@ofgem.gov.uk

23 November 2012

The Office of Gas and Electricity Markets
9 Millbank
London
SW1P 3GE

ELEXON's response to Code Governance Review (Phase 2) Proposals

We welcome the opportunity to comment on your [consultation](#) containing your Code Governance Review (Phase 2) Proposals.

Our response to the consultation is set out by question. We have not responded to the following questions as they do not relate to the BSC:

- Chapter 2: Questions 2 -8
- Chapter 3: Question 1
- Chapter 4: Question 2

If you would like to discuss any areas of our response, please contact me on 020 7380 4363 or by email to adam.lattimore@elexon.co.uk.

Yours faithfully

Adam Lattimore
Change Manager



Code Governance Review: (Phase 2) Proposals

Chapter 2: Question responses

Question 1: Do you consider that a 'fast track' self-governance process should be available in the industry codes for minor housekeeping changes?

The BSC Modification Procedures include a Report Phase Consultation. This Report Phase consultation provides BSC Parties with an opportunity to comment on the BSC Panel's initial recommendations (or intended decisions if self-governance) on whether to approve/reject a Modification. This step follows the Panel's consideration of the Assessment Report, which includes the recommendations from the Workgroup.

If the Modification has been raised under the Self-Governance process, then the Report Phase Consultation also provides an opportunity for BSC Parties to comment on the Panel's views as to whether it should be treated as a Self-Governance Modification.

The current conditions of the Transmission Licence require BSC Parties to be consulted on the initial recommendations of the Panel. If, under your proposal, the Panel would no longer consult on minor housekeeping Modifications then clear criteria would need to be set out. We note that there is a proposed list in the draft licence changes on what could be taken forward as a 'fast track' change, however it is unclear whether this is a complete or non-exhaustive list. Also BSC Section F, 2.1.1 D) iv) of the BSC already refers to what the BSC Panel can raise currently as a 'housekeeping' modification (i.e. rectification of manifest errors and correction of minor inconsistencies), This wording is general understood so wording similar to this in the licence drafting could be considered.

While there are no obvious issues with introducing such a 'fast track' process providing the licence wording is clear, our suggestion is to make use of the existing process of using the Report Phase consultation under the BSC more effective when considering 'Self-Governance Modifications' or 'fast track' changes.

Currently, Parties have two opportunities to disagree with the BSC Panel's decision to treat a Modification as Self-Governance: once during the Report Phase consultation (15 WDs) and then subsequently through the Self-Governance appeal window (also currently 15 WDs, but suggested to be reduced to 10 WDs in this consultation).



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Instead, a potentially more efficient and effective use of time is to have the Self-Governance appeal window during or alongside the Report Phase Consultation. The Draft Modification Report, which is the subject of the Report Phase Consultation, already includes the Panel's reasoning on why the Modification should or should not be treated as Self-Governance.

If this approach was taken, then Parties could still be consulted on any 'fast track' changes while still progressing such changes in an efficient and effective manner.

If the proposed 'fast track' process was introduced, thought would need to be given by each Code Administrator as to the format of the documentation. For example, legal drafting would still need to be produced for the respective Panels to consider along with an explanation of the changes proposed (possibly in a similar format to the BSC's normal Initial Written Assessment) so there may not be a significant reduction in effort to progress such changes.

Question 9: Do you have any comments on Ofgem's guidance for discharging self-governance appeals (Appendix 7), and on the proposed adjustment to the BSC, CUSC and UNC appeal windows?



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On the basis that no Self-Governance Modifications progressed under the BSC, CUSC and UNC have been appealed (to date) we would expect that the guidance will not be needed that often. We believe the lack of appeals stems from the provision of a clear rationale within the Modification Reports as to why such Modifications are being progressed as Self-Governance.

Guidance note on Self-Governance appeals

The Guidance note provided as appendix 7 to the consultation document seems sensible and explains the process that will be followed.

The only bit missing from the guidance note is a cross-reference or explanation of the process for obtaining revised Implementation Dates if the Authority upholds the Panel's decision to approve a Modification but the original dates for implementation have passed. We would expect the process to be the same as the existing processes set out in BSC Section F (whereby the Authority can request the Panel to provide new Implementation Dates if a decision deadline has expired).

While this may be the most pragmatic approach, it could add another month to the process of implementing an upheld Self-Governance Modification while the details of the Modification were taken back to the Panel for new Implementation Dates (plus any consultation on revised dates).

Proposal to amend appeal window commencement to publication date, and reduction of appeal window to 10 working days.

We are supportive of reducing the self-governance appeal window to 10 WDs, along with the alignment of the start of the appeal window to the date the Final Report is published as it will increase the efficiency of the current process and enable earlier implementation of Self-Governance modifications. However the CACoP says that consultations should be 15WDs which is the same as the current 15WD Self-Governance appeal window. So the reduction to 10 WDs would create some inconsistency.

Rather than reducing the Self-Governance appeal window to 10WDs, and to further expedite the process we refer you to our suggestion under Question 1, about using the Report Phase Consultation as a combined consultation and Self-Governance appeal window. Taking this approach rather than having the existing 15 WD (or proposed 10 WD) appeal window after the final decision would further aid the efficiency of the Self-Governance process.

Question 10: Do you consider that the ability to appeal a self-governance determination should be consistent across all codes?



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We are supportive of a consistent approach across all industry codes where a Self-Governance process exists. Increasing procedural consistency across all industry codes will aid the understanding of users of each code and help minimise confusion.

Chapter 4: Question Responses

Question 1: Do you agree that all industry code panels (or their equivalent) should provide substantive reasons for their recommendations/decisions?

We refer back to our [response](#) to the April open letter consultation (Question 1), where we confirmed that the BSC Panel has always provided rationale for its recommendations/decisions through reference to the Applicable BSC Objectives.

As far as the appropriateness of making all other industry code panels (or their equivalents) provide substantive reasons in support of their recommendations/decisions, this seems to be a sensible move and aid cross-industry code process consistency and user understanding of industry code panel decisions/recommendations. It is hard to understand though how an industry code panel could make a decision on a modification without reference to some form of applicable objectives.

Question 3: Do you agree that the Authority should be able to “send back” final modification reports in all codes, where a deficiency/flaw in the report is identified?

The BSC is already subject to the “send back” process, and since its introduction none of the final Modification Reports sent to the Authority for decision have been sent back. An appropriate level of engagement from the Authority during the original assessment should minimise the need to send back any modifications.

Regarding the appropriateness of the Authority having the ability to “send back” Final Modification Reports under other codes, this would be a sensible move to further consistency across all industry codes.

Question 4: Do you agree with the proposal to require all codes to have regard to and, to the extent relevant, be consistent with the CACoP principles?



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We refer to our previous consultation [response](#) to the April open letter for this question (Question 5) provided in May 2012.

As mentioned in our previous response, we believe the appropriateness of requiring all codes to follow the CACoP via a licence change is a matter for comment by the relevant code administrators, panels and users.

Question 5: Do you consider that a requirement on code administrators to fulfil a “critical friend” role should be set out in the relevant licence?

Even before the original CGR, the BSC Change Processes and ELEXON’s management of these included the ‘critical friend’ activity (for example provision of advice and support to all BSC Parties that want to raise a change to the Code or supporting documentation). Following the introduction of the CACoP, we have continued to provide this role to Parties raising change.

As far as including provisions on ‘critical friend’ in the other non-BSC licence conditions, we believe this is a matter for comments by the respective code administrators, panels and users. However if it is added then it should reflect the wording used in the existing licence conditions for the BSC, i.e. C3 part 4 (ac): <http://epr.ofgem.gov.uk/EPRFiles/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>.

Question 6: Do you agree with the amendments to the CACoP (Appendix 2) and do you consider that the standard process and templates described by the CACoP should have the status of guidance (rather than being mandatory) at this stage?



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CACoP KPI revisions

We are supportive of the minor revisions to the existing CACoP KPIs as indicated in Appendix 2 of the consultation document.

Standard Templates

We are supportive that the modification documentation included in the CACoP should remain as guidance, and provide an indication of what should be included as an absolute minimum without prescribing a set format.

While we support minimising the number of documents sent to the Authority when seeking a modification determination, a single document may not be practical. Typically in support of any Final Modification Report there will be attachments to the document containing any final proposed legal text, collated consultation responses and if appropriate attachments providing a more detailed explanation of any proposed solutions (e.g. technical specifications and/or cost benefit analysis). Providing a single 'zipped' file containing all this relevant information may be a more pragmatic approach to minimising the number of items sent to the Authority.

Standard Modification Process

We continue to be supportive that the 'standard modification process' should be adopted at a high level to aid overall cross-code understanding of change processes.

We are supportive of the additional clarity to the CACoP of specifying that modifications 'should' be rather than 'must' be submitted eight days prior to a code panel meeting, to take into account late agenda items and/or urgent modification proposals as appropriate.

Pre-Modification Process

The Pre-modification process is akin to the BSC 'Issues' process. We are supportive of the use of a Pre-modification processes as it is helpful for potential modification proposers in shaping change and is not solely reliant on the code administrator providing feedback under the 'critical friend' requirement.



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CACoP review process

We are also supportive of including questions on the BSC Change Processes (as we currently do) in annual customer surveys to help identify and inform any improvements or changes to the change processes and the CACoP during future CGRs.

Compliance with the CACoP

We continue to be supportive of the 12 principles set out in the CACoP and that the original aim of the CGR to facilitate convergence and transparency in code modification processes.

Chapter 5: Question Response

Question 1: Do you agree with the timetable proposed?

We are supportive in principle of the proposed timetable set out in Section 5 of the consultation document and we believe we would be able to meet it. However this is on the basis that it is an indicative timetable, and that revisions or a degree of flexibility may be needed depending on:

- The nature of responses to this consultation;
- how the responses are addressed;
- the format of the licence condition changes when they are formally consulted on; and
- the responses to the licence change consultation.

For more information on our response, please contact:

Adam Lattimore, Change Manager

T: 020 7380 4363 or email adam.lattimore@elexon.co.uk