

To: All holders of a gas transporter licence

NOTICE UNDER SECTION 23(2) OF THE GAS ACT 1986

The Gas and Electricity Markets Authority (“the Authority”) hereby gives notice pursuant to section 23(2) of the Gas Act 1986 (“the Act”) as follows:

1. The Authority proposes to modify all gas transporter licences granted or treated as granted under section 7 of the Act by amending the following standard condition:
 - Condition 9: Network Code and Uniform Network Codeas set out in Schedule 1 to this Notice.
2. In summary, the reason why the Authority proposes to make these licence modifications is to give effect to Code Governance Review phase 2, Final Proposals.
3. The effect of the proposed modifications is to implement the Code Governance Review phase 2, Final Proposals into the governance procedures of the independent Gas Transporters Uniform Network Code (iGT UNC).
4. Specific details on the reasons and effect of the proposed modifications can be found in Schedule 2 of this notice.
5. Further details and background on these proposed changes are set out in the following documents:
 - a. [Code Governance Review phase 2 consultation](#);
 - b. [Code Governance Review phase 2 - illustrative licence drafting](#); and
 - c. [Code Governance Review \(Phase 2\) final proposals](#).
6. Relevant licence holders for the purposes of the modifications referred to in paragraph 1 are all holders of a gas transporter licence at the relevant time with Standard Condition referred to in paragraph 1 in effect in their licence.
7. Copies of the proposed modifications and other documents referred to in this notice are available on the Ofgem website (www.ofgem.gov.uk).
8. Any representations on the proposed licence modifications may be made on or before 26 April 2013 to: Lisa Charlesworth, Office of Gas and Electricity Markets, 9 Millbank, London, SW1P 3GE or by email to licensing@ofgem.gov.uk.
9. All responses will normally be published on Ofgem’s website. However, if respondents do not wish their response to be made public then they should clearly mark their response as not for publication. Ofgem prefers to receive responses in an electronic form so they can be placed easily on the Ofgem website.

10. If the Authority decides to make the proposed modification it will take effect not less than 56 days after the decision is published.

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Hannah Nixon
Senior Partner, Smarter Grids and Governance (Distribution)
Duly authorised on behalf of the
Gas and Electricity Markets Authority

27 March 2013

Schedule 1 – Proposed modifications to the standard conditions of the gas transporter licence.

Condition 9: Network Code and Uniform Network Code

[Insert or amend the following text as indicated:]

Uniform Network Code

5. The licensee shall, together with the other relevant gas transporters, prepare a document (the “uniform network code”) setting out:

...

- a. the network code modification procedures established pursuant to paragraph 6 including procedures required by paragraphs 12A to 12G.

Network Code Modification Procedures

...

7. The network code modification procedures shall provide for:

...

dA. proper evaluation of the suitability of the self-governance route (in accordance with paragraph 12D) for a particular modification proposal;

dB. during a significant code review phase, proper evaluation of the relevance of the significant code review to a particular modification proposal;

...

ha. arrangements for a secretarial or administrative person or body, as specified in the uniform network code, to perform the role of code administrator (the “code administrator”). In addition to any powers, duties or functions set out in the uniform network code, the code administrator shall:

- i. together with other code administrators, publish, review and (where appropriate) amend from time to time the Code of Practice approved by the Authority (any amendments to the Code of Practice are to be approved by the Authority);

- ii. facilitate the network code modification procedures;

- iii. have regard to, and in particular (to the extent relevant) be consistent with the principles contained in, the Code of Practice; and

- iv. provide assistance, insofar as is reasonably practicable and on reasonable request, to parties (including, in particular, small participants) and, to the extent relevant, consumer representatives that request the code administrator’s assistance in relation to the uniform network code including, but not limited to, assistance with:

- drafting a modification proposal;
- understanding the operation of the uniform network code;
- their involvement in, and representation during, the modification procedure processes (including but not limited to code panel and/or workgroup meetings);
- accessing information relating to modification proposals and/or modifications.

...

- m. the procedures for the modification of the network code to be consistent with the principles set out in the Code of Practice, to the extent that they are relevant.

...

Modification of Network Code and the Uniform Network Code

10. The licensee shall not make or permit any modification to the network code or to the uniform network code except:

...

- c. in accordance with paragraph 12D (the "self-governance route"); or
- d. in accordance with paragraph 12G (the "fast track self-governance route").

...

12. Where a proposal is made in accordance with the network code modification procedures to modify the network code or the uniform network code the licensee shall:

- a. except in the case of a modification falling within the scope of paragraph 12G, as soon as is reasonably practicable, and no later than the time specified in the network code modification procedures, ~~give notice~~ submit a report to the Authority:

....

- iv. including a recommendation (or, in the case of a proposal falling within the scope of paragraph 12D, a determination) by the Panel as to whether any proposed modification should or should not be made, and the factors which (in the opinion of such body) justify the making or not making of a proposed modification, which shall include:

...

- b. without prejudice to paragraph 12F, except in the case of a modification falling within the scope of paragraph 12D or 12G, comply with any direction of the Authority:

- (i) to make a modification to the network code and/or the uniform network code in accordance with a proposal described in a notice given to the Authority under paragraph 12(a) which, in the opinion of the Authority, will, as compared to the existing provisions of the network code and/or (as the case may be) the uniform network code or any alternative proposal, better facilitate, consistent with the licensee's duties under section 9 of the Act, the achievement of the relevant objectives; or

- (ii) to revise and re-submit a report provided in accordance with paragraph 12(a) where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal in accordance with paragraph 12(b)(i).

Significant code reviews

- 12A. The network code modification procedures shall provide that proposals for the modification of the network code and/or the uniform network code falling within the scope of a significant code review may not be made during the significant code review phase, except:

- a. where the Authority determines that the modification proposal may be made, having taken into account (among other things) the urgency of the subject matter of the proposal; or
- b. at the direction of the Authority.

12B. The network code modification procedures shall provide that where a modification proposal is made during a significant code review phase the panel shall:

- (a) unless exempted by the Authority, notify the Authority as soon as practicable of:
 - i. any representations received in relation to the relevance of the significant code review; and
 - ii. the panel's assessment of, whether the proposal falls within the scope of the significant code review and its reasons for that assessment; and
- (b) if the Authority so directs, not proceed with the modification proposal until the significant code review phase has ended.

12C. The network code modification procedures shall provide that if within twenty-eight (28) days after the Authority has published its significant code review conclusions, the Authority issues to the licensee:

- a. directions, the licensee shall comply with those directions;
- b. a statement that no directions under sub-paragraph (a) will be issued in relation to the network code and/or the uniform network code, the licensee shall treat the significant code review phase as ended;
- c. neither directions under sub-paragraph (a), nor a statement under sub-paragraph (b), the significant code review phase will be deemed to have ended.

The Authority's published conclusions and directions to the licensee/relevant gas transporter(s), will not fetter any voting rights of the members of the panel or the procedures informing the recommendation described at paragraph 12(a)(iv).

Self-governance

12D. The network code modification procedures shall provide that modification proposals shall only be implemented without the Authority's approval pursuant to this paragraph 12D where:

- a.
 - (i) in the view of the panel, the modification proposal meets all of the self-governance criteria and the panel has submitted to the Authority in respect of the modification proposal and not withdrawn a self-governance statement; or
 - (ii) if a self-governance statement has not been made, or has been withdrawn, the Authority has determined that the self-governance criteria are satisfied and the modification proposal is suitable for the self-governance route; and
- b. unless otherwise exempted by the Authority, the panel has sent copies of all consultation responses to the Authority at least seven (7) days before the panel intends to make its determination under paragraph 12D(d); and

c. the Authority has not directed that the Authority's decision is required prior to the panel's determination under paragraph 12D(d); and

d. the panel has, no earlier than seven (7) days after sending the consultation responses referred to at paragraph 12D(b), determined that the modification proposal should be implemented on the basis that it would, as compared with the then existing provisions of the network code and/or the uniform network code and any other modifications proposed in accordance with paragraph 8(b), better facilitate the achievement of the relevant objective(s); and

e.

(i) no appeal has been raised up to and including 15 working days after the panel's determination under paragraph 12D(d) in respect of such modification proposal in accordance with paragraph 12E; or

(ii) an appeal has been raised in respect of such a modification proposal in accordance with paragraph 12E and the Authority has not quashed the panel's determination referred to at paragraph 12D(d) of this condition (and either remitted the relevant modification proposal back to the panel for reconsideration or taken the decision on the relevant modification proposal itself following the appeal).

12E. The network code modification procedures shall provide that those persons set out at paragraphs 8(a) and 9(a) (as applicable) may appeal to the Authority the approval or rejection by the panel of a modification proposal falling under the self-governance route, provided the appeal has been made up to and including 15 working days after the approval or rejection and in accordance with the network code modification procedures and, in the opinion of the Authority:

a.

(i) the appealing party is likely to be unfairly prejudiced by the implementation or non-implementation of that modification proposal; or

(ii) the appeal is on the grounds that:

(1) in the case of implementation, the modification may not better facilitate the achievement of at least one of the relevant objectives; or

(2) in the case of non-implementation, the modification may better facilitate the achievement of at least one of the relevant objectives; and

b. the appeal is not brought for reasons that are trivial or vexatious, nor does the appeal have no reasonable prospect of success.

12F. The network code modification procedures shall provide that:

a. where an appeal has been raised in respect of a modification proposal in accordance with paragraph 12E that modification proposal shall be treated in accordance with any decision and/or direction of the Authority following that appeal; and

b. if the Authority quashes the panel's determination referred to at paragraph 12D(d) of this condition and takes the decision on the relevant modification proposal itself following an appeal in accordance with paragraph 12E, the panel's determination of that modification shall be treated as a recommendation under sub-paragraph 12(a)(iv).

12G. The network code modification procedures shall provide that modifications shall only be implemented without the Authority's approval pursuant to this paragraph 12G where:

- a. in the unanimous view of the panel, the proposed modification meets all of the fast track self-governance criteria;
- b. the panel unanimously determines that the modification should be made;
- c. parties to the uniform network code and the Authority, have been notified of the proposed modification;
- d. none of the persons named in sub-paragraph (c) have objected to the modification being made via the fast track self-governance route in the fifteen (15) working days immediately following the day on which notification was sent; and
- e. notification under sub-paragraph (c) contains details of the modification proposed, that it is proposed to be made via the fast track self-governance route, how to object to the modification being made via the fast track self-governance route, the proposed legal drafting and the proposed implementation date.

...

Miscellaneous

...

22. Without prejudice to any rights of approval, veto or direction the Authority may have, the licensee shall use its best endeavours to ensure that procedures are in place that facilitate its compliance with the requirements of this condition including, but not limited to, modifying the uniform network code where necessary no later than 31 December 2013.

23. In this condition:

"Code of Practice" means the Code Administration Code of Practice approved by the Authority and:

- a. developed and maintained by the code administrators in existence from time to time; and
- b. amended subject to the Authority's approval from time to time; and
- c. re-published from time to time.

"directions" means, in the context of paragraph 12C(a), direction(s) issued following publication of significant code review conclusions which will contain:

- a. instructions to the licensee to make (and not withdraw, without the Authority's prior consent) a modification proposal;
- b. the timetable for the licensee to comply with the Authority's direction(s); and
- c. the Authority's reasons for its direction(s).

"fast track self-governance criteria" means a proposal that, if implemented,

- a. would meet the self-governance criteria; and
- b. is properly a housekeeping modification required as a result of some error or factual change, including but not limited to:
 - i. updating names or addresses listed in the network code and/or the uniform network code;
 - ii. correcting minor typographical errors;
 - iii. correcting formatting and consistency errors, such as paragraph numbering; or
 - iv. updating out of date references to other documents or paragraphs.

"self-governance criteria" means a proposal that, if implemented,

- a. is unlikely to have a material effect on:
 - a) existing or future gas consumers;
 - b) competition in the shipping, transportation or supply of gas conveyed through pipes or any commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes;
 - c) the operation of one or more pipe-line system(s);
 - d) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - e) the uniform network code governance procedures or the network code modification procedures; and
- b. is unlikely to discriminate between different classes of parties to the uniform network code / relevant gas transporters or gas shippers.

"self-governance statement" means the statement made by the panel and submitted to the Authority in accordance with paragraph 12D(a)(i);

- a. confirming that, in its opinion, the self-governance criteria are met and the modification is suitable for the self-governance route; and
- b. the panel's reasons for that opinion.

"significant code review" means a review of one or more matters which the Authority considers are likely to:

- a. relate to the network code and/or the uniform network code (either on its own or in conjunction with any other industry codes); and
- b. be of particular significance in relation to its principal objective and/or general duties (under section 4AA of the Act), statutory functions and/or relevant obligations arising under EU law; and
- c. concerning which the Authority has issued a notice to the parties listed in paragraphs 8(a) and 9(a) (as applicable) (among others, as appropriate) stating:
 - i. that the review will constitute a significant code review;

- ii. the start date of the significant code review; and
- iii. the matters that will fall within the scope of the review.

“significant code review phase” means the period commencing on the start date of a significant code review as stated by the Authority, and ending in one of the following ways:

- a. on the date on which the Authority issues a statement that no directions will be issued in relation to the uniform network code; or
- b. if no statement is made on the date on which the licensee has made a modification proposal in accordance with directions issued by the Authority; or
- c. immediately if neither a statement nor directions are issued by the Authority within (and including) twenty eight (28) days from the Authority’s publication of its significant code review conclusions.

“small participant” means

- a. a shipper, a supplier, or new entrant to the gas market in Great Britain that can demonstrate to the code administrator that it is resource-constrained and, therefore, is in particular need of assistance;
- b. any other participant or class of participant that the code administrator considers to be in particular need of assistance; and
- c. a participant or class of participant that the Authority has notified the code administrator as being in particular need of assistance.

Schedule 2 - Reasons and effect of proposed modifications to the standard conditions of the gas transporter licence

Standard Condition	Reasons for proposed modification	Effect of proposed modification
<p>9: Network Code and Uniform Network Code</p>	<p>To implement the Code Governance Review phase 2, Final Proposals:</p> <ul style="list-style-type: none"> • To enable self-governance; introduce Significant Code Review process; introduce the Code Administration Code of Practice (CACoP)/Code Administrator 'critical friend'. • To enable "send-back" powers. 	<ul style="list-style-type: none"> • Provides a more efficient process for modifications by enabling changes to the iGT UNC, that meet the self-governance criteria, to be made without requiring Authority approval. • Defines a role for Ofgem to lead complex changes to the industry codes with the introduction of the Significant Code Review process - to ensure that significant code changes can be facilitated more effectively. • Improves accessibility to the code modification process for all market participants and encourages greater participation in the code process by all parties. • Allows the Authority to "send back" final modification reports, where a deficiency/ flaw in the report is identified.