



Gas and electricity licensees,  
industry participants, consumer  
representatives, code  
administrators and other  
interested parties

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*Promoting choice and value for  
all gas and electricity customers*

Email: [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk)

Date: 27 March 2013

Dear Colleague,

### **Statutory consultation on licence modifications to implement Code Governance Review (Phase 2) final proposals**

Today we published our Code Governance Review (Phase 2) final proposals<sup>1</sup> ("CGR2 Final Proposals"). Accompanying this letter we have published the statutory notices<sup>2</sup> consulting on the licence modifications necessary to give effect to these final proposals.

#### **Background**

In September 2012 we published a consultation on Code Governance Review phase 2 ("September consultation") which set out our proposals to extend the outcomes of Ofgem's Code Governance Review<sup>3</sup> to other industry codes.<sup>4</sup> Alongside that consultation we also published illustrative licence drafting of proposed changes to licence conditions that could potentially give effect to these proposals ("licence drafting consultation").<sup>5</sup>

We sought views on the illustrative drafting and invited suggestions on alternative ways of giving effect to the proposals set out in our September consultation. The attached Appendix 1 sets out responses received together with our views on the issues raised.

#### **Relevant Licences**

Our CGR2 Final Proposals apply to holders of the relevant licences listed in the table below. The licence modifications would also affect the code parties and other interested parties.

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<sup>1</sup> [Code Governance Review \(Phase 2\) final proposals](#)

<sup>2</sup> See attached appendices 2 to 6

<sup>3</sup> Code Governance Review – final proposals:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=297&refer=Licensing/IndCodes/CGR>

<sup>4</sup> Code Governance Review phase 2 – proposals:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=407&refer=Licensing/IndCodes/CGR>

<sup>5</sup> Code Governance Review phase 2 – illustrative licence drafting:

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=409&refer=Licensing/IndCodes/CGR>

<b>Affected code</b>	<b>Licence type and relevant condition</b>
Balancing and Settlement Code (BSC)	Electricity Transmission – SLC C3
Connection and Use of System Code (CUSC)	Electricity Transmission – SLC C10
Grid Code	Electricity Transmission – SLC C14
System Operator- Transmission Owner Code (STC)	Electricity Transmission – SLC B12
Distribution Code	Electricity Distribution – SLC 21
Distribution Connection and Use of System Agreement (DCUSA)	Electricity Distribution – SLC 22
Master Registration Agreement (MRA)	Electricity Distribution – SLC 23
Uniform Network Code (UNC)	Gas Transporter- SSC A11
Independent Gas Transporters Uniform Network Code (iGT UNC)	Gas Transporter - SLC 9
Supply Point Administration Agreement (SPAA)	Gas Supply – SLC 30

### **Updated licence drafting**

We have updated the licence drafting to reflect our CGR2 Final Proposals. In addition to the amendments set out in Appendix 1, we have also amended the illustrative licence drafting where potential improvements were identified.

#### *Fast track self-governance*

In light of feedback received at the November workshop<sup>6</sup> and within some responses to our September consultation,<sup>7</sup> we have amended the drafting of the fast track self-governance provision. It was commented that it was unclear whether the criteria for the fast track process set out in the illustrative licence drafting was intended to be an exhaustive list. We have therefore adjusted the wording to be clear that the list is not exhaustive. We have also amended the licence drafting in order that it is not unnecessarily detailed in respect of the process that should be adopted under the codes. The revised drafting retains defined criteria for when this process may be used.

#### *DCUSA self-governance*

We have also revised the proposed licence drafting in Distribution Licence SLC 22 in respect of the DCUSA self-governance provisions. In order to aid implementation, recognising that self-governance criteria are already established within this code, the revised drafting largely reflects the existing provisions. Certain amendments are retained in order to reflect our proposal that self-governance should be considered for all proposed modifications, and not be restricted to modifications to only certain DCUSA clauses. We have amended the relevant licence text to refer to the criteria for assessing whether a modification may be made by self-governance, as specified under the DCUSA.

#### *Assessment against objectives*

Our final proposals require assessments against the relevant code objectives to be clearly reported for any proposed modification. We have amended the relevant licence drafting to be clear that – where decisions/recommendations are made pursuant to a party vote – parties are not required to provide their own assessments, but rather, to vote according to whether or not they consider the change to better facilitate the objectives of that code. Where a panel provides this recommendation or decision, detailed reasons for their decision/recommendation are to be reported in reference to the applicable objectives.

<sup>6</sup> Workshop hosted by Ofgem on 2 November 2012 to discuss the CGR2 proposals.

<sup>7</sup> <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=407&refer=Licensing/IndCodes/CGR>

### *Self-governance decision appeals*

The MRA and SPAA licence conditions<sup>8</sup> have been amended to provide that parties can appeal against non-implementation as well as implementation of a particular self-governance modification proposal. This is consistent with our initial proposal, however we considered that some clarity in the initial licence drafting was required.

### *Code administrator 'critical friend'*

The proposed legal text inserting a code administrator 'critical friend' concept into the relevant licences has been amended to reflect the fact that consumer representatives are not necessarily classed as 'parties' under the codes. Under the Grid Code and Distribution Code conditions, the wording has also been amended to reflect that code users can suggest modifications, however formal modification proposals can only be made by the licensee.<sup>9</sup> We have also clarified in the drafting that the duties of the panel and code administrator may be set out documents ancillary to the code.

### *Implementation*

Finally, the 'implementation' clause, which requires the licensee to ensure that the relevant procedures are in place in order to facilitate compliance with the requirements of the condition, has been amended following feedback that this was potentially unclear.

The attached statutory consultations reflect this updated drafting.

### **Next steps**

Any representations on the proposed licence modifications may be made on or before **26 April 2013** by email to [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk) or by post to:

Lisa Charlesworth  
Industry Codes and Licensing  
Ofgem  
9 Millbank  
London  
SW1P 3GE

All responses will normally be published on Ofgem's website and held in the Research and Information Centre. However, if respondents do not wish their response to be made public then they should clearly mark their response as not for publication.

Yours faithfully,

**Lesley Nugent**  
**Head of Industry Codes and Licensing**

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<sup>8</sup> Electricity Distribution SLC 23 and Gas Supply SLC 30, respectively.

<sup>9</sup> The illustrative drafting contained the phrase "drafting a modification proposal", which has been replaced with "proposing a modification" as this is more consistent within the provisions of these particular licence conditions.

## Appendix 1 – Responses to illustrative licence drafting consultation

We received 23 responses to our September consultation overall. Three responses were submitted in respect of the illustrative licence drafting consultation, one of which was marked as confidential. The two non-confidential responses have been published on our website, alongside the responses to our initial proposals.<sup>10</sup> It should be noted that we received no specific comments on the illustrative licence drafting for the gas supply licence or the gas transporter standard licence conditions.

### Responses to illustrative licence drafting consultation

Responses to the particular questions asked in the licence drafting consultation are summarised below, alongside our comments. A number of minor formatting, stylistic, typographical and cross-referencing type errors and omissions in the illustrative licence drafting were highlighted. We have, where appropriate, updated the licence drafting to rectify such issues and where these were minor grammatical issues or typographical errors they are not discussed separately below.

#### **1. Do you consider that the licence drafting would achieve the policy proposals set out in the CGR 2 consultation?**

<b>Licence type and condition<sup>11</sup></b>	<b>Response</b>	<b>Comments</b>
Electricity Transmission – SLC B12: System Operator- Transmission Owner Code	<p>The licence drafting is not clear in its reference to the roles of the Panel, the licensee and the STC Parties.</p> <p>If STC panel is to make a formal recommendation on a proposed code change, a separate NETSO recommendation should be required, given the different obligations and constraints faced by the NETSO - Paragraph 6(b)(vi)</p>	<p>Paragraph 6(b)(vi) has been amended to reflect that the report is on behalf of the STC panel.</p> <p>We do not consider that a separate NETSO recommendation is required given that paragraph 6(b)(vi) sets out that where the parties do not share a combined view, the views of each party are to be set out.</p>
Electricity Transmission – SLC C14: Grid Code	Policy proposals are unclear	Licence drafting has been amended to reflect final policy proposals.
Gas Transporter Licence – SSC A15: Agency	<p>Unclear how Ofgem intends to transfer governance and methodology for the Agency Charging Statement into the UNC.</p> <p>Proposed paragraph 6(k) is not consistent with text of existing paragraph 7(a) of SSC</p>	This does not form part of our CGR2 Final Proposals.

<sup>10</sup> Non-confidential licence drafting responses are published alongside our September consultation: <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=407&refer=Licensing/IndCodes/CGR>

<sup>11</sup> Standard Licence Condition (SLC). Special Standard Condition (SSC).

	A15.  The proposed text requires the ACS to set out the charges and methodology for core services, which the current ACS does not.	
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**2. Have you identified any or other consequential changes that would be required to implement these proposals?**

<b>Licence type and condition</b>	<b>Response</b>	<b>Comments</b>
Electricity Transmission – SLC C14: Grid Code	There may be further consequential changes once policy proposals have been clarified.	Licence drafting has been amended to reflect final policy proposals.
Gas Transporter Licence – SSC A11: Network Code and Uniform Network Code	No.	N/A

**3. Have you identified any unforeseen consequences of the licence drafting?**

<b>Licence type and condition</b>	<b>Response</b>	<b>Comments</b>
Electricity Transmission – SLC C10: Connection and Use of System Code	Comment that licensee would be unable to comply with proposed timeline set out under "Self-governance Statement".	This does not form part of our CGR2 Final Proposals.
Electricity Transmission – SLC B12: System Operator- Transmission Owner Code	Due to proposed changes, STC should be subject to The Electricity and Gas Appeals (Designation and Exclusion) Order 2005.	This is not a matter for the licence drafting.
Gas Transporter Licence – SSC A11: Network Code and Uniform Network Code	Paragraph 6(i) lists requirements for inclusion within the UNC. With respect to proposed new requirement for inclusion of a joint ACS, Ofgem should make clear that this requirement would take effect following implementation of necessary UNC changes.	This does not form part of our CGR2 Final Proposals.
Gas Transporter Licence – SSC A15: Agency	Proposed deletion of paragraphs 7-12 (inclusive) means: <ul style="list-style-type: none"> <li>the defined terms "core services" and "user pays</li> </ul>	This does not form part of CGR 2 Final Proposals.

	<p>services" will be removed from the licence; and</p> <ul style="list-style-type: none"> <li>reference to unduly discriminating between or unduly prefer any person, class or classes of person will be removed.</li> </ul>	
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**4. Do you agree that, where licence drafting differs between licence conditions, the substantive effect is materially the same?**

<b>Licence type and condition</b>	<b>Response</b>	<b>Comments</b>
Electricity Transmission – SLC C14: Grid Code	Unable to make assessment until further clarity is received.	Licence drafting has been amended to reflect final policy proposals.
Gas Transporter Licence – SSC A15: Agency	Refer to response to question 1 above.	This does not form part of our CGR2 Final Proposals.

**5. Are there any elements of the drafting that you do not understand or that you consider inappropriate?**

<b>Licence type and condition</b>	<b>Response</b>	<b>Comments</b>
Electricity Transmission – SLC C10: Connection and Use of System Code	Paragraph 13D makes reference to 'the panel has sent copies of a fast track self-governance statement'. Suggest this is amended as the Panel may circulate this statement via the Code Administrators website.	The concept of a fast track self-governance statement has been removed. The provisions have been clarified to require notification to be sent to code parties and the Authority.
Electricity Transmission – SLC C14: Grid Code	Refer to response to question 1.	Licence drafting has been amended to reflect final policy proposals.

**6. Do you agree with our preservation of existing provision numbering?**

<b>Licence type and condition</b>	<b>Response</b>	<b>Comments</b>
General Comment	Agree with intention to preserve paragraph numbering	N/A

## 7. Do you agree with the alignment of terminology across the licence conditions?

Licence type and condition	Response	Comments
Gas Transporter Licence – SSC A11: Network Code and Uniform Network Code	Agree with intention to align terminology but does not agree this has been achieved in this condition.	Amendments to this particular licence condition do not form part of our CGR2 Final Proposals.

## 8. Have you identified any other housekeeping amendments that may be required?

Licence type and condition	Response	Comments
Electricity Transmission – SLC B12: System Operator- Transmission Owner Code	Paragraph 6(b) states “where a modification proposal is made the procedures shall provide:” remove “the procedures shall provide”.	Corrected.
	Paragraph 6 (f) currently refers to: “that the procedures for the modification of the STC shall”, remove “that the procedures” and also replace “shall” with “to”.	This sub-paragraph has been moved to paragraph 6H.
	Paragraph 13A mentions “industry documents”; it is unclear which documents are referred to.	This drafting has been amended in all instances for clarity.
Electricity Transmission – SLC C3: Balancing and Settlement Code	Definition of "fast track self governance criteria" - add "and" to end of (v), assuming the intention is for these requirements to be cumulative	N/A. This drafting has been revised.
Electricity Transmission – SLC C10: Connection and Use of System Code	Definition of "fast track self governance criteria" - add "and" to end of (v), assuming the intention is for these requirements to be cumulative	N/A. This drafting has been revised.
Gas Transporter Licence – SSC A11: Network Code and Uniform Network Code	Paragraph 9 (db): delete “for” at the beginning of the provision.	Corrected.
	Paragraph 13 (b): delete “or” at the end.	Corrected.
	Paragraph 24 (b): in the definition of “fast track self governance criteria” add “and” to the end of (v).	N/A. This drafting has been revised.

## 9. Do you have any other (non-policy related) comments on the proposed licence drafting?

Licence condition	Response	Comments
Electricity Distribution Licence -	The adopted style is to use	We have substituted 'shall'

SLC 21: The Distribution Code; SLC 22: Distribution Connection and Use of System Agreement; and SLC 23: Master Registration Agreement	'must' rather than 'shall' hence the word 'shall' needs to be changed to 'must' in the relevant places.	for 'must' where appropriate.
	Terms defined in the condition should be capitalised in keeping with licence style.	We have capitalised any terms defined in these conditions to preserve the existing style.
Electricity Distribution Licence - SLC 22: Distribution Connection and Use of System Agreement	Inconsistent references to the 'panel' or 'DCUSA Panel'	Amended to ensure consistency.
Electricity Distribution Licence - SLC 23: Master Registration Agreement	As 'the Master Registration Agreement' is shortened to 'the MRA' in paragraph 23.1, all subsequent references to 'the Master Registration Agreement' should be changed to 'the MRA'	Amended to ensure consistency.