

Gas and electricity licensees,
industry participants and other
interested parties

Email: licensing@ofgem.gov.uk

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Dear Colleague,

Decision to modify gas and electricity licences to implement Code Governance Review (Phase 2) final proposals

In March we published our Code Governance Review (Phase 2) Final Proposals¹ ("CGR2 Final Proposals"). Alongside this we published the statutory notices² consulting on the licence modifications necessary to give effect to these proposals.

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

Affected code	Licence type and relevant condition
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

The statutory consultations on the proposed licence modifications closed on 26 April 2013. In total we received seven responses, none of which were marked as confidential. All are available on our website.³ A summary of these responses is set out in a Schedule to this letter alongside our views.

In light of the responses received we have made minor amendments to the licence drafting. These changes provide clarity and correct typographical and grammatical errors; they do

¹ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=442&refer=Licensing/IndCodes/CGR>

² <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=443&refer=Licensing/IndCodes/CGR>

³ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=443&refer=Licensing/IndCodes/CGR>

not amount to a substantive change to the modifications proposed in the statutory consultations. The Schedule to this letter sets out the reasons for changes to the licence drafting.

Yours faithfully,

Lesley Nugent
Head of Industry Codes and Licensing

Schedule – Responses to statutory consultation

Licence drafting

The issues raised in respect of the licence drafting are summarised below, alongside our comments. A number of formatting, stylistic, typographical and cross-referencing errors and omissions in the licence drafting were highlighted. Where appropriate we have updated the licence drafting to rectify such issues and where these were simple grammatical or typographical errors they are not discussed separately below.

Licence type and condition⁴	Response	Comments	Licence drafting amended?
Electricity Transmission – SLC B12, C3, C10	The wording which intends to 'carve out' requirements of the full modification procedure in respect of fast-track modifications has been incorrectly placed within the licence conditions.	We agree that the newly inserted wording ("except for modifications made pursuant to [fast track self-governance]") should be moved in some cases. The inserted fast track self-governance process includes specific steps which are to be followed and it was intended that duplicate/irrelevant steps relating to the full modification process were not to be applicable. We therefore agree with the amendments suggested, which provide necessary clarity.	Yes
Electricity Transmission – SLC B12 Electricity Distribution – SLC 22, 23	The licensee cannot guarantee consistency between the code modification procedures and the Code Administration Code of Practice (CACoP)	The licence drafting proposed is in line with the existing provisions of the Electricity Transmission and Gas Transporter licences. Any potential inconsistency with the 12 CACoP principles can be addressed by the licensee through proposing code modifications or changes to the CACoP, if appropriate.	No
Electricity Transmission – SLC C14	Use of the term 'modification' and 'modification proposal' may be confusing under the Grid Code licence condition, as it may imply that code users can raise modification/alternative proposals	We note the view that it may be confusing if the Grid Code licence provisions imply that code users can formally raise modification proposals or alternative proposals, as the licence conditions and the codes themselves presently do not provide for this. However, the word 'modification' has been	No

⁴ Standard Licence Condition (SLC). Special Standard Condition (SSC).

		<p>introduced as a direct replacement of 'revision' in all instances and this was not intended to change the meaning of the existing licence provisions.</p> <p>We also note the comments that the Grid Code does not presently have the concept of a 'modification proposal', however, this term has been introduced throughout the licence drafting to refer to modifications formally proposed by the licensee.</p>	
<p>Electricity Transmission – SLC C14</p> <p>Electricity Distribution – SLC 21</p>	<p>Use of 'proposing a modification' at para 1A(b)(iv), is not consistent with 'drafting a modification' as per similar conditions in other licences</p> <p>Reference to 'proposing a modification' causes confusion in relation to the ability to formally propose a modification</p>	<p>As code users cannot formally propose Grid Code and Distribution Code modifications, it is not directly relevant for the code administrators to provide assistance with 'drafting' modification proposals.</p> <p>We proposed alternative legal drafting in this case which intended to reflect the code administrator's role in assisting code users with suggesting potential modifications. However, we note that this may lead to some confusion, as code users cannot formally raise modifications. We note that assistance to code users with raising an 'issue'⁵ is captured by the requirement for the code administrator to assist with code users' involvement and representation in the code modification procedures. We therefore consider this additional line of text can be removed.</p> <p>These considerations also apply to the Electricity Distribution Licence regarding the Distribution Code. For consistency we have aligned the text across both.</p>	Yes
Electricity Transmission –	Query whether only the licensee shall have the	Yes, this paragraph has not been	No

⁵ An 'issue' is an identified defect or a suggested modification raised by a code user under a pre-modification process.

SLC C3	power to modify the BSC, as per para 5(f), under the fast track self-governance process	carved out by the fast track self-governance process.	
Electricity Distribution – SLC 22	Clarify that references to 'A3' in the legal drafting refer to the Appendix to SLC 22	Wording has been amended as per the previous convention to refer to condition A3 "of the Schedule".	Yes
Electricity Distribution – SLC 22	Lack of definition of the term 'publication' to describe the event which signals the start of the self-governance appeals process	We do not consider that a specific definition of the term 'publication' is needed in the licence. The DCUSA currently provides for notice of self-governance ⁶ decisions to be sent to specified parties. We do not consider that this licence modification necessarily requires a change to that existing code provision, although this is a matter for industry to consider at a code level. We would highlight that a requirement to adhere to the CACoP has been introduced as part of the CGR2 Final Proposals. This includes a requirement to make information promptly and publicly available to code users.	No
Electricity Distribution – SLC 21, 22, 23	Queried the use of 'must' and 'shall' in several paragraphs	We recognise that some stylistic differences exist between licence conditions. To gain consistency within the stated conditions, 'must' has been used in relation to the licensee's obligations, whereas 'shall' has been adopted in respect of obligations to be discharged by the code panel or code administrator.	Yes
Electricity Distribution – SLC 21, SLC 23 Gas Supplier – SLC 30 Electricity Transmission - B12, C14	Unnecessary use of 'arrangements for' when describing the requirement for a code administrator	We agree that this text is superfluous and have therefore removed it in all cases.	Yes
Electricity Distribution – SLC 21	Wording clarification suggested at 21.7A(b), to insert "In addition to <u>acting in accordance</u>	We do not agree that further clarification is necessary in this case.	No

⁶ Referred to under DCUSA as 'Part 2 matters'.

	<u>with</u> any powers, duties or functions...”		
Electricity Distribution – SLC 21, 22, 23	Suggested use of ‘Oxford comma’ for greater consistency within the licence	Commas added.	Yes
Electricity Distribution – SLC 21, 22, 23	Suggested replacement of ‘which’ with ‘that’ in a number of places.	We do not consider that these amendments are required.	No
Electricity Distribution – SLC 21, 22, 23	Suggested capitalisation of term ‘Directions’	Capitalisation has been adopted where relating to the defined term.	Yes
Electricity Distribution – SLC 22	Treatment of self-governance in the drafting is unclear; there is a lack of defined self-governance criteria	<p>We recognise that, for those codes under which self-governance procedures were established from their outset, including DCUSA, the self-governance criteria are not set out in the licence. We consider that it remains sufficient to rely on the self-governance (Part 2) criteria set out in DCUSA.</p> <p>The drafting at A3(f) of the Schedule to SLC 22 has been amended to further clarify that the DCUSA must specify self-governance criteria and that any modifications made by self-governance must remain in accordance with the procedures set out in the licence condition (Parts B to D).</p>	Yes
<p>Electricity Distribution – SLC 22</p> <p>Electricity Transmission – SLC B12, C14</p> <p>Gas Supplier – SLC 30</p> <p>Gas Transporter – SLC 9</p>	Suggested to align ‘send back’ drafting across all the codes	We agree that consistency in drafting across different licence provisions is beneficial. We have however opted to simplify the licence drafting which implements the ‘send back’ provision under CGR2, compared to the drafting which was inserted into the BSC, CUSC and UNC licence conditions as part of the initial Code Governance Review (CGR). ⁷ Authority ‘send back’ of Final Modification Reports is now an established process and we therefore do not consider that the additional level of licence detail is necessary. This is not intended to	No

⁷ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=330&refer=Licensing/IndCodes/CGR>

		provide for broader powers and we remain of the view that the contents of any send back direction would specify the additional steps, revision, analysis or information required (as per the existing licence provisions), as appropriate.	
Electricity Transmission Gas Transporter	Suggested alignment of 'significant code review' (SCR) drafting within the licence	We recognise that the existing drafting in the BSC, CUSC and UNC licence provisions differs slightly to that proposed under CGR2. We have opted for slightly simplified drafting as SCRs are now an established process. However, this is not intended to create any material difference. It may be beneficial to align the existing provisions in the future, however, this has not been considered under CGR2.	No
Gas Supplier – SLC 30	The licence drafting has switched SPAA objectives (e) and (f) without rationale	There was a numbering error in the gas supply SLCs which has been corrected separately. ⁸	No
Electricity Transmission – SLC C14	Unclear rationale for amending cross referencing at SLC C14 paragraph 1, from paragraph '11' to '12'	This change is a housekeeping amendment to correct an error identified during the course of this review. Paragraph 11 specifies how the duty under paragraph 1 should be complied with, whereas paragraph 12 provides when, by way of exception, the duty in paragraph 1 does not have to be complied with.	No
Electricity Transmission SLC B3	Due to the definition of BSC party, it should be stated that the Licensee may object to fast track self-governance modifications	We have amended this to ensure clarity. We consider that at a minimum code parties and the Authority must be able to formally object to modifications being made by fast track self-governance, as an appropriate safeguard. However, this could be extended to further persons or bodies within the code rules, if an appropriate code modification was to be brought forward.	Yes
Electricity Transmission	The implementation timeframe for	We note the indicative timetable for progressing Grid Code	No

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http://www.ofgem.gov.uk/Markets/RetMkts/Compl/Theft/Documents1/20130219_Theft%20licence%20mod%20correction.pdf

SLC C14	consequential code modifications does not allow time for the full modification process to be followed	modifications where a work group is formed. However, we remain of the view that the implementation date of 31 December 2013 should provide sufficient time for an appropriate modification process to be followed. ⁹	
Gas Transporter – SSC A11	Paragraph 9(b)(i) should include reference to the fast track self-governance process ('15G')	Agree. We have also removed reference to the fact track self-governance procedure under Gas Transporter SSC A11 9(da) as this was inconsistent with the other licence conditions and we do not consider that it is necessary.	Yes
Electricity Transmission – SLC B12, C3, C10 Electricity Distribution – SLC 22 Gas Transporter – SLC 9, SSC A11	Self-governance and fast track self-governance routes are not clearly named as such in the drafting	We have added the suggested clarification in all cases.	Yes
Gas Transporter – SLC 9 Electricity Transmission – SLC B12, C3, C10	Minor amendment to insert 'proposed' before the term 'modification' under the fast track self-governance provisions	We have amended this drafting to align across all conditions.	Yes
Gas Supplier – SLC 30 Electricity Distribution – SLC 23	Drafting at 30.7(b), regarding SPAA appeals, is unclear in its intent	The existing provision was amended to clarify that proposed modifications are appealable to the Authority, where they do not otherwise require Authority consent (ie the provision applies to decisions taken under self-governance). A slight drafting change has been made to add further clarity. A further query was raised at the May SPAA Executive Committee meeting regarding whether the National Consumer Council can raise appeals. We have amended the drafting to add further clarity that this may be specified in the code. This also applies to the Electricity Distribution Licence regarding the MRA. For	Yes

⁹ We also note that potential code modifications arising from the CGR2 Final Proposals were discussed at the May Grid Code Review Panel meeting and the view at that meeting was that a work group was not expected to be required.

		consistency we have aligned the text across both.	
Gas Supplier – SLC 30 Electricity Distribution – SLC 21 Electricity Transmission – SLC B12	Drafting does not require the code panels to have an independent chairperson and consumer representative	This was not proposed under CGR2 Final Proposals. Such provisions in the smaller industry codes may be beneficial, although we do not consider at the present time that regulatory prescription is required. Panel composition may be considered by industry at the code level.	No
Electricity Distribution – SLC 22	For consistency with other codes, the licence should allow 15 working days from panel decision for a self-governance appeal	Under DCUSA, there is no concept of a panel decision. The decision is made by party vote, and code parties have access to the final modification report (as approved by the panel) for a standard period of two weeks whilst voting is underway. This provision is therefore not directly comparable to those of other codes. The licence drafting reflects the existing self-governance appeal provisions in the DCUSA, and therefore does not change the current arrangements.	No
Electricity Distribution – SLC 22	Appeal provisions under the licence drafting do not extend to interested parties	The licence drafting sets out that appeal rights shall be available to those persons/bodies eligible to raise modifications. We note that this concern specifically relates to the potential for self-governance of distribution charging methodologies and the National Terms of Connection, and discuss this further below.	No

Clarification of policy proposals

In addition to comments on the proposed licence drafting, some issues were raised in respect of the CGR2 Final Proposals.

- Concern was highlighted by one respondent that the extension of self-governance in the DCUSA might potentially include the distribution charging methodologies and National Terms of Connection (NTC) which affect customers who might not be party to DCUSA. We do not consider that modifications to the distribution charging methodologies would be eligible for self-governance. Under the CGR, we set out our view that charging methodologies have significant impacts on competition and consumers and it is therefore important that regulatory oversight is maintained in this area. In respect of the NTC Schedule to the DCUSA, any modification that is likely to have material impacts on consumers or competition would not be eligible for self-governance. Any interested party can object to the classification of a proposed modification as self-governance during the consultation process and the Authority may direct that Authority consent is required up until the DCUSA Panel

approve the final modification report. We are therefore satisfied that this modification is proportionate and that appropriate safeguards are in place. We would encourage further discussion at the code level if concerns remain, to ensure that appropriate processes are in place.

- A respondent highlighted that our CGR2 Final Proposals stated that code administrators should ensure that final modification reports in respect of self-governance modifications are published within 'five days' of the panel's decision. However, this intended to say 'five working days'. Under our initial proposals, we consulted on whether it may be beneficial to amend the appeal window under certain codes to commence 'from publication' of the final modification report, ensuring that all parties have access to the full details of the decision for the duration of the appeal window, and if so, whether the appeal period should be amended to ten working days instead of 15 working days.¹⁰ Following this consultation, we opted not to pursue a licence change at the present time and consider that any possible disadvantage to parties can be substantively addressed by prompt publication of reports ensuring that parties have, at a minimum, a full ten working days to review the final report.

¹⁰ These provisions apply under BSC, CUSC and UNC.