

Modification proposal:	Master Registration Agreement (MRA) Change Proposals (CPs): 0204 – Amendments to the MRA for compliance with the legislation of the Code Governance Review (Phase 2); and 0207 – Code Governance Review (Phase 2) Code modification decision appeal provisions		
Decision:	The Authority ¹ provides its consent for these changes to be made ²		
Target audience:	MRASCo, Parties to the MRA and other interested parties		
Date of publication:	30 December 2013	Implementation date:	31 December 2013

Background to the modification proposals

Ofgem's Code Governance Review³ (CGR) sought to update and improve the industry code governance arrangements to ensure that they could effectively meet the challenges facing the industry, and to reduce complexity to ensure transparency and accessibility for all industry participants.

The CGR concluded in March 2010 with final proposals focusing primarily on the Balancing and Settlement Code (BSC), the Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC). In April 2012, we initiated a second phase CGR (CGR Phase 2) with the aim of extending governance arrangements introduced through the CGR to other industry codes, including the Master Registration Agreement (MRA).

Following a consultation on initial proposals in September 2012,⁴ we published final proposals for CGR Phase 2 in March 2013.⁵ Licence modifications giving effect to these final proposals came into force on 5 August 2013.

The CGR Phase 2 final proposals set out a number of changes to the governance arrangements of the MRA to:

- introduce a Significant Code Review (SCR) process which provides a role for Ofgem to lead complex changes to the industry codes in a holistic manner⁶
- clarify appeal procedures for self-governance⁷ Change Proposals (CPs) and setting out additional grounds for appeal
- require that modification⁸ reports are produced in respect of CPs. Such reports must include an assessment of that modification in reference to whether it better facilitates the requirements Standard Condition 23 of the Distribution Licence, and a detailed explanation of the reasons for that assessment

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

² This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989.

³ CGR Phase 1 final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-final-proposals-4310>

⁴ CGR Phase 2 initial proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-consultation>

⁵ CGR Phase 2 final proposals: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-final-proposals>

⁶ Ofgem guidance on SCRs: <https://www.ofgem.gov.uk/ofgem-publications/61740/guidanceinitiating-and-conducting-scrsfinal-draft110810.pdf>

⁷ 'Self-governance' means where a proposed change does not require the consent of the Authority

⁸ 'Modification' and 'Change' are used interchangeably in this document in reference to modifications to the MRA

- require recommendations for or against CPs to be made in reference to whether or not that change better facilitates the requirements Standard Condition 23 of the Distribution Licence
- introduce a 'send back' process allowing the Authority to send a final report on a modification proposal back for further work where the Authority indicates that it cannot make a decision based on the original report submitted to it. A send back direction by the Authority would allow deficiencies (for example, relating to proposed legal text or incomplete analysis) in the original report to be addressed
- introduce the concept of an administrative body (the 'Code Administrator') providing 'critical friend' support to parties, and the Code Administration Code of Practice (CACoP).⁹ The CACoP establishes certain principles that are considered to capture the key elements of best practice in the administration of code modification procedures. It also provides a template for the ongoing convergence and simplification of existing code rules.

The modification proposals

MRA CPs 0204 and 0207 were raised by London Power Networks in light of the amendments made to the Electricity Distribution Licence as a result of CGR Phase 2. The proposed legal drafting was developed through a working group established to consider the impacts of CGR Phase 2 on the MRA.¹⁰

MRA CP 0204 seeks to insert and amend MRA provisions to align the MRA with the Distribution Licence. In addition, MRA CP 0204 includes a change to clarify that MRA Agreed Procedures (MAPs) are MRA Products. The legal drafting sets out:

- new relevant definitions
- revised provisions in respect of appeals against CP decisions taken under self-governance
- a process to be followed in the event that the Authority 'sends back' a final modification report
- the process to be undertaken in respect of change proposals raised during a Significant Code Review
- the role of the Code Administrator
- the requirement on the MRA Executive Committee (MEC) to consider proposed changes in reference to whether or not it would better fulfil the requirements of Standard Condition 23 of the Distribution Licence when compared to the status quo¹¹

Further elements of the CGR Phase 2 final proposals are being implemented by way of a change to MAP 17 and this change is not subject to Authority consent.¹²

MRA CP 0207 was subsequently raised to better align the MRA provisions regarding appeals against CP decisions taken under self-governance with Ofgem's guidance on dealing with such appeals.¹³ This proposed amendment seeks to allow for the eventuality that we uphold an appeal as being valid, but return the CP to the MEC for reconsideration

⁹ The CACoP is for energy code administrators and users of those codes. It was developed by industry as part of the CGR: <https://www.ofgem.gov.uk/licences-codes-and-standards/codes/industry-codes-work/code-administration-code-practice-cacop>

¹⁰ The Code Review Expert Group (CREG)

¹¹ MRA does not have 'relevant objectives' against which change must be assessed, however Standard Condition 23 sets out certain requirements that the MRA must fulfil

¹² MAP CP 0183: http://mrasco.com/staticfiles/change_proposals/storage/MAP%20CP%200183%20-%20Amendments%20to%20MAP%2017%20for%20compliance%20with%20CGR%20Phase%202.pdf

¹³ <https://www.ofgem.gov.uk/ofgem-publications/83716/ofgemguidance-self-governancemodificationappealsprocess.pdf>

and redetermination rather than removing self-governance and making the determination ourselves.

MRA Development Board and MRA Forum

The MRA Development Board (MDB) considered MRA CP 0204 at its meeting of 28 November 2013, and MRA CP 0207 at its meeting of 5 December 2013. In both instances MDB voted unanimously to accept the changes. No appeals to the MRA Forum were made.

These CPs seek to change MRA clauses which are reserved for Authority consent or which require or permit matters to be referred to the Authority, and therefore Authority consent to make these changes is required.¹⁴

The Authority's decision

We have considered the issues raised by these change proposals. We have also considered and taken into account the minutes of the MDB meetings held on 28 November 2013 and 5 December 2013. We have concluded that the implementation of the changes proposed by MRA CPs 0204 and 0207 would better facilitate the requirements of Standard Condition 23 of the Distribution Licence compared to the existing provisions and should be implemented.¹⁵ We consider this to be consistent with our principal objective and statutory duties.

Reasons for our decision

The recent licence modifications made to introduce the CGR2 governance changes into the MRA governance arrangements are now in force.¹⁶ The relevant licensees therefore must ensure that these licence provisions can be efficiently discharged. The changes proposed by MRA CPs 0204 and 0207 will ensure that the licensees can efficiently discharge their obligations relating to CGR2 governance changes through the MRA governance procedures.

In addition, creating a Code Administrator 'critical friend' role and introducing best practice principles for the modification processes, which are consistent with other industry codes, should assist all participants engaging with the MRA, especially smaller participants and new entrants. This can be expected to result in benefits to competition by facilitating a greater degree of participation and aiding understanding of the MRA processes.

Decision notice

We consent to modification proposals MRA CP 0204 and 0207 being made.

Lesley Nugent

Head of Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose

¹⁴ In accordance with clause 9.5 of the MRA

¹⁵ Standard licence conditions available at:

<https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Distribution%20Consolidated%20Standard%20Licence%20Conditions%20-%20Current%20Version.pdf>

¹⁶ Standard Condition 23 of the Distribution Licence