

Code Governance Review (Phase 3): Initial Proposals

Consultation

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Overview:

In 2010, Ofgem's Code Governance Review implemented measures to improve the governance arrangements in three of the main codes which underpin the gas and electricity industry arrangements. In 2013, the second phase of our Code Governance Review extended many of the outcomes to the remaining industry codes.

Our code governance reforms were aimed at reducing unnecessary barriers and red tape. They were also aimed at ensuring significant code change could be delivered more effectively.

In May 2015, we issued an open letter noting that we continue to have concerns that the code governance arrangements may not be operating in the best interests of consumers. We noted that the gas and electricity industry in Great Britain is facing significant change in the coming years. We therefore considered it was timely to review the code governance reforms we have implemented. We set out our initial views on potential further reforms, building on those we have already introduced.

This document sets out our review of our code governance reforms, taking into account responses to our May 2015 open letter and feedback from our industry workshop in July 2015. It sets out and seeks views on our Initial Proposals for further reform, aimed at ensuring the code governance arrangements are fit-for-purpose for a changing industry and in light of the increasing pace, volume and complexity of change planned in the coming years.

Context

The gas and electricity industry in Great Britain is facing significant change in the coming years. This change includes the:

- roll out of gas and electricity smart meters to over 53 million domestic and non-domestic premises by 2020
- low carbon transition which will lead to increasing levels of intermittent electricity generation and new low carbon technologies, with potentially a greater role for flexibility in the system including demand side response (DSR)
- EU Third Energy Package, which is introducing new legislation, known as European Network Codes (ENCs), governing the design, operation and planning of the European energy sector.

These issues are already driving change to the detailed rules that underpin the operation of the industry and further changes to the rules are needed. These rules are set out in a number of industry codes, which include governance arrangements that define how the codes may be changed.

We have previously reviewed the industry code governance arrangements and introduced reforms to improve them. However, in the context of the anticipated scale of change required in the coming years, we continue to have concerns that the arrangements may not be operating in the best interests of consumers. We consider it is timely to review the reforms we have implemented and potentially introduce further reform to the arrangements.

Associated documents

Open Letter on Further Review of Code Governance dated 15 May 2015

<https://www.ofgem.gov.uk/publications-and-updates/open-letter-further-review-industry-code-governance>

Licence modifications to implement Code Governance Review (Phase 2) Final Proposals

<https://www.ofgem.gov.uk/publications-and-updates/modification-gas-and-electricity-licences-implement-code-governance-review-phase-2-final-proposals>

Code Governance Review (Phase 2) – Final Proposals (2013)

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

Licence modifications implementing the Code Governance Review Final Proposals (2010)

<https://www.ofgem.gov.uk/publications-and-updates/licence-modifications-implementing-code-governance-review-final-proposals>

Code Governance Review – Final Proposals (2010)

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

Code Administration Code of Practice

<https://www.ofgem.gov.uk/publications-and-updates/code-administration-code-practice-version-4>

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Executive Summary

In this document we set out our Initial Proposals for the third phase of our Code Governance Review (CGR3). These proposals build on reforms we have already introduced to improve code governance based on the arrangements and institutions currently in place. We recognise that more fundamental reform may be needed and in this regard welcome that the CMA is exploring this, given that it has provisionally identified industry code governance as having an Adverse Effect on Competition as part of its ongoing Market Investigation Reference.

Our Initial Proposals are in line with our commitment to Better Regulation principles and to reducing regulatory burdens on industry while maintaining effective consumer protection. They cover four main areas: the SCR process; the self-governance process; code administration; and the governance arrangements for charging methodologies.

SCR process – Chapter 2

We recognise that the Significant Code Review (SCR) process in its current form could still result in inefficiencies and duplication. We therefore consider that the SCR process should also provide for a collaborative, Ofgem-led, end-to-end approach. This would provide additional optionality in how the Authority may choose to lead an SCR and would enhance the SCR process that we introduced in our 2010 Code Governance Review (CGR) and our second phase of CGR (CGR2) in 2013¹. To ensure this process is effective we consider that this requires Ofgem to be able to draft code modification legal text as part of our SCR. We also consider that there are benefits in clarifying the ability for Ofgem to direct timetables for the development of code modifications, in cases where the SCR process relies on a direction to a licensee(s) to raise changes under the normal industry change processes.

Self-governance process – Chapter 3

Our Initial Proposals on the self-governance process provide two ways which should increase the use of the self-governance route. Firstly, to require industry to assess whether a modification requires Authority consent, i.e. why it **is** material, rather than why it is **not** material, which is the current situation. Secondly, for panel and code administrators to develop guidance on the type of criteria the industry should consider when considering whether a modification proposal should follow the self-governance route.

¹ See para Chapter 1, paras 1.2 – 1.4 below.

Code administration – Chapter 4

In this area we have set out a number of proposals that we consider would make code administration and related arrangements more effective, in particular, in supporting smaller parties and in driving greater consistency across the code change processes. Many of these proposals look to build on existing processes, particularly those established under CGR, such as the Code Administration Code of Practice (CACoP) and the Critical Friend role. We also put forward proposals for varying types of independence requirements for panel chairs, panel members and working group chairs.

Charging methodologies – Chapter 5

Our proposals for charging methodologies look to build on the benefits seen from incorporating the charging methodologies into the open governance arrangements for the respective industry codes. Several of our proposals for charging methodologies relate to self-governance and code administration. These are separately considered in Chapter 5.

1. Introduction

Chapter Summary

This chapter provides background on Ofgem’s Code Governance Review (CGR) and sets out the purpose and content of this consultation document. It also sets out our objectives in undertaking this third phase to the CGR and the scope of our work.

Background

1.1. The industry codes are, broadly speaking, the regulated contractual arrangements that underpin the operation of the electricity and gas industry arrangements. They each include governance arrangements which define how the codes may change. We have previously reviewed the code governance arrangements and implemented reforms. This document sets out our review of those reforms, and seeks views on our Initial Proposals for further potential reforms under this latest phase of our Code Governance Review (CGR3).

Previous Code Governance Reviews

1.2. We launched our Code Governance Review (CGR) in November 2007², in light of the evolving nature of the industry and strategic challenges likely to impact the code arrangements. The first phase of CGR concluded in 2010 and focused on three of the main industry codes (the Balancing and Settlement Code (BSC), the Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC)).

1.3. In our CGR Final Proposals, we identified a number of deficiencies with the arrangements and introduced a range of reforms in two main areas. First, seeking to reduce unnecessary barriers and red tape in the existing industry code governance arrangements. And second, aimed at ensuring that significant code change could be delivered more effectively. We recognised that the code governance arrangements worked well in delivering incremental change to industry codes, but that they had not been effective in supporting larger scale and more complex change. In 2013, we concluded the second phase of CGR (CGR2), extending our key reforms to cover all of the industry codes.

1.4. The governance reforms we introduced under CGR and CGR2 include:

² We issued an open letter announcing our review: <https://www.ofgem.gov.uk/ofgem-publications/61488/open-letter-announcing-governance-review.pdf>. We commissioned consultants to undertake an independent critique of the code governance arrangements and published their report in June 2008: <https://www.ofgem.gov.uk/publications-and-updates/independent-critique-codes-governance-arrangements-commissioned-ofgem-and-prepared-brattle-and-simmons-and-simmons>.

- **Significant Code Review (SCR):** this process enables Ofgem to lead a holistic review that may result in complex and/or cross code change. We introduced new powers to enable us to direct a relevant licensee(s) to raise code changes to give effect to our SCR policy conclusions.
- **Role of Code Administrators:** we introduced a number of changes aimed at improving code administration arrangements, including
 - Code Administration Code of Practice (CACoP), aimed at aligning processes across codes and capturing best practice in code administration
 - 'Critical Friend' role for code administrators to support code users, in particular smaller parties, in the modification process.
- **Self-governance:** we enabled industry to make decisions on code changes which do not have a material impact on, for example, consumers or competition.
- **Charging methodology governance:** we included certain charging methodologies within industry codes, introducing arrangements to enable code parties and other materially affected parties to propose changes.

Our May 2015 open letter

1.5. In May 2015, we issued an open letter (May open letter) noting that we continue to have concerns that the code governance arrangements may not be operating in the best interests of consumers. We noted that the electricity and gas industry in Great Britain is facing significant change in the coming years. This includes the roll out of gas and electricity smart meters and the low carbon transition which will lead to increasing levels of intermittent electricity generation and new low carbon technologies.

1.6. We noted that these and other issues are already driving change to the industry codes, and further change is needed. We noted that in the context of the anticipated scale of change required in the coming years, we continue to have concerns that the arrangements may not be operating in the best interests of consumers.

1.7. We set out some initial views on the code governance reforms we have already implemented under CGR and CGR2. We set out our view that the reforms introduced under CGR and CGR2 have improved the code governance arrangements. For example:

- The SCR process has enabled us to lead reviews and propose reforms in a number of areas where we have had longstanding concerns, i.e. gas security of supply, electricity "cash out" and electricity transmission charging.

- The CACoP and code administrator Critical Friend role can play an important role in encouraging best practice, consistency across codes, and supporting smaller parties.
- Self-governance has been successful in enabling effective and efficient delivery of changes that do not have material consumer or competition impacts, allowing us to focus resource on more material changes.
- Including charging methodologies within the codes has provided greater transparency and enabled more affected parties to engage directly in proposing, developing and assessing charging reforms.

1.8. However, we noted that we have ongoing concerns. For example, smaller parties continue to raise concerns around the difficulty they have engaging in the code change processes, and that the arrangements are a barrier to entry. We have ongoing concerns about the risks associated with a lack of coordination across codes. We noted that we face difficulty delivering major reform where there may be industry opposition through a lack of incentives for industry to engage in the change process. We noted that our concerns are heightened in the context of an evolving industry in which the volume, complexity and pace of change is increasing. In light of this, we sought views on areas where further potential reform may be appropriate to ensure the arrangements are fit-for-purpose for a changing industry in the coming years.

1.9. We received 36 responses to our May open letter. The non-confidential responses are available in full on our website. In July 2015, we held a workshop³ to inform our thinking and provide a further opportunity to seek views on the issues discussed in our open letter.

1.10. The views provided in responses to our consultation and at our industry workshop support our view that it is timely to review the governance reforms we have already made and to explore further code governance reforms. The remainder of this chapter sets out the objectives and scope of the work under this third phase of our Code Governance Review (CGR3).

Objectives

1.11. In this third phase of our review of code governance we are reviewing the effectiveness of the key measures we introduced under our past Code Governance Reviews. Our objective is to identify further reforms seeking to ensure that the governance arrangements of all industry codes deliver both non-material self-governance changes and more complex changes in an efficient and timely way. Further, we are seeking to ensure the governance arrangements promote transparency and accessibility for all industry participants. These further reforms are

³ <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-workshop-22-july-2015>

intended to facilitate best practice becoming business as usual, whilst avoiding unnecessary regulatory burden.

Scope

1.12. The scope of our review covers the four broad areas identified in our May open letter:

- **SCR process:** We consider that the SCR process introduced in the first phase of the CGR has been effective in enabling us to lead reviews. However, we recognise that the timescales for completing SCRs have been longer than we initially expected. Therefore, we propose to address the factors which influence the timescales, such as the complexity and detail of the process and the level of engagement and participation of industry.
- **Self-governance:** The number of modifications taken forward through self-governance is not as high as expected in our original impact assessment for CGR; therefore, we propose to consider the effectiveness of the self-governance arrangements
- **Code Administration:** We propose to revisit some areas implemented under CGR that may not be working as well as expected, in particular those that were aimed at supporting smaller companies. We want to look at improvements to the 'Critical Friend' role, address ongoing inconsistencies in the code change process and find more effective ways to manage the change process and timings of changes. We also consider reform to panel and workgroup arrangements may be needed.
- **The governance arrangements for charging methodologies:** The inclusion of charging methodologies in code open governance has generally succeeded in enabling more parties to engage on charging changes. However, there are further practical ways in which users' experience of existing processes could be enhanced and lead to more effective and efficient change of charging methodologies, for example how pre-modification processes operate.

Related work under the Market Investigation Reference

1.13. Industry code governance is one of the areas also being considered by the Competition and Markets Authority (CMA) as part of its ongoing Market Investigation Reference (MIR). In its provisional findings, the MIR has identified code governance

as having an Adverse Effect on Competition (AEC) and has proposed possible remedies⁴.

1.14. We have set out in our response to the CMA's provisional findings that we strongly agree with their conclusion that the current code governance regime, including the limited incentives that incumbent players have to promote and deliver change that could benefit consumers, gives rise to an AEC. We also set out that we believe there are changes to the industry governance regime that can address these issues, building on the options set out in the CMA's notice of possible remedies. We noted that a reformed set of institutions would be central to ensuring that the regulatory regime is able to respond to the innovation and change the industry is going to see in the coming years.

1.15. We are supporting the CMA by providing them with information and expertise throughout their investigation. We are fully committed to supporting the CMA in developing remedies that can improve market outcomes for energy consumers, including on code governance reforms beyond the scope of the reforms we are consulting on as part of this review.

1.16. The reforms we are considering in this consultation build on reforms we have already introduced, and seek to improve code governance based on the arrangements and institutions currently in place. A number of respondents to our May open letter set out their views on more fundamental reform, which go beyond the scope of this consultation process. We recognise that more fundamental reform may be needed and therefore welcome that the CMA is exploring this, however, we still consider that there would be benefits to making the changes proposed in this document in the meantime.

Content of this document

1.17. In the following four chapters of this document, we discuss each of the four broad areas covered by the scope of our review:

- **Chapter 2:** relates to the **SCR process**
- **Chapter 3:** discusses the **self-governance process**
- **Chapter 4:** discuss a number of issues related to **code administration**; and
- **Chapter 5:** considers the **governance arrangements for charging methodologies**.

⁴ <https://www.gov.uk/cma-cases/energy-market-investigation>

1.18. Within each chapter we set out our views regarding the current process as set out in our May open letter and discuss the responses to that letter. We then set out our Initial Proposals for each of the areas. With respect to the SCR process we propose potential enhancements aimed at making the process more effective; for the self-governance process we explore ways to ensure it is used effectively across all the codes; for code administration we set out a range of potential measures aimed at increasing transparency and accessibility; and for the code governance arrangements for charging methodologies we set out proposals that build on its effective introduction into the governance arrangements.

1.19. We also discuss possible ways that each of our Initial Proposals may be taken forward. We consider that there are three possible routes for implementation:

- **Ofgem to take forward:** this would be the route for changes that we consider would be best implemented, for example, by licence changes. Under this approach, we would expect to publish Final Proposals, based on the responses to this consultation and, as appropriate, licence drafting. Although Ofgem would be leading on implementation, we would expect industry to engage fully in the consultation process.
- **Industry participants to take forward:** this would be the route where changes could be made by certain industry players. This would particularly be the case where it is considered that improvements could be made through behavioural changes by certain players, for example through website changes.
- **Cross industry working groups:** for some of our proposals, we do not consider at this stage that regulatory (e.g. licence) changes may be the appropriate method for implementation. However, we recognise that there may be the need for a number of parties (including Ofgem) to be involved in taking forward such changes. We are therefore proposing that one or more working groups could be set up (which Ofgem could chair) in order for the details of implementation to be taken forward.

Next steps

1.20. Within chapters 2 to 5 are a number of questions that we would welcome your views on (details of how to respond are contained in Appendix 1). Dependent on the responses we receive we will look to issue our Final Proposals in spring 2016; where appropriate, we will also include licence drafting in that document.

1.21. A number of our Initial Proposals set out in this document suggest code administrators, code panels and industry more widely taking forward developments in the code governance process. We would welcome the opportunity to discuss these developments with industry parties, as appropriate.

2. Significant Code Reviews

Chapter Summary

This chapter discusses the Significant Code Review (SCR) process under which Ofgem can lead a review to deliver complex code change. It summarises respondents' views on the current SCR process and sets out our current views. It also seeks views on our Initial Proposals set out in this chapter for reform to the SCR process, to enable Ofgem to lead a collaborative, end-to-end SCR process, including the development of code change.

Question Box

Question 1: Do you agree that Ofgem should have the ability to lead an end-to-end SCR process, including the development of code change and legal text?

Question 2: Do you agree it is appropriate to clarify that Ofgem may set timetables for the code change process under an SCR, when the existing, industry-led code development route is used?

Question 3: Do you have any comments on the licence drafting set out in Appendix 3?

Question 4: Should Ofgem be able to directly raise a modification proposal under the standard process (option 2A)?

Question 5: Do you have any other proposals for changes to the SCR process?

The SCR process

2.1. Under CGR we introduced a mechanism to enable Ofgem to undertake a Significant Code Review (SCR)⁵. The purpose of introducing the mechanism was to deliver effective and efficient complex change to the industry codes, through Ofgem leading holistic reviews.

2.2. Given the challenges facing the energy industry, we considered under CGR that it is critical that significant code changes can be facilitated more quickly and effectively. We anticipated that Ofgem would play a leading role in facilitating code changes through the SCR process, which we considered could avoid the issues that arise if reform is approached in a more piecemeal way. We committed to giving as much notice as possible and to consulting with stakeholders before launching an SCR. We noted that we did not expect to undertake more than one or two SCRs per financial year.

2.3. We set out that the process may vary on a case-by-case basis according to the complexity or contentiousness of the issues at stake, and that we would keep this under review in light of experience of the SCR process. In addition, we set out that the precise duration of an SCR would also vary according to the complexity of the issue,

⁵ Details of how the current SCR process works is provided in Appendix 2.

but we expected that the Ofgem-led phase described above would take no longer than 12 months in most cases, the industry phase six months and that we expected to make our decision within 25 working days.

2.4. We initially proposed a backstop power for Ofgem to draft code modifications. While we did not agree with those who opposed this power on the grounds of unfairness, and the Competition Commission (the predecessor to CMA) agreed with our views, we did not proceed with this proposal.

Our May open letter

2.5. In our May open letter, we noted that the SCR process has enabled us to lead reviews and propose reforms in a number of areas where we have had longstanding concerns. Following the introduction of the SCR mechanism in 2010, we have conducted three SCRs, each of which have resulted in code modifications:

- the Electricity Balancing SCR (“the EBSCR”)⁶;
- the Electricity Transmission Charging SCR (“the TransmiT SCR”)⁷;
- the Gas Security of Supply SCR (“the Gas SCR”)⁸.

2.6. In addition, we will be launching a new SCR later this year to deliver faster switching reforms⁹.

2.7. In each case where we have conducted an SCR, the steps followed matched our high level guidance¹⁰ on the process (for example, giving notice to industry of our intention to undertake an SCR, and consulting through written documents and workshops).

2.8. However, as set out in our May open letter, we recognise that the timescales for completing SCRs has in each case been longer than the indicative timetable we anticipated under CGR (please see table 2.1 below). We recognise that both Ofgem’s process and the industry-led stage of an SCR may have taken longer than we initially expected. This may be because we underestimated the level of analysis and resource necessary for delivering the type of complex reforms that are taken forward under an

⁶ <https://www.ofgem.gov.uk/electricity/wholesale-market/market-efficiency-review-and-reform/electricity-balancing-significant-code-review>

⁷ <https://www.ofgem.gov.uk/electricity/transmission-networks/charging/project-transmit#block-views-publications-and-updates-block>

⁸ <https://www.ofgem.gov.uk/gas/wholesale-market/market-efficiency-review-and-reform/gas-significant-code-review-scr>

⁹ <https://www.ofgem.gov.uk/ofgem-publications/93224/fastandreliableswitchingdecisionfinal.pdf>

¹⁰ <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-launch-and-conduct-significant-code-reviews-scrs>

SCR. There may be other factors influencing the timescales, such as the overall complexity and granular detail involved in the process. We sought your views on this and how the Ofgem and industry stages of the process could be better streamlined.

Table 2.1: Timings of SCRs launched since 2010

| | SCR Launch date | Ofgem Direction | Panel recommendation | Code mod decision | Total duration |
|---|------------------------|------------------------|-----------------------------|--------------------------|-----------------------|
| Gas Security of Supply | Jan 2011 | Sep 2014 | n/a* | n/a | 44 months |
| Electricity Transmission Charging (TransmiT) | July 2011 | May 2012 | June 2013 | July 2014 | 36 months |
| Electricity Balancing | Aug 2012 | May 2014 | March 2015 | April 2015 | 32 months |

* we directed changes to the UNC using powers under s.36C of the Gas Act

2.9. As noted above, under our CGR Initial Proposals, we considered a backstop power for Ofgem to draft modifications. While we did not proceed with this in our Final Proposals, we observed in our May open letter that having this option may be one means of reducing the timescales for the overall SCR process. We set out that we would not expect to use such a power in all cases, and we anticipate that, were we to use any such power, we would continue to rely on industry input to develop the detail of any modification (for example, through workgroups facilitated by Ofgem). We set out that we consider having this option may be appropriate in order to ensure that changes resulting from SCRs can be implemented in the most effective and efficient way.

2.10. We also noted that under the current SCR framework, while we can direct a licensee to raise code modifications to implement the conclusions of an SCR, there was no explicit facility for Ofgem to control the timetable in which code modifications had to be made. We noted that we have such a facility in other areas (e.g. in respect of code modifications related to Third Package regulations) and suggested that it may be appropriate to introduce similar provisions in relation to modifications raised through the industry change process following an SCR.

Responses to our May open letter and our views

2.11. There was general support for SCRs in response to our May open letter, and recognition that SCRs had been beneficial in driving through complex change and initiating large scale reform in some areas. There was, however, recognition that although the process is working, it could be much more efficient and effective. Our views on some of the broad themes respondents raised are set out below.

Timescales for SCR process

2.12. Respondents noted the process had taken longer than anticipated to reach a conclusion. Some respondents considered that while it may be possible for efficiencies to be made, the process reflected the scale and complexity of the issues being considered, and that the over-running timetable was due to Ofgem underestimating the time that complex change takes. Some respondents considered that delays were a result of the Ofgem-led process, rather than the industry-led stage.

Duplication and quality of analysis and process

2.13. Some respondents considered that the SCR process is inefficient because there will necessarily be duplication of analysis and process (carried out during the Ofgem-led part of the SCR process and then subsequently after the modification proposals had been raised). One respondent highlighted that the code modification process that follows the SCR process provides an opportunity for high-level policy issues to be re-opened. However, some considered there may be benefits to having a two-stage process as it allows more detailed implementation analysis to identify issues that were not previously identified in the initial analysis.

2.14. A further theme to emerge was the need for robust analysis and appropriate levels of scrutiny, whilst balancing this with efficiency and any potential savings in time and efforts. In addition, the sharing of analysis under an SCR was thought important to ensure a joint understanding of the issues and avoid duplication of effort.

2.15. We agree with respondents that, in practice, there can be duplication in the process and analysis undertaken by Ofgem during the Ofgem-led SCR phase, and the further work undertaken by industry during the industry-led detailed code modification development phase. We agree that, in principle, it would be preferable for all necessary analysis to be undertaken in a consolidated manner. We discuss further in our Initial Proposals section below how the process may be adapted to provide for this.

Industry engagement

2.16. The level and timing of industry involvement was a strong theme in responses. An approach involving greater co-ordination, giving clarity and direction to industry was considered to be beneficial for the process. Some commented that where Ofgem's SCR Direction sets out high-level, binding conclusions, it is important that there is sufficient clarity in the Direction for industry to be able to effectively develop code modifications that fulfil the intention of the conclusions.

2.17. We note the views on the need for early and extensive engagement with industry, and the need for collaborative working. We strongly agree there is a need for close Ofgem and industry working under the SCR process both in developing our policy proposals as well as more detailed changes to codes. This type of feedback has helped inform the approach we are taking under our faster switching SCR. We expect

to publish our launch statement setting out more detail on our approach later this year. We discuss further below what additional steps we propose may be appropriate to facilitate effective collaborative working throughout the entire SCR process, including the development of detailed code change.

Ofgem ability to direct timetables and draft modifications

2.18. Several respondents expressed concerns over the ability for Ofgem to direct timetables under an SCR. It was thought unnecessary by some respondents, as they thought that there was already sufficient oversight and this measure could foreshorten debate and increase errors. One respondent thought that we already had an effective power of veto over timetable extensions and therefore specific powers would be of little benefit. There was some support for this proposal on the basis that it would provide clarity and direction.

2.19. Regarding drafting modifications, comments included the view that Ofgem does not have the appropriate experience to understand the wider impact of the modification. There were also some concerns with impartiality resulting from the ability for Ofgem to both raise and draft modifications. Conversely, there were opposing views that we should consider drafting and raising all modifications under the process.

2.20. We recognise that a number of respondents did not support Ofgem having the ability to direct timetables. As we have acknowledged above, we recognise it is important to ensure the timetable for delivering change under an SCR reflects the complexity of the issues being considered. We also note the views of respondents that we already have this ability to some extent under the codes, either explicitly or through our ability to not agree to extensions to timetables for modification processes. We therefore consider that including an explicit provision in the licence may not be a significant departure from the current arrangements. It would clarify our ability to do this as part of an SCR, and bring the SCR licence provisions in line with similar powers we have in relation to code changes required to implement European Third Package regulations.

2.21. We acknowledge that developing and drafting code modifications requires a good understanding of how provisions interact with others and the wider impacts of potential changes. It requires close understanding of the technical rules within the code. We do not agree that there would be any concerns with regards to partiality were Ofgem to deliver its SCR conclusions through detailed code changes. However, we do recognise that successful development of modifications, including the legal text, to implement SCR decisions requires close engagement and cooperation with industry.

Initial Proposals

2.22. We agree there are lessons to be learned in how Ofgem and industry work collaboratively under an SCR. The approach we are proposing to adopt under our forthcoming faster switching SCR seeks to ensure effective engagement with the industry at all stages in the process, including in the delivery of detailed rule change.

However, we recognise that the SCR process in its current form could still result in inefficiencies and duplication, if the industry decides at the end of that process to undertake its own process which may revisit some of the work already undertaken.

2.23. We therefore consider the SCR process should provide for a collaborative, Ofgem-led, end-to-end approach. We consider that effectively incorporating what is currently the industry-led phase (of developing detailed code change) within the Ofgem-led process, would facilitate a more efficient end-to-end process and avoid potential duplication under two separate processes. To ensure this process is effective we consider that this requires Ofgem to be able to draft code modification legal text as part of our SCR. We fully agree with respondents' views on the need for effective engagement and collaborative working with industry, and consider this would be essential under an Ofgem led end-to-end process, in order that we could draw on industry expertise to develop appropriate code modifications.

2.24. We propose this would be an additional tool that we may use for delivering change under an SCR – we would also retain the ability for Ofgem to issue a Direction to a licensee to raise a code change/develop legal text. As set out above, we also consider that there are benefits in clarifying the ability for Ofgem to direct timetables for the development of code modifications, in cases where the SCR process relies on a direction to a licensee(s) to raise changes under the normal industry change processes.

2.25. In our original CGR proposals, we were concerned that the effectiveness of the SCR process and the ability for it to arrive at coherent and well-thought through policy positions could be undermined by industry participants using the modification process to delay or otherwise frustrate the process of developing code modification text¹¹. We considered that a backstop measure for Ofgem to draft code modifications text would provide an effective means of overcoming such risks.

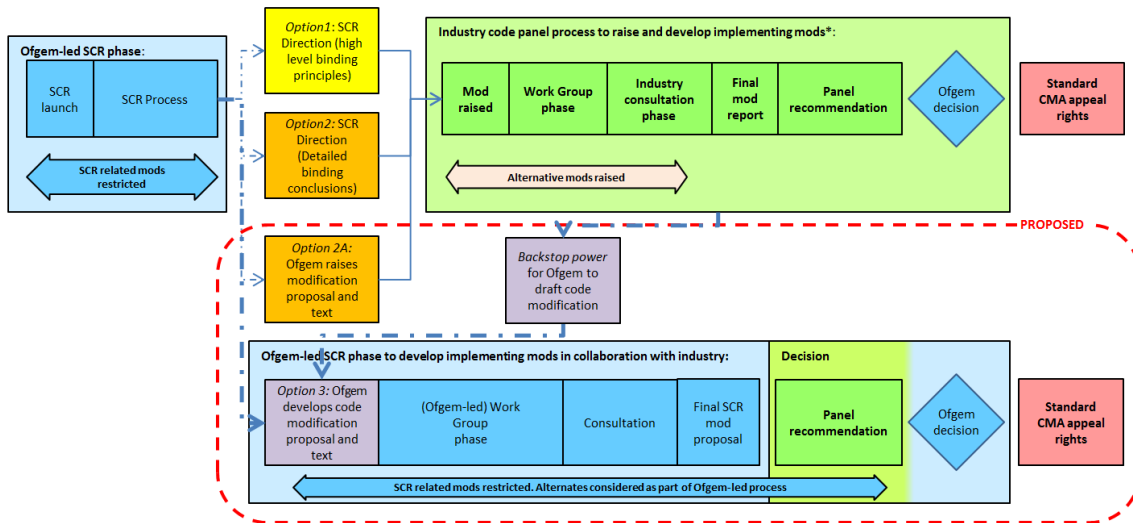
2.26. In the SCRs that we have undertaken we consider it may have been helpful to have had the ability for Ofgem to run an end-to-end process and/or an explicit ability to direct timetables, in order to drive forward the implementation of Ofgem's SCR conclusions. Our experience from the SCRs that we have conducted to date also indicates that providing a mechanism for Ofgem to draft code modifications text may provide a way of working through issues where there is significant industry disagreement.

2.27. We agree with respondents who noted that it is important that detailed implementation issues arising from the drafting of legal text can be properly considered in forming policy conclusions under an SCR. We recognise that in some cases, implementation issues may only become apparent during legal text drafting and that such issues could potentially influence the outcome of policy conclusions. This further supports our view that it is appropriate to enable Ofgem to have the ability to draft code modifications.

¹¹ Code Governance Review: Major Policy Reviews and Self Governance – Ofgem Ref: 172/08

2.28. Figure 2.1 indicates how the SCR process could look, with these additional tools (directing timetables and drafting modifications) available for Ofgem to make use of.

Fig 2.1: proposal for enhancing the existing SCR regime



2.29. Were we to implement the option of Ofgem developing code modifications (option 3 above), we would expect to develop code modification legal text with close involvement from code administrators, code owners, affected licensees and code parties. This would be done through working groups established by Ofgem as part of the Ofgem-led SCR process and could be designed effectively to mirror the working arrangements used by code panels as part of the established code modification process. As the development of the code modification would occur outside of the standard industry code panel working arrangements, we expect that any alternative proposals for drafting the legal text would be considered as part of the Ofgem-led development process which would result in a single modification proposal for panel consideration.

2.30. We propose that this option could also be used to provide a backstop mechanism in the event that a licensee produces a modification proposal (under option 2) that was inconsistent with our SCR Directions or failed to do so within the specified time period. To provide clarity/guidance on when Ofgem would use option 3 (including the backstop mechanism) we propose to revise our current SCR guidance document to explain the circumstances under which we might consider using this route.

2.31. Option 3 would enable us to lead an SCR process end-to-end – we would develop a proposal as part of the SCR, including the associated legal drafting. This would be undertaken through collaborative working with industry and a process of consultation. The relevant code panel would then assess and vote on any code modifications developed under an Ofgem-led SCR, making a recommendation to Ofgem in the usual way and under the same timescales. Industry would retain the

opportunity for appeals to be made to the CMA in the same way as is currently provided for under section 173 of the Energy Act 2004. Properly managed, option 3 has the potential in appropriate cases to significantly streamline the timescales taken to deliver complex reform to the codes under an Ofgem-led SCR process.

2.32. Dependent on the views of respondents to this consultation, we would expect to take forward these Initial Proposals, through publishing Final Proposals and implementing through licence changes. Appendix 3 contains an illustration of potential changes to the licence to incorporate this process within the BSC (we have used the BSC licence condition purely as an example – we would expect to make similar changes to the other relevant licence conditions for other codes)¹².

2.33. As a potential supplement, it may be appropriate to provide for Ofgem to directly raise a modification proposal under the standard code modification process (option 2A). Such a modification proposal would be treated by the panel in the same way as any other modification proposal, except that Ofgem would be listed as the proposer. This would allow Ofgem to be more directly involved in the development of the code modification legal text whilst making use of existing panel working group arrangements. The potential changes required within the BSC to facilitate this are also included in Appendix 3.

¹² The implementation of other proposals set out in this document may require licence changes. However, these have not been included at this stage.

3. Self-Governance

Chapter Summary

This chapter discusses the self-governance code change process under which industry can take forward decisions on changes that do not have a material impact on consumers and competition. There is broad support for the use of self-governance and we are seeking views on options which may encourage greater use of this approach.

Question Box

Question 1: Do you agree that requiring a positive identification of why Authority consent is needed (rather than why it is not) could result in additional modifications being developed under self-governance?

Question 2: Do you agree that guidance on the materiality criteria may assist industry in its assessment of whether a modification should be self-governance or require Authority consent?

Question 3: Do you agree that any potential guidance is something that panels and code administrators should develop, based on experience to date of using self-governance?

Question 4: Do you have any other proposals that may improve the self-governance processes under the codes?

The Self-Governance process

3.1. We introduced a self-governance route for code modifications through CGR and CGR2 to ensure that our (and industry) resources are focused on those issues that have a significant and material impact on consumers and in respect of our other statutory duties. We identified that there would be consequential better regulation benefits as a result.

3.2. Under CGR, we carried out an analysis of potentially how many modification proposals could have followed the self-governance route. Our assessment suggested that a large number of modification decisions (around 50%) could be taken forward by industry through self-governance. We considered that this approach would have the potential to reduce resources and costs (for both ourselves and industry), allowing a more effective refocusing of those resources, and would assist in facilitating faster implementation of modification proposals.

3.3. Under CGR we introduced self-governance for the three main industry codes – the BSC, the CUSC and the UNC – and extended this to other industry codes under CGR2¹³. The process provides for the industry to consider the self-governance criteria

¹³ Under current Grid Code and Distribution Code governance, modification proposals are raised by, and recommendations provided to us by, the relevant licensee(s) (National Grid or the Distribution

to determine which code changes should follow this route, enabling industry to make decisions on those changes which do not have a material impact on, for example, consumers or competition¹⁴. There are appropriate checks and balances provided: we may divert a code change from the self-governance route (to Authority decision route) before the panel makes its decision; and there is an appeal route to us following a panel decision if parties disagree on the materiality of code changes in line with the self-governance criteria.

Our May open letter

3.4. In our May open letter, we noted that establishing a self-governance route for code modifications has delivered significant benefits, enabling more effective and efficient delivery of code changes which are assessed not to have a material impact in line with the self-governance criteria. This has allowed us and industry to focus resource on more material changes. We recognised that the number of modifications taken forward as self-governance is not as high as we anticipated, and there are variations in the use of self-governance mechanisms across the different codes. However, we noted that there are still a significant number of modifications following this route, around 30% of modification proposals each year across all codes.

3.5. We asked for views on whether the self-governance arrangements across the different codes are effective, and whether the self-governance criteria remain appropriate.

Responses to our May open letter

3.6. In response to our May open letter, those who commented on self-governance generally welcomed its introduction. Respondents saw benefits in having a route to enable code changes assessed as not material to be progressed and implemented more efficiently. Respondents identified the merits of the self-governance route as an increase in efficiency of the code processes and ensuring that greater resources are appropriately focused on more material code changes. One respondent encouraged greater use of self-governance to speed up progress of code changes further.

Network Operators) and not by the relevant panel body. There is currently no scope for a self-governance route. A current Grid Code issue (GC0086) has been raised to consider introducing full open governance arrangements in the Grid Code, including a self-governance route for Grid Code changes. More details are here: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/Grid-code/Modifications/GC0086/>

¹⁴ A full list of the self-governance criteria against which to assess code changes is set out in relevant licences, e.g. Standard Licence Condition C10(15) of the Electricity Transmission Licence in respect of the CUSC: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20transmission%20full%20set%20of%20consolidated%20standard%20licence%20conditions%20-%20Current%20Version.pdf>

However, another respondent was not clear that self-governance did deliver code changes in less time than 'standard' modifications.

3.7. One respondent considered that differences in the application of self-governance processes should be resolved, while another highlighted that the process should not be extended to the Grid Code or the Distribution Code.

3.8. Another respondent considered that a review of the self-governance criteria may assist in raising the profile of the self-governance route for new entrants and small parties who may be unaware of it. Some considered more guidance was needed, including because panels may be reluctant to use the self-governance route as a result of a lack of guidance.

Our views

3.9. We note that respondents are generally supportive of the use of self-governance. We welcome the progress the industry has already made towards using self-governance since the introduction and extension of this route through CGR and CGR2. As we set out in our May open letter, around 30% of modification proposals across all codes are progressing along the self-governance route and, to date, there have been no appeals in respect of whether a modification should progress via self-governance. This suggests that the panels' and our assessment of the appropriateness of self-governance for certain modifications is broadly correct. In that sense, therefore, we consider self-governance is working well and the self-governance route is being appropriately used, particularly for codes where higher volumes of modifications are processed¹⁵.

3.10. However, we recognise there may be scope for further use of self-governance, and would note the Grid Code modification proposal in this regard. We note the views of some respondents to our open letter and at our workshop that some codes/panels may take a more cautious approach when considering the self-governance route than others. We note some responses suggest its use could be increased, including potentially if additional guidance is provided. We therefore explore below potential options that may further increase the take-up of the self-governance approach.

Initial Proposals

3.11. We have considered two potential options which may increase use of the self-governance route.

¹⁵ Since the introduction of the self-governance route from January 2011 (and fast-track self-governance (from January 2013)), 63 of 229 UNC modifications raised have followed the self-governance (or fast-track self-governance) route. In the same period, 14 of 61 BSC modifications have followed this route.

3.12. Currently, when raising a modification, the industry and panels must assess whether a modification meets the self-governance criteria – i.e. why it is **not** material. An alternative approach may be to require the industry to assess whether a modification requires Authority consent – i.e. why it **is** material. This would be a marginal change to the existing process, and would continue to require an assessment of the materiality of a proposal. However, it may help with behavioural change, by requiring a positive identification of those matters which are material and therefore clearly demonstrating what is driving the need for the Authority (rather than the industry) to make a decision. It may help avoid any undue caution that parties may have towards self-governance that can arise based on the current approach (of having to identify why a proposal is *not* material). We would expect the code administrators for each of the codes to take forward such a change, and work with industry to develop any process and/or code changes, if necessary, to achieve this.

3.13. Respondents have suggested that another way in which to facilitate greater use of self-governance is through the further development of guidance on materiality. We consider that there is merit in the current approach, which enables the industry to come to a view on a case-by-case basis on what constitutes materiality in relation to particular proposals. However, we recognise that further, high-level guidance on the type of criteria the industry should consider may be helpful. We consider that panels and code administrators are well placed to develop such guidance, which could be set out in CACoP, based on experience already gained from use of the self-governance process to date. Whilst guidance could be developed for individual codes, we consider that it may be more consistent with the principles of CACoP if the code panels coordinate their approach and develop a single, agreed guidance.

4. Code Administration

Chapter Summary

This chapter discusses a broad range of issues related to code administration. It summarises responses to our May open letter and our current views. It then sets out our Initial Proposals on potential options to make the code administration and related arrangements more effective, in particular in supporting smaller parties and in driving greater consistency across the code change processes.

Question Box

Question 1: Do you agree that updating the guidance in CACoP and ensuring best practice across all codes would enhance the role of the Critical Friend?

Question 2: Please provide your suggestions as to how the Critical Friend role could be better advertised and what information each code administrator should include on its website.

Question 3: Could a self-governance process be introduced for the CACoP?

Question 4: How often should the CACoP be reviewed?

Question 5: Do you agree that greater visibility of the CACoP can be achieved by having clear links available on all code websites to a dedicated CACoP page?

Question 6: How could the quantitative metrics be improved?

Question 7: Should a single body send out one qualitative survey across all codes? If so, who would be best placed to undertake this role?

Question 8: Do you agree that the modification process and template should be standardised across all codes?

Question 9: Is it appropriate that all panel chairs be completely independent of industry?

Question 10: Is it appropriate that all panel members are required to be impartial, i.e. not to represent the interests of their company?

Question 11: Should DCUSA and SPAA voting be undertaken by panel, rather than all parties?

Question 12: Should code administrators provide a chair for workgroups?

Question 13: Would including a consumer impacts section on each change proposal form help to ensure consumer interests are discussed and published?

Question 14: Do you agree with the housekeeping changes we have proposed?

Code administration

4.1. This chapter discusses a range of issues which we have grouped together as generally related to our theme of 'code administration'. These are discussed under the following headings below:

- Critical Friend
- Code Administration Code of Practice (CACoP)

- Role of code panels
- Independence
- Identifying consumer impacts
- Other issues

Critical Friend

4.2. CGR established a formal 'Critical Friend' role for code administrators. The aim was to make the code modification process more robust, and to provide support to all interested parties, in particular smaller participants. We discussed the minimum activities that a code administrator should provide. This included giving assistance to smaller participants and consumer representatives on drafting modification proposals and a plain English explanation of the arrangements under the relevant sections of the code. In CGR we also noted that smaller participants may suffer from an asymmetry of information compared to larger participants and that the code administrator could provide access to information, where reasonably available to them.

Our May open letter

4.3. We noted in our May open letter that the role of the code administrator as a Critical Friend plays an essential part in helping smaller parties to engage with the codes and the code modification process. However, we are aware that smaller parties continue to face difficulty engaging with the codes, and find it harder to resource activity in this area.

4.4. We recognised that to some extent, this is a product of the complexity of the industry. However, we considered that there may be scope for greater use of the Critical Friend role to further support smaller parties in particular. We suggested the Critical Friend role may currently be underutilised by smaller parties, potentially as a result of a lack of awareness as to what this role provides. We noted there may also be different approaches to the role under different codes, and potentially scope to extend 'best practice' across the codes. We suggested that there may be more proactive measures industry can take to ensure smaller parties' views are represented, given they are likely to find it harder to resource workgroup attendance than larger parties.

Responses to our May open letter

4.5. We have received broadly positive feedback regarding the code administrators' role as a Critical Friend in the code modification process. However, respondents to our open letter also considered that this role has not been implemented consistently across the codes with some performing better than others. Some respondents noted that the code administrators' performance of their Critical Friend role is linked to how

each code is funded. A number of parties, in particular independent suppliers, said that they were not aware of this role. There was broad consensus that awareness of this role amongst industry participants needs to be improved. Some respondents welcomed the overview days and training seminars held by some code administrators.

Our views

4.6. We welcome the measures that the code administrators are already taking to fulfil the Critical Friend role. We agree that the Critical Friend role has been helpful in aiding engagement but consider there is scope for increased transparency and greater use of the role to further support smaller parties in particular, options for which are explored below.

4.7. We are concerned at the number of parties who are not aware that this role exists. This could be the result of the lack of explanation of this role in code administrators' communications with users and limited visibility of this role on code websites. From our engagement with smaller parties, we note that in cases even where they are accessing some of the Critical Friend services, they often still remain unaware of the full range of Critical Friend services that should be available to them. We fully expect code administrators to be effective in performing their Critical Friend role, and to be proactive in increasing an awareness of the role and the range of services offered by it.

4.8. We note the comment that the ability of the code administrators to fulfil the role is linked to how each code administrator is funded. We note that the Critical Friend role is an existing principle in the CACoP, which licensees are obliged to comply with. We expect all licensees to ensure that mandatory code administration activities are provided and are appropriately funded – and we note that each code has in place a funding mechanism that can already achieve this. We expect licensees and panels to have regard to this in agreeing funding/setting budgets, and note that if there is evidence this is not happening, we would consider if action may be appropriate under the licence. We therefore do not consider that any changes are required to address the comments respondents have made in relation to funding, as we consider there are existing obligations and mechanisms that should be applied appropriately.

Initial Proposals

Mandating defined, minimum Critical Friend role

4.9. The Critical Friend role is already mandatory in that it is an existing requirement of CACoP (Principle 1), which also sets out guidance on how code administrators should achieve this principle. Mandating what is currently guidance may strengthen the Critical Friend role; however, there is a risk it may stifle innovation. In particular, we noted under CGR that we expected the examples provided in this guidance to be refined over time in light of operational practice.

4.10. We note, however, that there have been no changes to the guidance under principle 1 since CACoP was introduced in 2010. Whilst this may be because the guidance is appropriate, it may also indicate there is further work the industry and code administrators could do to learn from best practice across the codes, and ensure this is reflected in updated guidance. This may be an alternative to mandating the detailed scope of the Critical Friend role, and would be consistent with our aims when including this as guidance under CACoP in 2010. We would therefore look to the code administrators to work together to update the existing guidance as necessary and take steps to adopt best practice across all the codes.

Visibility

4.11. Given the low level of awareness of the existence of the Critical Friend role amongst smaller parties in particular, we consider that the visibility of this role needs to be improved to help increase engagement and ensure all parties are able to make most effective use of the services the code administrators can offer. We will take steps to make this role more visible on our website so that affected parties can see what the role entails and what administrators can do to support them.

4.12. We consider that code administrators should also make this role more visible on their websites. This could be done by each code website having a page that is dedicated entirely to this role. This could include a description of the role and have a clear and obvious link to it on the home page of each website. To make this page more useful and transparent, we think that each code administrator should detail exactly what it is doing by reference to the CACoP guidance in order to meet the Critical Friend principle and what services it is providing to users. We do not consider this to be an onerous task and consider that by clearly signposting this information it increases users' awareness, transparency and may facilitate greater consistency of approach across the codes. Our starting point is that there should be consistency between codes unless there are objective reasons that are clearly explained for a slightly tempered approach.

Code Administration Code of Practice (CACoP)

4.13. Under CGR, we set out to reduce the complexity and fragmentation of the existing governance arrangements. We considered that removing barriers to entry for smaller participants is likely to promote competition and should stimulate innovation within the codes regulatory framework. To support this aim, we introduced the CACoP which was developed by code users and code administrators based on the principles that code administrators and code modification processes will:

- promote inclusive, accessible, and effective consultation
- be governed by processes that are transparent and easily understood
- be administered in an impartial, objective and balanced manner

- provide rigorous, high quality analysis of any case for modification
- be cost effective
- contain rules and processes that are sufficiently flexible to allow for efficient Modification management and
- be delivered in a manner that avoids unnecessary regulatory burdens.

4.14. The relevant licence conditions require that the industry codes make provision for the code administrators to have regard to, and act consistently with, the principles contained in the CACoP and for the modification procedures for each of the industry codes to be consistent with the CACoP. Within each principle of the CACoP there is guidance on how code administrators can meet the principle. These are non-mandatory points which make up non-exhaustive lists aimed at capturing best practice.

Our May open letter

4.15. We noted in our May open letter that we consider there is scope for the CACoP to play a key role in better aligning processes across codes and establishing best practice in code administration. We welcomed the steps the code administrators have taken already to align with CACoP, for example providing accessible and relevant information on websites and providing some support to parties throughout the pre-modification process. However, we noted that there remain differences across the codes, which can add to the complexity in engaging in the code change process.

4.16. We noted that CACoP introduced performance metrics for the code administrators to report against. These were intended to be a means to ensure benchmarking and transparency on relative performance of the code administration processes. However, we set out that we do not consider that to date they have been demonstrated to achieve this. We noted that, in part, this may be the result of differences in reporting across the codes, which makes it difficult to meaningfully compare the data, and potentially increases the difficulty in establishing engagement in this across the codes.

4.17. We welcomed the work the code administrators have been doing to introduce an annual review process for CACoP through which they can seek feedback from code users, and the proposal (which has since been approved¹⁶) to add a new principle to CACoP (Principle 13) to require cross code coordination. However, we noted that further reforms may be needed to address ongoing inconsistencies in the code change processes, and in particular the difficulties faced by smaller parties in engaging with the codes.

¹⁶ https://www.ofgem.gov.uk/sites/default/files/docs/2015/08/cacop_approval_letter_2_0.pdf

Responses to our May open letter

4.18. One respondent suggested that a more uniform approach across the codes would be beneficial, while another suggested that there may be merit in having a single set of modification rules. It was also noted that there was insufficient consistency regarding how changes to each code are administered. However, one respondent noted the current volume and complexity of the changes is challenging to manage and is stretching current resources, and so on this basis further reform is discouraged.

4.19. It was noted that the annual CACoP reports are not accessible and that Ofgem should publish them. One respondent noted that direct comparison between codes is challenging as a result of the different complexities of each code.

Our views

4.20. Principle 4 of the CACoP sets out that the document must be periodically reviewed. Any changes proposed following such a review must be approved by the Authority. The code administrators currently undertake an annual review with industry which helps to ensure that the CACoP can be modified by users following a set process developed by code administrators¹⁷. Although we welcome the work done on this review and note it has resulted in some positive changes (e.g. the introduction of new Principle 13 to CACoP), it has not resulted in any developments under CACoP related to improving and extending best practice, nor has it so far resulted in any further streamlining of processes under codes.

4.21. We recognise the arrangements that code administrators have in place to ensure the requirements of the CACoP are met (e.g. sending email updates highlighting when a modification is raised, having teleconference facilities for meetings etc.). However, we are concerned that certain users are still unaware of these services and that some of these services have not been implemented consistently across all codes.

4.22. Principle 12 of the CACoP sets out agreed metrics against which the code administrators report annually. These metrics include both qualitative and quantitative information. These were intended to be a means to ensure benchmarking and transparency on relative performance of the code administrators' responsibilities under the CACoP as well as on the efficacy of the code modification processes. However, we recognise that such reports are not always easy to access or widely known about. There are also differences in how code administrators are reporting against these (e.g. what timescales they are using), which makes cross code comparisons more difficult. We also see little evidence that such reports are being used as feedback tools to improve current practice.

¹⁷ We note that code administrators are currently undergoing a review of this process with the aim of making it more transparent.

4.23. We understand that the industry codes are in some areas necessarily complex and as they have developed they have become increasingly more complex and different from one another. However, such complexity can make it harder for smaller parties to engage effectively. This is compounded by the fact that each code has its own process for modifying it. In introducing the CACoP we sought to simplify the code modification processes across codes by introducing Section 4 which sets out a common modification process and sets out the main points we consider should be included in any process designed by code administrators and their panels, whilst preserving flexibility to adapt the process to suit unique code issues. We are concerned that as a result of such differences it is hard to understand and know exactly how modifications are progressing and have progressed. We consider that the process of modifying an industry code should be straightforward, from raising a modification, through voting on it and decision through the self-governance procedure or by the Authority.

Initial Proposals

4.24. As noted above, the CACoP is reviewed annually, with any changes being approved by the Authority. We consider that the CACoP review process could be streamlined. One way of doing this is to introduce a self-governance process into this review so that minor, non-material changes can be made without the need for Authority consent. We also consider that it may be appropriate for the CACoP to be reviewed less frequently than on an annual basis (although retaining the ability for change to be brought forward at any time, should it be required).

4.25. We consider that the visibility of the CACoP needs to be increased to ensure that code users are aware of what should be available to them. We propose that this could be achieved by having clear links available on all code websites to a dedicated CACoP page. This page should include detailed descriptions of the services that the individual codes provide to users in order to meet each CACoP principle. This should help to raise the profile of the document as well as, through greater transparency, make the code administrators more accountable to their users for how they work.

4.26. We consider that it is important to have effective, fit for purpose reporting metrics that help achieve the principles underpinning the CACoP. The current metrics may need to be reviewed to ensure this. We consider that quantitative metrics are useful, not so much for cross code comparison but to track progress within an individual code. As such, we consider that code administrators should continue to report on the quantitative metrics. Such metrics need to be improved to make them clear as to exactly what each code should be reporting on to maintain consistency. The qualitative results should be useful when comparing current practice across codes. In order to improve the usefulness of such results we propose that a qualitative survey should be sent out periodically by one body to all code users covering all codes. This could be led by an industry body or Ofgem. A report could then be produced to compare across all codes. This report could also contain a section for each code mapping the quantitative metrics across the years that they have been reported on.

4.27. We note that CACoP currently sets out a modification process, although this is currently not standardised across all codes. A more standardised modification process

would mean that users will know how to raise a modification in all codes just by knowing one process. Such a process could be decided by the code administrators working together, with our input, and could be published in the CACoP. Another way to aid engagement is to standardise the modification templates across all codes. We propose that there should be a standard template for each step of the process (i.e. for raising a modification, progressing it through workgroups, sending it out to consultation and producing the final modification report). When producing such templates thought should be given to having a clear front page which outlines the proposal, solution, recommendations, and any other useful information. Such a template could be produced by the code administrators with input from Ofgem and industry participants and included in the CACoP.

Role of code panels

4.28. Each of the industry codes has a panel made up of representatives appointed by the industry. Each panel also provides for consumer and Authority representation, as well as other relevant parties for example the System Operator. Each of the panels has a range of functions across the different codes, and in particular each has a role in assessing and voting on code modifications raised by industry parties under open governance.

Our May open letter

4.29. We noted in our May open letter that the volume of code change at any time may add to the difficulties smaller parties face engaging with codes, as well as the inability to predict when a change may be brought forward (given this is entirely dependent on the proposer). We noted that there may be more effective ways to manage the change process and timings of changes, which may help smaller parties determine how best to use their resources for code engagement.

4.30. We suggested there may be merit in exploring options for more 'strategic' panels/proactive industry management of the modification process. We sought views on how code panels, code administrators and the wider industry can work more strategically to improve the code modification process. We noted for example that this could be through providing a forward work plan for the year to enable more efficient planning and allocating of resources throughout the year. Another option may be to have a more managed process for bringing forward change (e.g. a change window) in some areas.

Responses to our May open letter

4.31. Respondents to our May open letter broadly supported the concept of more strategic panels. However, several noted that any approach should provide for flexibility – for example to ensure that modifications that do not necessarily fit in with any agreed work plan should still be allowed to be raised. One respondent considered that forward planning is difficult to reconcile against the current rights of code parties to bring forward what they see as necessary and timely changes.

4.32. Respondents did not support a modification window. Many considered this would delay change, and considered industry should be able to retain the right to propose change at any time.

4.33. One respondent noted the 'Assessment Timetable' implemented in DCUSA via DCP210, whilst another respondent noted that the BSC Panel sets out its strategic priorities in a panel strategy, which incorporates a Strategic Work Programme.

4.34. One respondent suggested that a single code administrator/body might be able to ensure that changes are more strategic and that this may work well alongside an independent industry change overview board. Similar views were expressed by other respondents, and a number suggested that reducing the number of codes may help with code strategy by avoiding duplication of work.

Our views

4.35. We welcome the industry support for a more managed/strategic approach to the code modification process. We recognise the concerns of some respondents that any approach should not prevent modifications being raised and taken forward. Whilst we continue to see merit in a potential modifications window, in terms of managing the timing and volume of proposals, and enabling issues to be considered in the round, we do not propose to develop this further at this stage. We consider that our Initial Proposals below, together with initiatives such as the new CACoP Principle 13 on cross code coordination, should go some way to providing for a more strategic approach to managing change within and across codes.

4.36. We also recognise that some responses proposed far reaching reform to the current arrangements, including a single code administrator or new institution with a role in driving and coordinating code change. As set out in chapter one, we have noted in our response to the CMA's provisional findings and notice of possible remedies that we consider a reformed set of institutions would be central to ensuring that the regulatory regime is able to respond to the innovation and change the industry is going to see in the coming years. We therefore agree there are merits in considering some of the further-reaching reform options respondents have raised, and these responses are helpful in informing our input to the CMA on this aspect of its ongoing investigation. The aim of this consultation is to explore further improvements to code governance, building on the reforms introduced under CGR and CGR2, in light of the current institutional arrangements. We are not including any proposals for far reaching institutional reform at this stage as part of this review.

Initial Proposals

4.37. We propose that all panels develop a forward work plan, in consultation with the industry and Ofgem, which takes into account, for example, Ofgem's published Forward Work Plan and ongoing significant major Ofgem and/or government priorities. In developing forward work plans, we expect coordination across codes to ensure consistency.

4.38. In addition, we consider that panels could take a more proactive approach to managing 'major' industry change, including cross code change and potentially also establishing arrangements to ensure oversight of end-to-end delivery of central systems changes, where appropriate. For example, the codes could provide for the panel to be able to put in place appropriate project management and/or assurance arrangements to provide for greater oversight and to coordinate major change. We note this is consistent with the approach now being adopted to manage the end stages of Project Nexus.

4.39. We also note the approach to managing code change and cross code coordination that we and industry are adopting to implement the electricity European Network Codes (ENCs). The industry has established the Joint European Stakeholder Group, made up of industry representatives as well as representation from DECC and Ofgem. Respondents have also highlighted the cross code workshop that Elexon used to facilitate. We note similar groups to these could be set up to work on other policy initiatives to ensure robust and focused analysis and effective use of resource.

4.40. The approaches we have suggested aim to provide for a more strategic approach for panels in managing code change and cross code coordination, while retaining the benefits of open governance by enabling parties to continue to raise modifications as per the existing arrangements. Whilst this extension of their role would be something that could be taken forward by each panel, there would be benefit to industry participants in ensuring that there is a coherent and coordinated approach across all codes. Initially, we consider a group should be set up to look at how such an approach could be taken forward in a consistent manner.

Independence

4.41. In our CGR Final Proposals we introduced independent panel chairs to the CUSC and UNC panels, noting that the BSC already provided for this. We considered that this could provide, among other things, a degree of independent oversight of code administrators. In CGR2 we noted that such provisions in the smaller industry codes may be beneficial, although we did not consider at that time that regulatory prescription was required. We considered that panel composition could be considered by industry at the code level and would note that some do now have independent chairs (eg. IGT UNC).

4.42. We considered that the presence of an independently appointed panel chair might increase the robustness of industry assessments and may also help to ensure that small participants and consumer representatives are provided with more assistance in engaging in code processes. In particular, we considered that an independent chair would help to ensure that modification reports are balanced and set out the full range of arguments for and against modification proposals.

4.43. We also noted under CGR the need for code administrators and the panels themselves to operate in a manner which best serves the interests of all code parties, rather than being subject to potential influence from the relevant network operator or parties responsible for the funding of the code administrator.

Our May open letter

4.44. We did not comment on independent panel chairs in our May open letter. However, we did discuss the independence of panels. We noted that some codes require independent panel members (i.e. where voting members must act impartially and not represent the interests of their employer and/or constituency) whereas other panels rely on representative voting (e.g. individual DCUSA Parties are able to vote on proposed changes to DCUSA¹⁸). We proposed there may be benefits in extending the independent panel member requirement to other codes, to ensure that code modification decisions and recommendations are made on an impartial/objective basis.

4.45. We also discussed independent chairing of workgroup meetings. We noted that some codes provide independent chairs at workgroup meetings and there may be merit in requiring that all workgroups have an independent chair. We considered that this may help support smaller party representation. We further noted there may also potentially be benefits in requiring that independent and impartial expertise is appointed to workgroups in certain circumstances.

Responses to our May open letter

4.46. Several respondents to our May open letter supported independent panel chairs being a requirement for all codes. Some noted this would result in additional costs; some suggested that additional expense would only be a marginal increase as companies already have to supply the chairs themselves. A number of respondents considered it has been successful where independent chairs have been implemented to date, and that such chairs instil confidence that the meeting will be chaired impartially. There was concern that on some codes, for example the Grid Code, having a technical expert as the chair actually aided the process more than having a completely independent chair.

4.47. There was also some support in responses for having independent panel members, for example like the BSC arrangements. One respondent suggested that this would be the most efficient means of addressing any differences in resourcing between the larger and smaller participants, as independent panel members would consider the effect of the modification on all parties. Another suggested that having independent panel members may remove any perceived incumbency bias and improve engagement of smaller parties. However concern was raised that independence cannot be guaranteed if they are still industry members with some respondents preferring representative panel members. There was also some concern expressed that by making panels independent industry expertise would be lost.

4.48. There was also support from respondents for having independent working group chairs to help smaller party engagement. Although some suggested that the benefit

¹⁸ In our decision on DCP214 we noted that whilst it is inclusive, a party voting system may not necessarily be an effective way of ensuring that change recommendations and decisions are made in reference to the applicable code objectives.

may not be proportionate to the cost and that smaller parties should jointly fund experts to attend on their behalf. One respondent noted the benefit of the IGT workstreams now being chaired by the code administrator (rather than the IGTs).

Our views

4.49. Whilst we did not propose it in our May open letter, we note the support from industry to extend independent panel chair requirements across all of the codes. We agree this works well in those codes that currently have this arrangement. Extending this should support impartial and objective debate as well as focus it on the relevant issues. We recognise this may impose some additional cost, but agree that this should not be significant, as the industry already must provide resource to chair panels.

4.50. We note that panel member representation currently varies across the codes, with some code panels' members representing constituencies (this is also applicable to the DCUSA voting system) and others acting independently. We agree with respondents who noted there may be a perception of bias if panel members are not required to act independently. We recognise the need to ensure panel members have relevant expertise, and therefore do not consider independence from industry is required, but they should be required to be impartial. We consider that appropriate controls can be included at a code level, such as those that exist in the BSC (under which panel members are required to act impartially and in accordance with the code objectives; they must not be representative of the body by whom they were appointed; they must have a letter from their employer agreeing that they may act independently as a panel member). We also consider that it may be appropriate for the DCUSA voting system to be changed to a panel voting system, which would be consistent with the other codes.

4.51. We think there is value in having workgroups independently chaired by the code administrator. As discussed, as well as aiding debate, this would also have the knock on effect of helping the code administrators in carrying out their Critical Friend role.

Initial Proposals

4.52. **Independent panel chairs:** we propose that each code panel has an independent chair. As per the arrangements we introduced under CGR, it will be for the licensee(s), having particular regard to the views of the relevant panel, to ensure that they have discharged the requirement that the panel chair be independent. Like with the existing codes that have this approach, we propose that the Authority should have a right of veto over any candidate put forward by the licensee.

4.53. **Independent panel members:** we propose, for modification business at the very least, that panel members should act independently (i.e. voting members must act impartially and not represent the interests of their employer and/or constituency). This should also mean that panel members provide reasons as to why the modification proposal better facilitates the relevant objectives of the code. We do not expect such panel members to be independent of the energy industry, but they must act in an

independent manner and controls are in place to achieve this. We also propose that the DCUSA and SPAA voting should be undertaken by panel.

4.54. **Independent workgroup chairs:** We consider that workgroups should be chaired independently, and we propose this can be achieved through code administrator chairs. We recognise that in some cases, the code administrator function is carried out by the System Operator and not a separate code administrator entity. We consider the representative of the licensee, acting in the capacity as code administrator rather than representing NGET as the System Operator, can provide an appropriate degree of independent chairing. We note that there may be some instances where the code administrator might have a direct interest in the modification in which case it may be appropriate for an alternative chair to be in place.

4.55. Were these proposals to be implemented they would require changes to the current requirements of the panel or workgroup in respect of some of the codes. We would expect the relevant party to take forward such changes, which in the case of independent panel chairs would require an appropriate licence change, as was the case for implementation in the CUSC and the UNC.

Identifying consumer impacts

4.56. As part of the original CGR scoping exercise, we considered whether there was a need for code objectives to align with our statutory duties and principal objective to protect consumers. This was ruled out of scope of the CGR, as it was considered that issues relating to consumer impacts, social matters, safety and security of supply are primarily public policy and public interest matters that are more appropriately considered by the Authority as opposed to commercial matters in which the industry has expertise.

Our May open letter

4.57. We noted in our May open letter that aligning code objectives with our principal duty was ruled out of scope of the CGR. We set out that while we do not consider that this should be revisited, we recognised that there may be scope for consumer impacts to be better considered during the code modification processes and we welcomed ideas on how best to achieve this.

4.58. We sought views on how the industry can better report on consumer impacts of proposed modifications in order to aid engagement of all relevant parties. For example, we suggested that a section could be added to all modification reports to give a description, where relevant, of how the modification would affect consumers, what type of consumers would be affected and an approximation of how many consumers would potentially be affected. Potential consumer impacts could initially be identified by the proposer of a modification and updated as necessary throughout the modification process, allowing all parties to effectively engage with the development of the potential solution.

Responses to our May open letter

4.59. In response to our May open letter there was support to have a consumer impact section on the modification templates to help parties identify such impacts sooner. Some went further to say that the discussion of consumer impacts should be put on the standard terms of reference for every workgroup. However, there was a suggestion that consumer impacts should only be identified via an Ofgem impact assessment and that it is not for the industry to do so. There was also some disappointment expressed that we were not considering a consumer objective.

Our views

4.60. We recognise that it is not always clear from the outset what impacts a modification may have on consumers. It is important for all of industry to understand consumer impacts of any modification, including consumer representatives in order that they can engage efficiently and effectively and focus resource on areas where there are likely to be the biggest impacts on consumers. Additionally, though parties have told us that they do regularly consider consumers when raising and progressing modifications, such consideration is not, as a matter of practice, included in the modification reports that are sent to us for decision. Making parties consider what the impacts on consumers are from the start in a way that is transparent may help parties to engage more effectively (particularly those representing consumers) and help ensure that industry decisions and recommendations are taken more objectively. It will also help us when we come to make our decision so that we can see from the outset what has been considered and how.

4.61. We could mandate that industry carry out a consumer impact analysis for every modification, allowing panels to consider this when making their recommendations and decisions. However, it may not be possible for Ofgem to make a decision based on this analysis and, therefore, we would have to carry out another impact assessment, and so duplicate much of the work of industry. As a result we do not propose to mandate consumer impact analysis but would welcome views as to whether we should.

Initial Proposals

4.62. We continue to consider that including a consumer impacts sections on every change proposal form would help to ensure consumer impacts are considered through the entire modification process and therefore propose that such a section is included in each form. If possible, this should be filled in by the proposer when a modification is raised. However, if such impacts are not known this should be filled in as soon as possible and reviewed at every stage of the process (i.e. workgroups, consultations and panel discussions). As such, consideration of consumer impacts should be included in the Terms of Reference for each of the workgroups. We do not envisage this section on the change proposal form to be used to decide whether or not the impacts are beneficial, rather it will be to consider issues such as how it affects consumers, what type of consumers and an approximation of how many would be potentially affected. If it was considered that a modification would not have any

impact on consumers, we would expect a note explaining why this is thought to be the case and revisited as above if new information comes to light.

4.63. We consider that these changes could be taken forward by the relevant industry party. It may also be helpful to set out in CACoP how consumer impacts should be considered.

Other issues

4.64. In addition to the areas we set out in our May open letter, we have identified two relatively minor or 'housekeeping' issues that we propose to address as part of this review.

4.65. The first is in relation to the code objective, contained in some form in the majority of the codes, which relates to administration in code efficiency. For example, BSC objective (d) is "promoting efficiency in the implementation and administration of the balancing and settlement arrangements described in paragraph 2" and DCUSA objective (d) in the licence is "the promotion of efficiency in the implementation and administration of the DCUSA arrangements". This type of objective supports progression of housekeeping modifications and modifications related to code administration. Currently, there is no similar code administration efficiency objective in the CUSC (both the main code objectives and the charging objectives), the DCUSA charging objectives, the Distribution Code objectives and the Grid Code objectives. **We propose including such an objective for these codes.**

4.66. The second relates to the applicable objectives of the BSC, CUSC and STC. The licence condition for each of these codes indicates that the 'applicable objectives' in relation to proposed modifications to the modification procedures themselves are those provisions in the relevant licence condition which set out what the modification procedures should contain (for example, in relation to the BSC, paragraph 4 of SLC C3 of the electricity transmission licence). This approach does not apply to other codes, and we note that in practice, we and the industry assess all modifications against the same set of applicable objectives for that code, whether they seek to modify the modification procedures or other parts of the code. **We consider this is appropriate, and propose amending the definition of applicable objectives for the BSC, CUSC and STC to remove reference to the licence provision relating to the scope of the modification procedures.**

5. Charging methodologies

Chapter Summary

This chapter discusses a broad range of issues related to the governance of charging methodologies. It summarises respondents' views to our May open letter and sets out our Initial Proposals on some potential ways that the existing modification processes in respect of charging methodologies can be made more robust and deliver more effective and efficient outcomes.

Question Box

Question 1: Should all 'material' charging modifications proceed through pre-modification processes and demonstrate some initial evidence against the relevant charging objectives prior to being formally raised?

Question 2: Could the current pre-modifications processes for charging code changes be applied more effectively in line with CACoP Principles 5 and 6?

Question 3: Should panels develop forward workplans for charging modifications in line with agreed priority area(s) to provide a more robust approach to managing modifications?

Question 4: Do you agree that charging modifications which are 'not material' (in line with self-governance criteria) should be progressed through the self-governance route?

Question 5: Do you agree that bringing all current charging methodologies forums under DCUSA governance could help to improve stakeholder engagement and increase the consistency of processes for charging modifications?

Question 6: Do you agree that having a panel sponsor would help the DCUSA Panel better understand the origins of charging modifications and the DCUSA Panel would be more accountable for, and engaged with, efficiently progressing them?

Question 7: Please set out any other proposals you may have for improving the governance for charging methodologies under open governance arrangements.

Open governance for charging methodologies

5.1. Under CGR, the governance of a number of charging methodologies were incorporated into the open governance arrangements of their respective industry codes (UNC¹⁹, CUSC²⁰ and the DCUSA²¹). It was considered that open governance

¹⁹ See Section Y of the UNC Transportation Principal Document (TPD) here: http://www.gasgovernance.co.uk/sites/default/files/TPD%20Section%20Y%20-%20Charging%20Methodologies_23.pdf

²⁰ See Section 14 of the CUSC here: <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/CUSC/The-CUSC/>

²¹ Subsequently, the electricity distribution charging methodologies were also brought into industry code governance. Our decision to implement a Common Distribution Charging Methodology (CDCM) through DCUSA (November 2009) is here: <https://www.ofgem.gov.uk/ofgem-publications/44179/cdcm-decision-doc-201109-2.pdf>. Our decision to deliver the electricity Structure of Charges project for extra high voltage charging and associated governance arrangements (July 2009) is here: <https://www.ofgem.gov.uk/publications-and-updates/delivering->

would improve accountability, accessibility and transparency of the charging methodologies for networks users. Open governance would also enable those users and materially affected customers to raise charging code changes (and related non-charging code changes where appropriate) which would be managed through a well-established, robust process. Discussion of issues relating to charging methodologies would continue to take place in existing charging methodology forums²².

5.2. We anticipated that including the governance of charging methodologies within code open governance arrangements would result in network licensees developing robust and effective processes for planning, managing and implementing charging modifications²³. We recognised a concern that a significant number of charging code modification proposals could come forward, thereby increasing administrative costs and creating regulatory uncertainty. However, we considered that this could be mitigated by effective planning by the network licensees. Effective planning could be achieved by adapting existing modification processes to incorporate a change window, allowing the development of a forward workplan and rationalisation of parallel proposals. We suggested a three month change window could work, but that it would be for network licensees to develop an appropriate process. However, no proposals have been raised or changes made along these lines since. We also expected the volume of changes raised during a window to be limited through the use of effective pre-modifications processes (the charging methodologies forums) acting as a filter for modifications formally entering the modifications process.

Our May open letter

5.3. In our May open letter, we acknowledged that the inclusion of charging methodologies within the governance of industry codes has been successful and is achieving the aim of increased engagement with charging code changes. This has been beneficial overall. However, we also noted that some of the codes, e.g. DCUSA,

[electricity-distribution-structure-charges-project-decision-extra-high-voltage-charging-and-governance-arrangements](https://www.ofgem.gov.uk/publications-and-updates/making-changes-electricity-distribution-common-connection-charging-methodology-decision-modify-electricity-distribution-licence-facilitate-open-governance). Our decision to facilitate changes to the Common Connection Charging Methodology (CCCM) through open governance (June 2012) is on our website here: <https://www.ofgem.gov.uk/publications-and-updates/making-changes-electricity-distribution-common-connection-charging-methodology-decision-modify-electricity-distribution-licence-facilitate-open-governance>. The methodologies are incorporated in the DCUSA in Schedule 16 (Common Distribution Charging Methodology (CDCM)), Schedules 17 and 18 (Extra High Voltage Charging Methodology (EHV CM)) and Schedule 22 (Common Connection Charging Methodology (CCCM)).

²² For the CUSC, the relevant charging forum established by licence (Standard Condition C10(6)(ad)(i) of the Electricity Transmission Licence) is the Transmission Charging Methodology Forum (TCMF). For the UNC, the relevant charging forums established by licence (Standard Special Condition A11(9)(ac)(i) of the Gas Transporters Licence) are the gas Transmission Charging Methodology Forum (TCMF) and the gas Distribution Charging Methodology Forum (DCMF). For the DCUSA, licensees are obligated by their licence (Standard Condition 22A.13 of the Electricity Distribution Licence) to develop arrangements to meet and discuss further development of relevant charging methodologies (the Distribution Charging Methodology Forum (DCMF)).

²³ See paragraphs 4.24 and 4.25 of the CGR Final Proposals document.

have experienced high volumes of charging code changes. We suggested that further practical measures may be needed to manage the current processes more effectively.

5.4. In particular, we identified and sought views on the following:

- whether there is a need for a more effective pre-modification process to enable issues to be considered in the round prior to entering the formal modification process. We noted this could enable consideration of how potential changes relate to each other and how they meet policy priorities.
- whether a change 'window' (within which modifications may be raised and assessed) could assist in better prioritisation and planning²⁴.
- Whether there were circumstances when charging modifications could follow the self-governance route.

Responses to our May open letter

5.5. Respondents to our May open letter made the following observations about the governance of charging methodologies:

5.6. ***Inclusion of the charging methodologies in code open governance arrangements:*** most respondents who commented considered that the inclusion of charging methodologies in industry codes is a beneficial development. They agreed with us that this approach has enhanced engagement by more parties than would otherwise have been reached. However, one small party did not consider that there is still sufficient active engagement of smaller parties by network owners and suggested revisiting the existing process by which users are invited to engage with them.

5.7. ***Enhanced and effective pre-modification processes:*** generally, those respondents who commented did not agree with a compulsory pre-modification process for all charging modifications that would only subsequently enter the formal modification process. However, some open letter responses identified a lack of stakeholder understanding of code changes at an early stage which potentially affects processing times once modifications are formally raised. There were a variety of views on making better use of existing pre-modification processes such as the charging methodologies forums. One respondent suggested that the forums should make their papers and meeting dates available on a public website and accessible to all users who wanted to know about them and not just to those who had previously engaged. Another suggested that the timing, format and attendance at existing forums should change to improve current levels of engagement. One respondent did see some benefit to a compulsory pre-modifications process for issues identified as potential

²⁴ As noted in the open letter, we recognised this may result in changes raised in a given 'window' needing to be developed over longer timescales and not necessarily delivered for that charging year.

modifications, so long as the principle of proposer ownership of an issue was retained and the proposer could subsequently choose whether to raise a charging code change.

5.8. ***Establishing forward workplans, effective 'packaging' of charging modifications and a clearer change cycle (change 'window')***: there was a broadly negative response to our suggestion of a change window to assist with planning and more effective 'packaging' of charging modifications. Some respondents identified flexibility and the ability of any party to raise a charging modification at any time as beneficial. In their view, a change window could concentrate limited industry and Ofgem resources on charging code changes into a short period of time with a consequential detrimental impact on efficiency, and would be unsuitable for urgent code changes. Other respondents did see some merit in developing a forward plan for charging code changes as changes generally come into effect on a specific date and having a 'target' date provides an incentive to timetable them. However, these respondents also recognised that this approach would be unsuitable for more complex charging issues and modifications.

5.9. In our workshop sessions, there was also a broadly negative view of establishing a change window. Attendees considered that the window would be inflexible and would act as a 'straitjacket' for the modifications process but without achieving any improvements to efficiency. 'Good' modifications could potentially miss the window, there would be peaks in activity which could stretch limited resources and it would adversely affect the principle of proposer ownership. Some attendees also linked concerns about an effective process for charging code changes to a general need for more strategic code management by panels.

5.10. ***Use of self-governance for charging methodology modifications:*** respondents considered that further guidance on the 'materiality' of modifications could help determine whether more charging modifications (which are almost always treated as material because they affect users' charges) should be treated as self-governance.

5.11. ***DCUSA specific concerns:*** Some workshop attendees considered that the lack of an effective pre-modification process seemed to be a DCUSA specific concern and that any practical remedies should be limited to this code. One open letter response highlighted in particular the lack of a single public website for papers about DCUSA charging code changes. Another response also highlighted the need to revisit how to engage more effectively with smaller parties and new entrants on charging code changes.

Our views

5.12. ***Pre-modification process:*** the existing pre-modification processes do not appear to act as an effective filter for charging modifications, with the result that a number of modifications go straight into the formal process without prior discussion. We are concerned that there may be a lack of effective engagement with and between parties prior to raising those modifications. We also note that network licensees continue to be the main source of charging modifications. This suggests that users

may not be effectively supported when seeking to raise charging issues or that they lack confidence in the pre-modification processes and so choose to engage, if at all, only through the formal modification process. The current inconsistent use of pre-modifications processes may result in extended and inefficient processing of charging modifications once they are formally raised. A more robust pre-modifications process (operated through the existing charging methodologies forums) should enable more parties to engage, bring forward issues for consideration in the round and then to raise formal charging modifications. The provision of robust analysis of issues at an early stage should facilitate proper assessment (including whether they are material) and improve the quality of charging modifications which are then formally raised.

5.13. **Forward work plans and 'packaging' of charging changes** – we continue to have concerns about a lack of effective 'packaging' of charging code changes, which potentially hampers the efficiency of the process for assessing charging modifications in similar subject areas by ensuring this happens in parallel and in the round. While we recognise there are concerns regarding the establishment of a change window, we also agree with respondents that improvements to the overall planning cycle for charging changes should be established through the governance arrangements. Industry and code administrators are well placed to undertake this.

5.14. **Self-governance:** we recognise that many charging modifications would be unlikely to meet the self-governance criteria given the potential material impact on, for example, consumers and competition. However, we agree with respondents that further guidance on the materiality criteria would help to establish whether certain charging modifications could progress through the self-governance route²⁵. In chapter 4 above, we have discussed possible changes to the self-governance process that we consider could equally be applied to charging modifications.

5.15. **DCUSA specific concerns:** specifically in respect of the electricity distribution charging methodologies, governance around, and information about, the pre-modifications processes (the charging methodologies forums) appears to be fragmented:

- The DCUSA governs the Standing Issues Group (SIG) (for non-charging issues) but not the Distribution Charging Methodologies Forum (DCMF) (for charging issues), the Commercial Operations Group (COG) (although this is a DNO-only forum, it still impacts charging under the DCUSA) and the DCMF Methodologies Issues Group (MIG) (also for charging issues).
- Papers for the DCMF, the DCMF MIG and the COG are hosted and accessed on the Energy Networks Association (ENA)'s website²⁶. All other DCUSA

²⁵ See footnote 22 of our May open letter and the example of DCP170 here:

<https://www.ofgem.gov.uk/publications-and-updates/open-letter-further-review-industry-code-governance>

²⁶ See the link to the DCMF and DCMF MIG on the ENA website here:

<http://www.energynetworks.org/electricity/regulation/distribution-charging/distribution-charging-working-groups.html> and to the COG here:

documentation about modifications (charging and non-charging) is accessed on the DCUSA website²⁷.

5.16. The lack of a single point of information is likely to adversely affect users and other affected parties wishing to access the relevant papers and understand the change processes should they for example intend to raise a charging modification.

Initial Proposals

5.17. We consider that there are a number of improvements that could be made to the modification process for charging methodologies. Our Initial Proposals in these areas are set out below.

Pre-modification process

5.18. **We consider that there would be benefits in all 'material'²⁸ charging modifications going through a pre-modifications process prior to being formally raised.** The benefit of this approach is that there is some initial evidence against the relevant charging objectives for proceeding formally with a charging modification. Early discussion through a pre-modification process with other industry participants can give early sight of an issue to interested stakeholders, help in the development of a charging modification with wider input before its formal submission, and thereby improve the efficiency and timeliness of the formal process as a result. Charging modifications which cannot demonstrate some early assessment could be sent back by the relevant panel to be developed further prior to returning to the formal process.

5.19. We consider that the proposal form for each charging modification should record what pre-modification assessment was undertaken, any outcomes of that assessment, and how the modification formally raised as a result may better facilitate the relevant charging objectives of the code. It does not dilute the principle of proposer ownership which applies from when a modification is formally raised. Instead it enhances this principle as the proposer can show it has used the pre-modifications process to debate the issue and has established some robust evidence for taking forward a modification.

5.20. The CACoP provides (Principle 5) for active support by code administrators of access to the use of pre-modification processes so that industry can be encouraged to debate and develop solutions. The CACoP also provides (Principle 6) for proposer

<http://www.energynetworks.org/electricity/regulation/working-groups.html>

²⁷ See the DCUSA website here: <http://www.dcusa.co.uk/SitePages/Home.aspx>

²⁸ In this context, 'material' can be determined in line with any guidance developed in respect of the use of the self-governance route and whether Authority consent is required for a modification – see paragraph 5.25 below.

ownership to apply to modifications that are formally raised so that the proposer can retain control of its solution.

5.21. We do not see a conflict in the practical application of these two principles. Instead, for charging modifications, they should complement one another to ensure:

- a potential proposer of a modification has confidence in the pre-modifications process (the charging methodologies forums) to debate and develop its idea, and then
- the proposer raises a proposal formally which has been robustly developed and over which it retains ownership.

Development of a forward workplan by panels for charging modifications

5.22. In light of responses to our open letter which were broadly against the concept of a change window, we have decided not to proceed with this approach. However, we do consider that there are improvements that can be made to make the existing modifications processes more effective in how resources are focused and how to provide a more efficiently executed modifications process for charging modifications. Charging modifications will generally be implemented on a specific date each year and so a natural timetable and plan could develop for assessing these modifications with that target date in mind.

5.23. In chapter 4 of this document, we have proposed a more strategic approach to how panels can plan and manage modifications processes, both for individual codes and through cross code coordination. We consider that this approach could be particularly beneficial for charging modifications. Some respondents to our open letter also favour a more planned approach. Therefore, the current flexibility for raising charging modifications at any time would be retained. **However, certain charging 'priority' area(s) could be agreed each year and charging modifications that deliver in the priority area(s) would be the subject of a panel forward workplan.** There would be an expectation that, except for more complex modifications, these charging modifications would be developed and ready for decision for implementation on the specific date.

5.24. This approach would concentrate both industry and Ofgem resource over a specific period of time. However, an effective plan and timetabling of modifications could provide more focus and efficient use of resources. A more effective use of pre-modification processes would also assist in managing resources efficiently. As set out in chapter 4, we consider that panels, working alongside industry, code administrators and ourselves, are well placed to develop and execute effective forward work plans that deliver in significant priority areas with timely and real benefits for, amongst other things, consumers and competition. We consider that it would be appropriate for these plans to include charging modifications. The existing processes are capable of being adapted to achieve these aims.

Use of the self-governance route for charging modifications

5.25. In chapter 3 of this document, we are seeking views on how the self-governance route could be used more often where the relevant criteria are met, e.g. development of guidance about what is 'material'. We would want to inform guidance on materiality in relation to charging mods with care and consider the impacts on all types of customer. We would keep a definition of material changes in relation to charges under review. **Guidance or an initial assessment of why Authority consent is needed for a modification, including for a charging modification, could enable some charging modifications to proceed through the self-governance route too, freeing up resources for consideration of 'material' modifications in line with established priorities.** As set out in chapter 3, we have put forward both these options for further consideration and potentially for implementation.

Specific proposals for DCUSA charging:

Information about pre-modifications processes to be less fragmented

5.26. We consider that it may be appropriate that information about the various charging methodologies forums (DCMF, DCMF MIG and COG) should be brought under DCUSA governance and administered by a single party to provide a 'one-stop' shop for information about charging issues (and non-charging issues) and to improve the consistency of processes. **Ensuring that all relevant documentation is managed through a single website should provide ease of access for interested stakeholders and could help to address concerns about the lack of engagement by some affected parties.** It could also assist in ensuring that a more effective 'joined up' pre-modifications process develops for DCUSA.

Each charging methodologies forum (DCMF, DCMF MIG and COG) to have a DCUSA Panel sponsor

5.27. Currently, there is no formal connection between the DCUSA Panel which oversees the process for formal charging modifications and the pre-modifications processes through which these modifications should be initially developed. **By having a panel sponsor who reports back to the panel each month on the issues discussed at the DCMF, the DCMF MIG and the COG, we consider that the panel would better understand the origins of charging modifications and the panel would be more accountable for, and engaged with, efficiently progressing them.** Together with the panel playing a more direct role in managing forward planning for charging modifications this should develop and maintain a firm link between the DCUSA Panel which is responsible for DCUSA governance and the charging methodologies forums tasked with initially assessing charging issues and potential modifications²⁹. Panel members can take up a 'sponsor' role on the various

²⁹ Parallels can be drawn with the Balancing and Settlement Code (BSC) where individual BSC Panel members sponsor and attend panel sub-committees.



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charging methodologies forums without any significant change to existing arrangements, e.g. the forum's Terms of Reference may in certain cases be amended to facilitate this.

Appendices

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Appendix 1 - Consultation Response and Questions

Ofgem would like to hear the views of interested parties in relation to any of the issues set out in this document. We would especially welcome responses to the specific questions which we have set out at the beginning of each chapter and which are replicated below.

Responses should be received by 18 December 2015 and should be sent to:

Marion Quinn
Industry Codes & Licensing
9 Millbank, London, SW1P 3GE
industrycodes@ofgem.gov.uk

Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website www.ofgem.gov.uk. Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

Any questions on this document should, in the first instance, be directed to:

Lesley Nugent
Industry Codes & Licensing
industrycodes@ofgem.gov.uk

CHAPTER: Two

Question 1: Do you agree that Ofgem should have the ability to lead an end-to-end SCR process, including the development of code change and legal text?

Question 2: Do you agree it is appropriate to clarify that Ofgem may set timetables for the code change process under an SCR, when the existing, industry-led code development route is used?

Question 3: Do you have any comments on the licence drafting set out in Appendix 3?

Question 4: Should Ofgem be able to directly raise a modification proposal under the standard process (option 2A)?

Question 5: Do you have any other proposals for changes to the SCR process?

CHAPTER: Three

Question 1: Do you agree that requiring a positive identification of why Authority consent is needed (rather than why it is not) could result in additional modifications being developed under self-governance?

Question 2: Do you agree that guidance on the materiality criteria may assist industry in its assessment of whether a modification should be self-governance or require Authority consent?

Question 3: Do you agree that any potential guidance is something that panels and code administrators should develop, based on experience to date of using self-governance?

Question 4: Do you have any other proposals that may improve the self-governance processes under the codes?

CHAPTER: Four

Question 1: Do you agree that updating the guidance in CACoP and ensuring best practice across all codes would enhance the role of the Critical Friend?

Question 2: Please provide your suggestions as to how the Critical Friend role could be better advertised and what information each code administrator should include on its website.

Question 3: Could a self-governance process be introduced for the CACoP?

Question 4: How often should the CACoP be reviewed?

Question 5: Do you agree that greater visibility of the CACoP can be achieved by having clear links available on all code websites to a dedicated CACoP page?

Question 6: How could the quantitative metrics be improved?

Question 7: Should a single body send out one qualitative survey across all codes? If so, who would be best placed to undertake this role?

Question 8: Do you agree that the modification process and template should be standardised across all codes?

Question 9: Is it appropriate that all panel chairs be completely independent of industry?

Question 10: Is it appropriate that all panel members are required to be impartial, i.e. not to represent the interests of their company?

Question 11: Should DCUSA voting be undertaken by panel, rather than all parties?

Question 12: Should code administrators provide a chair for workgroups?

Question 13: Would including a consumer impacts section on each change proposal form help to ensure consumer interests are discussed and published?

Question 14: Do you agree with the housekeeping changes we have proposed?

CHAPTER: Five

Question 1: Should all 'material' charging modifications proceed through pre-modification processes and demonstrate some initial evidence against the relevant charging objectives prior to being formally raised?

Question 2: Could the current pre-modifications processes for charging code changes be applied more effectively in line with CACoP Principles 5 and 6?

Question 3: Should panels develop forward workplans for charging modifications in line with agreed priority area(s) to provide a more robust approach to managing modifications?

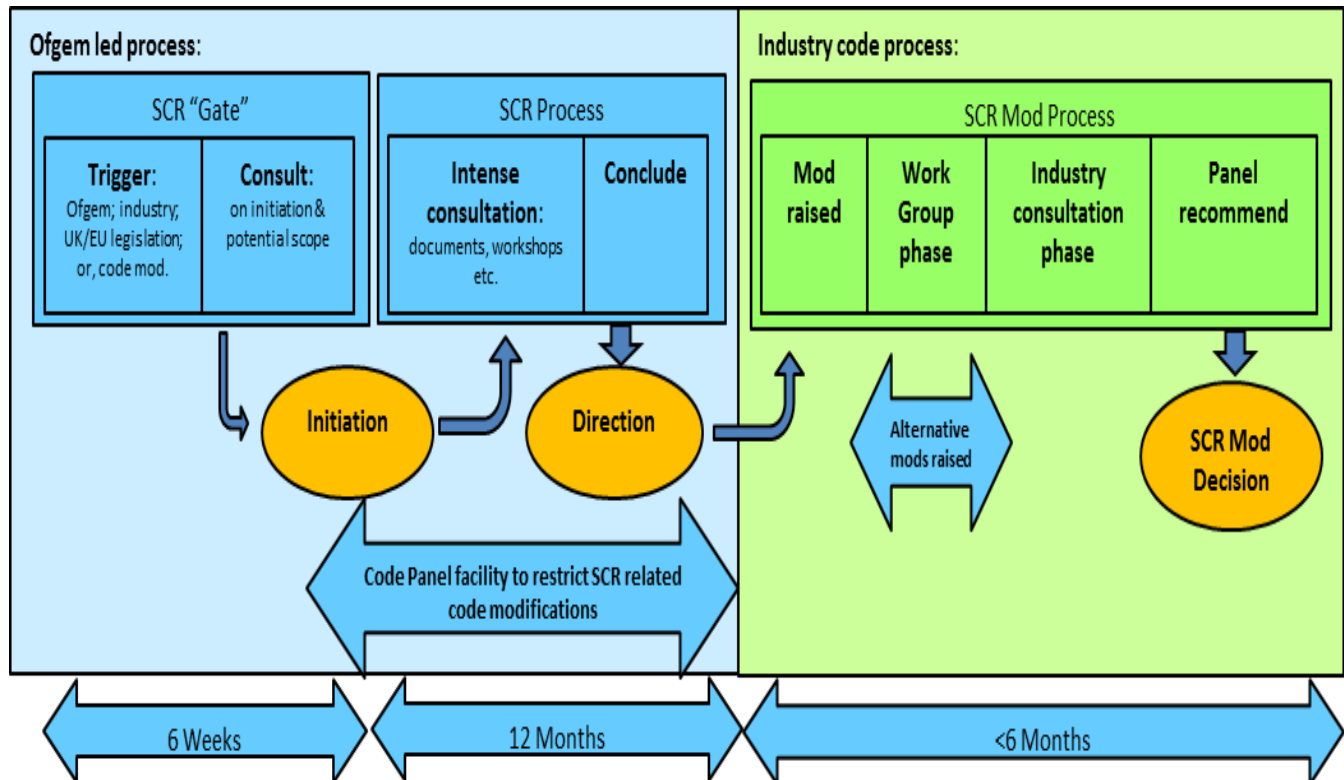
Question 4: Do you agree that charging modifications which are 'not material' (in line with self-governance criteria) should be progressed through the self-governance route?

Question 5: Do you agree that bringing all current charging methodologies forums under DCUSA governance could help to improve stakeholder engagement and increase the consistency of processes for charging modifications?

Question 6: Do you agree that having a panel sponsor would help the DCUSA Panel better understand the origins of charging modifications and the DCUSA Panel would be more accountable for, and engaged with, efficiently progressing them?

Question 7: Please set out any other proposals you may have for improving the governance for charging methodologies under open governance arrangements.

Appendix 2 - Details of how the Current SCR Process Works



Indicative timeframes

Appendix 3 – Illustrative licence drafting

Condition C3: Balancing and Settlement Code (BSC)

1. The licensee shall at all times have in force a BSC, being a document
 - (a) setting out the terms of the balancing and settlement arrangements described in paragraph 2;
 - (b) designed so that the balancing and settlement arrangements facilitate achievement of the objectives set out in paragraph 3;
 - (c) including the modification procedures required by paragraphs 4, ~~4A to 4DC and~~ 13A ~~and to~~ 13D;
 - (d) including the matters required by paragraph 6;
 - (e) establishing a secretarial or administrative person or body, as specified in the BSC, (the "code administrator") and setting out the code administrator's powers, duties and functions, which shall:
 - (i) include a requirement that, in conjunction with other code administrators, the code administrator will maintain, publish, review and (where appropriate) amend from time to time the Code of Practice approved by the Authority and any amendments to the Code of Practice are to be approved by the Authority;
 - (ii) include facilitating the matters required by paragraphs 4 and 6;
 - (iii) have regard to and, in particular to the extent that they are relevant, be consistent with the principles contained in, the Code of Practice;
 - (f) establishing a panel body, as specified in the BSC, (the "panel") whose functions shall include the matters required by this condition, and whose composition shall include:
 - (i) an independent chairperson approved by the Authority; and
 - (ii) a consumer representative (appointed by Citizens Advice or Citizens Advice Scotland, or any successor body) who has a vote as specified in the BSC,and the licensee shall be taken to comply with this paragraph by modifying from time to time in accordance with the provisions of paragraphs 4 and 5 and the transition modification provisions, the document known as the BSC which existed and the licensee maintained pursuant to this licence immediately prior to the start of the transition period.
- 1A. The BSC may also include provisions about
 - (a) arrangements for the operation of any reconciliation mechanism established by the Secretary of State under section 11 of the Energy Act 2010 in connection with a scheme for reducing fuel poverty, where the operator of the reconciliation mechanism is the BSCCo (as referred to in paragraph 1B) or an affiliate of the BSCCo; and

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- (b) arrangements that facilitate the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation.
- 1B. The licensee shall establish a Balancing and Settlement Code Company (BSCCo) to provide and procure facilities, resources and services required for the proper, effective and efficient implementation of the BSC.
- 1C. The BSC shall not include provisions that prevent or restrict the BSCCo or any affiliate of the BSCCo from:
- (a) operating the reconciliation mechanism referred to in paragraph 1A(a); or
 - (b) undertaking the calculation, collection, administration and settlement of amounts payable or arising in respect of contracts for difference and capacity agreements entered into pursuant to EMR legislation.
- 1D. The BSC may include provisions allowing the BSCCo or any affiliate of the BSCCo to undertake activities other than those referred to in paragraphs 1, 1A and 1B above, subject to Authority consent.
2. The balancing and settlement arrangements are
- (a) arrangements pursuant to which BSC parties may make, and the licensee may accept, offers or bids to increase or decrease the quantities of electricity to be delivered to or taken off the total system at any time or during any period so as to assist the licensee in co-ordinating and directing the flow of electricity onto and over the national electricity transmission system and balancing the national electricity transmission system; and for the settlement of financial obligations (between BSC parties, or between BSC parties and the licensee) arising from the acceptance of such offers or bids; and
 - (b) arrangements:
 - (i) for the determination and allocation to BSC parties of the quantities of electricity delivered to and taken off the total system, and
 - (ii) which set, and provide for the determination and financial settlement of, obligations between BSC parties, or (in relation to the system operator's role in co-ordinating and directing the flow of electricity onto and over the national electricity transmission system) between BSC parties and the licensee, arising by reference to the quantities referred to in sub-paragraph (i), including the imbalances (after taking account of the arrangements referred to in sub-paragraph (a)) between such quantities and the quantities of electricity contracted for sale and purchase between BSC parties.
3. The objectives referred to in paragraph 1(b) are:
- (a) the efficient discharge by the licensee of the obligations imposed upon it by this licence;
 - (b) the efficient, economic and co-ordinated operation of the national electricity transmission system;

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- (c) promoting effective competition in the generation and supply of electricity, and (so far as consistent therewith) promoting such competition in the sale and purchase of electricity;
 - (d) promoting efficiency in the implementation and administration of the balancing and settlement arrangements described in paragraph 2;
 - (e) compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency; and
 - (f) implementing and administering the arrangements for the operation of contracts for difference and arrangements that facilitate the operation of a capacity market pursuant to EMR legislation.
4. The BSC shall include procedures for its own modification (including procedures for the modification of the modification procedures themselves), which procedures shall provide:
- (a) subject to paragraphs 4A and 4B, for proposals for modification of the BSC to be made by the licensee, BSC parties, the Authority (in relation only to modifications within the scope of paragraph 13F ~~which it reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency~~), and such other persons or bodies as the BSC may provide;
 - (aa) for proposals for modification of the BSC to be made by the licensee in accordance with a direction issued by the Authority pursuant to paragraphs 4(ae), 4C (the "significant code review route") and 10(b);
 - (ab) for the implementation of modification proposals without the Authority's approval in accordance with paragraphs 13A (the "self-governance route") and 13C;
 - (ac) for the provision by the code administrator of assistance, insofar as is reasonably practicable and on reasonable request, to parties (including, in particular, small participants and consumer representatives) that request the code administrator's assistance in relation to the BSC including, but not limited to, assistance with:
 - (i) drafting a modification proposal;
 - (ii) understanding the operation of the BSC;
 - (iii) their involvement in, and representation during, the modification procedure processes (including but not limited to panel and/or workgroup meetings) as required by this condition, specified in the BSC, or described in the Code of Practice; and
 - (iv) accessing information relating to modification proposals and/or modifications;
 - (ad) for modification proposals made by the Authority or the licensee in accordance with paragraphs 4(a), 4(aa) and 4(ae)(i) respectively which ~~the Authority reasonably considers are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency~~ fall within the scope of paragraph 13F:
 - (i) to be accepted into the BSC modification procedures by the panel;

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(ii) where they are raised by the licensee, not to be withdrawn without the Authority's prior consent; and

(iii) to proceed in accordance with any timetable(s) directed by the Authority in accordance with paragraph 4(ae);

(ae) for compliance by the licensee and (where applicable) the panel with any directions(s) issued by the Authority under this paragraph setting and/or amending a timetable (in relation to a modification proposal which ~~the Authority reasonably considers falls within the scope of paragraph 13F~~ is necessary to comply with or implement the Electricity Regulation and/or any relevant binding decisions of the European Commission and/or the Agency) for the:

(i) licensee to raise a modification proposal; and/or

(ii) completion of each of the proposal steps outlined in paragraph 4, to the extent that they are relevant; and/or

(iii) implementation of a modification.

(af) for the implementation of modification proposals without the Authority's approval in accordance with paragraph 13D (the "fast track self-governance route");

(b) except in the case of a modification falling within the scope of paragraph 13D or 4AA, where a proposal is made in accordance with paragraphs 4(a), 4(aa) and, unless otherwise directed by the Authority, 4(ab),

(i) for bringing the proposal to the attention of BSC parties and such other persons as may have an appropriate interest in it (including consumer representatives);

(ii) for proper consideration of any representations on the proposal including representations made by small participants and/or consumer representatives;

(iiA) for properly evaluating the suitability of the significant code review or self-governance route for a particular modification proposal

(iii) for properly evaluating whether the proposed modification would better facilitate achieving the applicable BSC objective(s), provided that so far as any such evaluation requires information which is not generally available concerning the licensee or the national electricity transmission system, such evaluation shall be made on the basis of the licensee's proper assessment (which the licensee shall make available for these purposes) of the effect of the proposed modification on the matters referred to in paragraphs 3(a) and (b);

(iv) for the development and consideration of any alternative modifications which may, as compared with the proposed modification, better facilitate achieving the applicable BSC objective(s), provided that:

- the alternative proposals are made as described in the Code of Practice and as further specified in the BSC; and

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- unless an extension of time has been approved by the panel and not objected to by the Authority after receiving notice, any workgroup stage shall last for a maximum period (as specified in the BSC) from the date on which the original modification was proposed,

(ivA) for the evaluation required under paragraph 4(b)(iii) (and, if applicable paragraph 4(b)(iv)) in respect of the applicable BSC objective(s) to include, where the impact is likely to be material, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions, to be conducted in accordance with such guidance (on the treatment of carbon costs and evaluation of the greenhouse gas emissions) as may be issued by the Authority from time to time,

(v) for the preparation of a panel report:

- * setting out the proposed modification and, separately, any alternatives,
- * evaluating the proposed modification and, separately, any alternatives,
- * assessing the extent to which the proposed modification or any alternative would better facilitate achieving the applicable BSC objective(s) and providing a detailed explanation of the panel's reasons for that assessment (such assessment to include, where applicable, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions in accordance with 4(b)(ivA)),
- * assessing the impact of the modification and any alternative on the core industry documents and the changes expected to be required to such documents as a consequence of such modification,
- * setting out a timetable for implementation of the modification and any alternative, including the date with effect from which such modification and any alternative (if made) would take effect; and

(vi) for the submission of the report to the Authority as soon after the proposal is made as is appropriate (taking into account the complexity, importance and urgency of the modification, and in accordance with the time periods specified in the BSC, which shall not be extended unless approved by the panel and not objected to by the Authority after receiving notice) for the proper execution and completion of the steps in sub-paragraphs (i) to (v);

(vii) for the revision and re-submission of the panel report provided under sub-paragraphs (v) and (vi), such re-submission to be made, if required by a direction issued by the Authority under paragraph 5(aa), as soon after the Authority's direction as is appropriate (taking into account the complexity, importance and urgency of the modification),

(c) for the timetable (referred to in sub-paragraph (b)(v)) for implementation of any modification to be either:

- (i) in accordance with any direction(s) issued by the Authority under paragraph 4(ae)(iii);
or
- (ii) where no direction has been issued by the Authority under paragraph 4(ae)(iii)

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such as will enable the modification to take effect as soon as practicable after the Authority has directed or, in the case of a proposal falling under paragraphs 4(ab) and 13A, the panel has determined that such modification should be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended or shortened with the consent of or as directed by the Authority after those persons likely to be affected by the revision of the timetable have been consulted;

(d) for empowering the licensee to secure, if so directed by the Authority in circumstances specified in the BSC,

(i) that the modification procedures are complied with in respect of any particular modification in accordance with the terms of the direction;

(ii) that, where a modification has been made but not implemented in accordance with its terms, all reasonable steps are taken to implement it in accordance with the terms of the direction;

(iii) that the licensee can recover its reasonable costs and expenses properly incurred in complying with the direction, and

(e) for each of the procedural steps outlined in this paragraph 4, to the extent that they are relevant, to be consistent with the principles contained in the Code of Practice.

(f) for the completion of each of the procedural steps outlined in this paragraph 4, to the extent that they are relevant, to be in accordance with any timetable(s) directed by the Authority under paragraph 4(ae).

4A. The procedures for the modification of the BSC shall provide that proposals for modification of the BSC falling within the scope of a significant code review may not be made by the parties listed in paragraph 4(a) during the significant code review phase, except where:

(a) 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) the modification proposal is made by the licensee in accordance with paragraphs 4(aa) and 4C or 4(ae)(i); or

(c) the modification proposal is made by the Authority in accordance with paragraph 4(a).

4AA. The procedures for the modification of the BSC shall provide, where the Authority submits a significant code review modification proposal to the panel for a modification within the scope of paragraph 13F(b):

(a) for the modification to be accepted into the modification procedures as if the steps in paragraph 4(b)(i)-(ivA) had been completed;

(b) for the proper evaluation of whether the proposed modification better facilitates achieving the applicable BSC objective(s), provided that so far as any such evaluation requires information which is not generally available concerning the licensee or the national electricity transmissions system, such evaluation shall be made on the basis of the licensee's proper assessment (which the

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licensee shall make available for these purposes) of the effect of the proposed modification on the matters referred to in paragraphs 3(a) and (b);

(c) for the preparation of a panel report:

- (i) evaluating the proposed modification;
- (ii) assessing the extent to which the proposed modification would better facilitate achieving the applicable BSC objective(s) and providing a detailed explanation of the panel's reasons for that assessment (such assessment to include, where applicable, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions in accordance with paragraph 4(b)(ivA)); and
- (iii) setting out a timetable for implementation of the modification, including the date with effect from which such modification (if made) would take effect;

(d) for the submission of the report to the Authority as soon after the significant code review modification proposal is submitted for evaluation as is appropriate (taking into account the complexity, importance and urgency of the modification, and in accordance with the time periods specified in the BSC, which shall not be extended unless approved by the panel and not objected to by the Authority after receiving notice) for the proper execution and completion of the steps in sub-paragraphs (a) to (c); and

(e) for the timetable (referred to in sub-paragraph (c)(iii)) for implementation of any modification to be either:

- (i) in accordance with any direction(s) issued by the Authority; or
- (ii) where no direction has been issued by the Authority, such as will enable the modification to take effect as soon as practicable after the Authority has directed that such modification should be made, account being taken of the complexity, importance and urgency of the modification, and for that timetable to be extended or shortened with the consent of or as directed by the Authority after those persons likely to be affected by the revision of the timetable have been consulted.

The Authority's published conclusions and significant code review modification proposal shall not fetter the voting rights of the members of the panel or the recommendation procedures informing the report described at paragraph 4AA(c).

4B. The procedures for the modification of the BSC shall provide that where a modification proposal is made during the significant code review phase, unless otherwise exempted by the Authority, the panel shall:

(a) comply with the steps in paragraph 4(b) subject to sub-paragraph (c) of this paragraph; and

(b) as soon as practicable notify the Authority of:

- (i) any representations received in relation to the suitability of the significant code review route; and

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(ii) the panel's assessment of whether the proposal falls within the scope of a significant code review and the applicability of the exceptions under paragraph 4A(a) or (b), and its reasons for that assessment; and

(c) not proceed with the modification proposal without at the Authority's direction.

4BA. The procedures for the modification of the BSC shall provide, where a proposal has been raised in accordance with paragraphs 4(aa), 4(ae)(i), or 4C, or by the Authority under paragraph 4(a) and it falls within the scope of paragraph 13F(b), for the proposal and any alternatives to be withdrawn where the Authority so directs.

4C. The procedures for the modification of the BSC 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) the Authority issues directions to the licensee, ~~directions~~, the licensee shall comply with those directions;

(b) the Authority issues to the licensee a statement that no directions under sub-paragraph (a) will be issued in relation to the BSC, the licensee shall treat the significant code review phase as ended;

(ba) the Authority raises a modification proposal in accordance with paragraph 4(a), the licensee shall treat the significant code review phase as ended;

~~(bb) the Authority issues a statement that it will continue work on the significant code review, the licensee shall treat the significant code review phase as continuing until it is brought to an end in accordance with paragraph 4D.~~

(c) neither directions under sub-paragraph (a), or a statement under sub-paragraphs (b) or (bb), or a modification proposal under sub-paragraph (ba), have been made, the significant code review phase will be deemed to have ended.

The Authority's published conclusions and directions to the licensee shall not fetter the voting rights of the members of the panel or the recommendation procedures informing the report described at paragraph 4(b)(v).

4D. The procedures for the modification of the BSC shall provide that, if the Authority issues a statement under paragraph 4C(bb), the significant code review phase will be deemed to have ended when either:

(a) the Authority issues a statement that the significant code review phase has ended,

(b) one of the circumstances in sub-paragraphs 4C(a) to (ba) occurs; or

—the Authority makes a decision consenting, or otherwise, to the modification of the BSC following the panel's submission of its report under paragraph 4AA(d).

5. (a) Without prejudice to paragraph 13A, if a report has been submitted to the Authority pursuant to the procedures described in paragraph 4(b)(vi), and the Authority is of the opinion that a modification set out in such report would, as compared with the then existing provisions of the BSC and any other modifications set out in such report, better facilitate achieving the applicable BSC objective(s), the Authority may direct the licensee to make that modification

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(aa) If a report has been submitted to the Authority pursuant to the procedures described in paragraph 4(b)(vi) and if the Authority determines that the report prepared in accordance with paragraph 4(b)(v) is such that the Authority cannot properly form an opinion in accordance with paragraph 5(a), the Authority may issue a direction to the panel:

(i) specifying the additional steps (including drafting or amending existing drafting of the modification to the BSC), revision (including revision to the timetable), analysis and/or information that it requires in order to form such an opinion; and

(ii) requiring the report to be revised and be re-submitted in accordance with paragraph 4(b)(vii).

(b) The licensee shall, upon receipt of a direction from the Secretary of State to do so, modify the BSC so as to incorporate any changes directed by the Secretary of State pursuant to section 90 of the Energy Act 2004 during or before the offshore transmission implementation period.

(d) [Not used]

(e) [Not used]

(f) Without prejudice to paragraph 4A, or 4AA, only the licensee shall have power to modify the BSC.

6. The BSC shall provide for:

(b) a copy of the BSC to be provided to any person requesting the same upon payment of an amount not exceeding the reasonable costs of making and providing such copy;

(c) the licensee to refer to the Authority for determination, whether of its own motion or as provided in the BSC, such matters arising under the BSC as may be specified in the BSC;

(d) information about the operation of the BSC and the balancing and settlement arrangements

(i) to be provided to the Authority and/or

(ii) to be published,

and for the licensee to be empowered to secure compliance with these requirements if so directed by the Authority.

7. [Not used]

(a) [Not used]

(b) [Not used]

8. The provisions of paragraphs 6 and 11 shall not limit the matters which may be provided for in the BSC.

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9. The Authority may direct the licensee to procure the provision to the Authority of, or the publication of, such information about the operation of the BSC and/or the balancing and settlement arrangements as is referred to in paragraph 6(c) and specified in the direction.
10. The licensee shall comply with:
 - (a) the BSC; and
 - (b) any direction to the licensee made pursuant to this condition.
11.
 - (a) The licensee shall be a party to the BSC Framework Agreement.
 - (b) The BSC and/or the BSC Framework Agreement shall contain provisions:
 - (i) for admitting as an additional party to the BSC Framework Agreement any person who accepts the terms and fulfils the conditions (each as specified in the BSC) on which accession to the BSC Framework Agreement is offered;
 - (ii) for the licensee to refer to the Authority for determination, whether of its own motion or as provided in the BSC any dispute which shall arise as to whether a person seeking to be admitted as a party to the BSC Framework Agreement has fulfilled any accession conditions; and if the Authority determines that the person seeking admission has fulfilled all relevant accession conditions, for admitting such person as a party to the BSC Framework Agreement;
 - (i) for persons to be admitted as additional parties to the BSC Framework Agreement by either
 - * a representative (who need not be a BSC party) appointed thereunder to act on behalf of all parties to it, or
 - * if there is no such representative or if the representative fails to act, the licensee acting on behalf of all parties to it.
 - (c) If, following a determination of the Authority as referred to in sub-paragraph (b)(ii), the representative referred to in sub-paragraph (b)(iii) fails to act on behalf of all parties to admit such person, the licensee shall act on behalf of all parties to admit such person if directed to do so by the Authority.
12. The licensee shall take all reasonable measures to secure and implement (consistently with the procedures applicable under or in relation to the core industry documents and/or industry codes to which it is party (or in relation to which it holds rights in respect of amendment)), and shall not take any steps to prevent or unduly delay, changes to those documents, such changes being changes which are appropriate in order to give full and timely effect to and/or in consequence of any modification which has been made to the BSC, including, but not limited to, changes that are appropriate in order to avoid conflict or inconsistency as between the BSC and any core industry document or industry code.
13. For the avoidance of doubt, paragraph 12 is without prejudice to any rights of approval, veto or direction in respect of proposed changes to the documents referred to in paragraph 12 which the Authority may have.

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- 13A. The procedures for the modification of the BSC shall provide that modification proposals shall only be implemented without the Authority's approval pursuant to this paragraph 13A 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 13A(d); and
 - (c) the Authority has not directed that the Authority's decision is required prior to the panel's determination under paragraph 13A(d); and
 - (d) the panel has, no earlier than seven (7) days after sending the consultation responses referred to at paragraph 13A(b), determined, in accordance with paragraphs 4(b)(i) to (v) of this condition as applicable, that the modification proposal or any alternative should be implemented on the basis that it would, as compared with the then existing provisions of the BSC and any other modifications proposed in accordance with paragraph 4(b)(iv), better facilitate the achievement of the applicable BSC objective(s); and
 - (e) (i) no appeal has been raised up to and including 15 working days after the panel's determination under paragraph 13A(d) in respect of such modification proposal and any alternative in accordance with paragraph 13B; or

(ii) an appeal has been raised in respect of such a modification proposal and any alternative in accordance with paragraph 13B and the Authority has not quashed the panel's determination referred to at paragraph 13A(d) of this condition and either remitted the relevant modification proposal and any alternative back to the panel for reconsideration or taken the decision on the relevant modification proposal and any alternative itself following the appeal.
- 13AA. In no circumstances can the self-governance procedure set out in paragraph 13A be used to amend the BSC to expand the range of activities that can be undertaken by the BSCCo as contemplated by paragraph 1D above.
- 13B. The procedures for the modification of the BSC shall provide that those persons set out at paragraph 4(a) may appeal to the Authority the approval or rejection by the panel of a modification proposal and any alternative 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 procedures specified in the BSC and, in the opinion of the Authority:
- (a) (i) the appealing party is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of that modification or alternative proposal; or

(ii) the appeal is on the grounds that:

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

(2) in the case of non-implementation, the modification or alternative proposal may better facilitate the achievement of at least one of the applicable BSC objectives; and

(b) it is not brought for reasons that are trivial, vexatious or have no reasonable prospect of success.

13C. The procedures for the modification of the BSC shall provide that:

(a) where an appeal has been raised in respect of a modification proposal and any alternative in accordance with paragraph 13B that modification proposal and any alternative shall be treated in accordance with any decision and/or direction of the Authority following that appeal;

(b) if the Authority quashes the panel's determination referred to at paragraph 13A(d) of this condition and takes the decision on the relevant modification proposal and any alternative itself following an appeal in accordance with paragraph 13B, the panel's determination of that modification proposal and any alternative referred to in paragraph 13A(d) of this condition shall be treated as a report submitted to the Authority in accordance with the procedures specified in paragraph 4(b)(vi) of this condition and paragraph 5(a) of this condition and the panel's determination shall be treated as its recommendation.

13D. The procedures for the modification of the BSC shall provide that modifications shall only be implemented without the Authority's approval pursuant to this paragraph 13D (the "fast track self-governance route") 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) BSC parties, the licensee and the Authority have been notified of the proposed modification;

(d) none of the persons named in sub-paragraph (c) have objected to the proposed 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.

13E. 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 and create or modify industry documents including but not limited to the BSC, core industry documents and industry codes where necessary no later than 31 December 2013.

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13F. Modification proposals fall within the scope of this paragraph where:

- (a) the Authority reasonably considers the modifications are necessary to comply with or implement the Electricity Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency; and / or
- (b) the modification proposal relates to a significant code review.

14. In this condition in the expression "sale and purchase of electricity", sale excludes sale by way of assumption of an imbalance under the BSC and sale by way of supply to premises, and purchase shall be construed accordingly; and

"applicable BSC objective(s)" means

(a) in relation to a proposed modification of the modification procedures, the requirements of paragraph 4 (to the extent they do not conflict with the objectives set out in paragraph 3); and

(b) in relation to any other proposed modification, the objectives set out in paragraph 3.

"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 paragraph 4C, direction(s) issued following publication of significant code review conclusions which shall contain:

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

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

(b) would meet the self-governance criteria; and

(c) 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 BSC;
- (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.

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“industry code” means a multilateral code or agreement created and maintained pursuant to a licence granted by the Authority under section 6 of the Act or under sections 7, 7ZA or 7A of the Gas Act 1986.

“self-governance criteria” means, a proposal that, if implemented:

- (a) is unlikely to have a material effect on:
 - (i) existing or future electricity consumers; and
 - (ii) competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution, or supply of electricity; and
 - (iii) the operation of the national electricity transmission system; and
 - (iv) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
 - (v) the BSC’s governance procedures or modification procedures, and
- (b) is unlikely to discriminate between different classes of BSC parties.

“self-governance statement” means a statement made by the panel and submitted to the Authority in accordance with paragraph 13A(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) providing a detailed explanation of the panel’s reasons for that opinion.

“significant code review” means a review of one or more matters which the Authority considers likely to;

- (a) relate to the BSC (either on its own or in conjunction with other industry code(s)); and
- (b) be of particular significance in relation to its principal objective and/or general duties (under section 3A of the Act), statutory functions and/or relevant obligations arising under EU law; and concerning which the Authority has issued a notice to the BSC parties (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

- (a) commencing either:
 - (i) on the start date of a significant code review as stated by the Authority, and or
 - (ii) on the date the Authority makes a direction under paragraph 4BA,

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and

~~(a)~~ ending either:

(b)

- (i) ~~(a)~~ on the date on which the Authority issues a statement under paragraph 4C(b) (that no directions will be issued in relation to the BSC); or
- (ii) ~~(b)~~ if no statement is made under paragraph 4C(b) or (bb), on the date on which the licensee has made a modification proposal in accordance with paragraphs 4(aa), 4C(a) and 10(b), or the Authority makes a modification proposal under paragraph 4C(ba); or
- (iii) ~~(c)~~ immediately under paragraph 4C(c), if neither a statement, a modification proposal or directions are ~~issued~~ made by the Authority up to and including twenty-eight (28) days from the Authority's publication of its significant code review conclusions, or
- ~~(iv)~~ (iv) in accordance with paragraph 4D.

“small participant” means

- (a) a generator, supplier, distributor, or new entrant to the electricity market in Great Britain that can demonstrate to the code administrator that it is resource-constrained and, therefore, 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.

"transition modification provisions" means the provisions of this condition which apply or applied during the transition period and which enable or enabled the Authority (whether with or without the consent of the Secretary of State) to direct the licensee to modify the BSC in certain circumstances.

“affiliate of the BSCCo” means any holding company or subsidiary of the BSCCo or any subsidiary of a holding company of the BSCCo, in each case within the meaning of section 1159(1) of the Companies Act 2006.

Appendix 4 - Glossary

B

BSC

Balancing and Settlement Code.

C

CACoP

Code Administration Code of Practice.

CGR

Code Governance Review.

CGR2

Code Governance Review phase 2.

CGR3

Code Governance Review phase 3.

Code Governance Review

Ofgem led review of industry code governance, concluding in 2010.

CUSC

Connection and Use of System Code.

D

DCUSA

Distribution Connection and Use of System Agreement.

DNO

Distribution Network Operator.

F

[Final modification report](#)

The report submitted to the Authority in order for a decision to be made on a code modification. In the case of self-governance, the report containing the final decision on a code modification.

I

[iGT UNC](#)

Independent Gas Transporters' Uniform Network Code.

M

[MRA](#)

Master Registration Agreement.

[MAM](#)

Meter Asset Manager.

S

[SCR](#)

Significant Code Review.

[SLC](#)

Standard Licence Condition.

[SPAA](#)

Supply Point Administration Agreement.

[STC](#)

System Operator – Transmission Owner Code.

U

[UNC](#)

Uniform Network Code.

Appendix 5 - Feedback Questionnaire

1.1. Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand, could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?
6. Please add any further comments?

Please send your comments to:

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