

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

Email: industrycodes@ofgem.gov.uk

Date: 31 March 2016

Dear colleague,

Code Governance Review (Phase 3) Final Proposals – consultation on licence modifications

Today, we published our Code Governance Review (Phase 3) (CGR3) Final Proposals.¹ We have prepared illustrative licence drafting – which is annexed to this letter – to set out the changes to licence conditions that could give effect to these proposals.

The proposed licence modifications reflect our CGR3 Final Proposals; the illustrative drafting provided here should therefore be read in conjunction with that document. The table below provides an overview of the proposed modifications. We would like to hear your views on the changes proposed in this letter by 28 April 2016.

Overview of proposed modifications

Affected code	Licence condition to be modified	Summary of proposed changes
BSC	Electricity Transmission Licence SLC C3	Introduce Ofgem-led end-to-end Significant Code Review (SCR) process; introduce ability for Ofgem to raise SCR modification proposals; make a housekeeping amendment to the applicable objectives
CUSC	Electricity Transmission Licence SLC C10 and C5	Introduce Ofgem-led end-to-end SCR process; introduce ability for Ofgem to raise SCR modification proposals; make housekeeping amendments to the applicable objectives
STC	Electricity Transmission Licence SLC B12	Introduce Ofgem-led end-to-end SCR process; introduce ability for Ofgem to raise SCR modification proposals; make a housekeeping amendment to the applicable objectives
DCUSA	Electricity Distribution Licence SLC 22 and 22A	Introduce Ofgem-led end-to-end SCR process; introduce ability for Ofgem to raise SCR modification proposals; add applicable charging methodology objective related to facilitating efficiency

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

		in code administration
MRA	Electricity Distribution Licence SLC 23	Introduce Ofgem-led end-to-end SCR process; introduce ability for Ofgem to raise SCR modification proposals
Distribution Code	Electricity Distribution Licence SLC 21	Introduce Ofgem-led end-to-end SCR process; introduce ability for Ofgem to raise SCR modification proposals; add applicable objective related to facilitating efficiency in code administration
Grid Code	Electricity Transmission Licence SLC C14	Introduce Ofgem-led end-to-end SCR process; introduce ability for Ofgem to raise SCR modification proposals; facilitate introduction of open governance as per GC0086; add applicable objective related to facilitating efficiency in code administration
UNC	Gas Transporter Licence Standard Special Licence Condition A11	Introduce Ofgem-led end-to-end SCR process; introduce ability for Ofgem to raise SCR modification proposals
iGT UNC	Gas Transporter Licence SLC 9	Introduce Ofgem-led end-to-end SCR process; introduce ability for Ofgem to raise SCR modification proposals
SPAA	Gas Supply Licence SLC 30	Introduce Ofgem-led end-to-end SCR process; introduce ability for Ofgem to raise SCR modification proposals

The CGR3 Final Proposals are also intended to apply to the Grid Code. On 17 March 2016, we received the final modification report in relation to Grid Code modification proposal (GC0086 Grid Code Open Governance)². Changes would be required to both the Grid Code and SLC C14 of the Electricity Transmission Licence to implement GC0086 (if approved). Whilst we have not yet made a decision on whether or not to approve the changes proposed under GC0086, we have included the licence changes related to the code modification in the illustrative licence drafting that is annexed to this letter.

The CGR3 Final Proposals are also intended to apply to the Smart Energy Code (SEC). However, the detail of the SCR process is not set out in the relevant licence conditions (SLC 22 and 23 of the Data Communications Company (DCC) Licence), but in the SEC itself. Changes would therefore need to be made to the SEC, rather than to the licence, in order to implement our Final Proposals.³

Proposed amendments

In our CGR3 Initial Proposals,⁴ we consulted on illustrative licence drafting⁵ to introduce our proposed amendments to the SCR process in respect of the BSC (SLC C3 of the Electricity Transmission Licence). Seven respondents to our consultation commented specifically on that illustrative drafting. Appendix 1 of this letter sets out our comments on the responses we received, and the amendments to the illustrative licence drafting we have made in the light of those comments.

We have used this amended drafting as the basis for the modifications to the other licence conditions that we are proposing to change, to introduce our SCR amendments to the remaining codes. For the most part, the wording of the licence drafting is largely the same across the conditions relating to the applicable codes. However, there are occasions where

² <http://www2.nationalgrid.com/UK/Industry-information/Electricity-codes/Grid-code/Modifications/GC0086/>

³ We are in discussion with the Department of Energy and Climate Change (DECC) to agree the most appropriate way to bring forward the necessary changes.

⁴ <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-initial-proposals>

⁵ Please see appendix 3 of our Initial Proposals document (link in footnote 4 above).

the drafting varies, as it has been drafted to fit in with the existing provisions of that licence condition as far as possible, and to follow the most logical placement. Where proposed wording is not identical, the effect of the drafting is intended to be materially the same.

In addition to the proposed licence drafting that reflects our Final Proposals in respect of the SCR process; we have also sought to make some minor housekeeping amendments to existing provisions. Some of these housekeeping amendments we consulted on in our Initial Proposals, to which all respondents who commented on these amendments agreed. These are set out in chapter 4 of our Final Proposals document. We have also included some further minor housekeeping changes in the proposed licence drafting.⁶

The proposed licence drafting to give effect to our Final Proposals is set out in the Appendices to this letter as follows:^{7,8}

Appendix	Licence Condition	Relevant Industry Code
2	Electricity Transmission Licence SLC C3	BSC
3	Electricity Transmission Licence SLC C5	CUSC
4	Electricity Transmission Licence SLC C10	CUSC
5	Electricity Transmission Licence SLC B12	STC
6	Electricity Distribution Licence SLC 22 and 22A	DCUSA
7	Electricity Distribution Licence SLC 23	MRA
8	Electricity Distribution Licence SLC 21	Distribution Code
9	Electricity Transmission Licence SLC C14	Grid Code
10	Gas Transporter Licence Standard Special Licence Condition A11	UNC
11	Gas Transporter Licence SLC 9	iGT UNC
12	Gas Supply Licence SLC 30	SPAA

Views invited

We welcome views on the illustrative licence drafting, in particular:

1. Do you consider that the licence drafting would achieve the policy proposals set out in the CGR3 Final Proposals?
2. Do you consider that the licence drafting in Electricity Transmission Licence SLC C14 would also facilitate the implementation of GC0086?
3. Do you agree that, where licence drafting differs between licence conditions, the substantive effect is materially the same?

Responses to this illustrative licence drafting consultation should be received by 28 April 2016 and should be sent to:

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 Ofgem
 9 Millbank
 London SW1P 3GE
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⁶ These changes relate to licence conditions corresponding to the following codes: BSC, DCUSA, SPAA, CUSC, and UNC.

⁷ In line with protocol all proposed deletions are shown in strikethrough, all proposed additions are shown in double underline.

⁸ These Appendices are published on the Ofgem website as separate secondary documents.

We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so that they can be placed easily on our website.

Next steps

We intend to publish a statutory consultation on licence modifications in summer 2016. For further information, please refer to our CGR3 Initial Proposals and Final Proposals and the final modification report for GC0086; should you have any further questions, please do not hesitate to contact me.

Yours faithfully,

Lesley Nugent
Head of Industry Codes and Licensing

Appendix 1 – Comments on Consultation Responses to Illustrative Licence Drafting in CGR3 Initial Proposals

Appendix 3 of CGR3 Initial Proposals contained illustrative drafting of the modifications that could be made to Standard Licence Condition C3 of the Electricity Transmission Licence, in order to give effect to our proposals in respect of the BSC. We received 32 responses to our Initial Proposals consultation. Seven of the responses referred to the specifics of the drafting contained in Appendix 3. The responses we received are summarised below, alongside our comments.

Response	Ofgem's Comments
The amendments add complexity to an already complex condition, including confusing cross-referencing.	We agree that the paragraph numbering in the illustrative licence drafting was potentially confusing. While we did not consider that it was appropriate to undertake wholesale re-numbering of the licence condition, we have re-ordered and re-numbered the amended provisions to make the condition simpler to understand. In particular: 4AA to 4F, 4BA to 4G, 13F to 4H.
The illustrative licence drafting (in particular paragraph 4AA(a)) permits an end-to-end Ofgem-led SCR process to proceed without proper consultation with various industry participants	As set out in further detail in our Final Proposals, effective consultation with industry participants is a vital aspect of any SCR. If we were to lead an SCR, we would carry out effective engagement and collaboration with industry in accordance with the process set out in the revised SCR Guidance. The processes that we would follow to consult with industry are not detailed in the licence condition, because we do not consider it is necessary or appropriate to use a licence condition to detail the process to be followed by Ofgem.
The amendments to the licence provide powers for Ofgem to raise modifications to implement EU obligations	The ability for us to raise modification proposals which we reasonably consider are necessary to comply with or implement certain European legislation and/or any relevant legally binding decisions of the European Commission or ACER is not being introduced by these amendments. This power was inserted by Schedules 7 and 9 to the Electricity and Gas (Internal Markets) Regulations 2011.
It is not clear what the intent of paragraph 4AA(b) is, given that the licence condition already provides for an assessment of whether the proposed modification would better facilitate achieving the applicable objectives, nor is it clear what a 'proper evaluation' means.	We agree that this paragraph was duplicative, and have therefore omitted it from the revised drafting.
Paragraphs 4AA(e)(i) and (ii) should include a reference to the fact that the direction is made pursuant to paragraph 4(ae)(iii).	We agree that, in the interests of consistency, directions setting a timetable for implementation of a modification should refer to paragraph 4(ae)(iii).
Paragraph 4AA(d) should include a reference to a direction made pursuant to paragraph 4(ae)(ii).	We agree that paragraph 4(ae)(ii) should be modified to extend to the procedural steps required under an end-to-end Ofgem-led SCR.
The purpose of paragraph	The purpose of paragraph 4BA is to provide a 'backstop

4BA is unclear.	mechanism', permitting us to lead the SCR process in the event that a licensee produces a modification proposal that was inconsistent with our SCR Directions or failed to do so within the specified time period. This mechanism is described in paragraph 2.30 of our Initial Proposals and paragraph 2.29 of our Final Proposals.
There is no provision for send-back of a Panel report under an Ofgem-led SCR process.	We agree that a provision equivalent to paragraph 4(b)(vii) should be included in respect of an Ofgem-led SCR process.
Paragraph 4C(a) should include the words 'and shall treat the significant code review phase as ended'.	We agree that, in the interests of consistency, these words should be added.
It is not clear that paragraph 4D identifies the correct circumstances in which the significant code review phase should be deemed to have ended.	<p>Paragraph 4D sets out the circumstances in which the SCR phase would end once we have indicated (within 28 days of its SCR conclusions) that we intend to continue the SCR phase. This paragraph is also intended to set out the circumstances in which the SCR phase would end once we have exercised a 'backstop mechanism', and the drafting has been amended accordingly.</p> <p>In either of these situations, we consider that the SCR phase should end in one of four ways: (i) Ofgem states that the SCR phase has ended; (ii) Ofgem (re-)issues directions to the licensee to raise a modification proposal; (iii) Ofgem itself raises a modification proposal; or (iv) the Ofgem-led SCR process is seen through to completion (i.e. the Authority makes its final decision on the proposal). We therefore consider that paragraph 4D identifies the correct circumstances (subject to a minor drafting change of the word 'to' to 'and').</p> <p>This paragraph also provides: (i) the ability for Ofgem to re-issue directions to raise a modification proposal (in the event that the 'backstop mechanism' has been exercised by Ofgem), and (ii) the ability for Ofgem to issue directions more than 28 days following its SCR conclusions (in the event that Ofgem states that it wishes to continue the SCR process within 28 days following its SCR conclusions).</p>
Paragraph 13F(b) should refer to modification proposals "in respect of" rather than "relating to" an SCR	We agree that the relevant modification proposals are those "in respect of" an SCR.
The ability for the Authority to raise modification proposals is limited to those in respect of an SCR.	This drafting reflects the policy intention. In addition to the current provisions, we will be able to raise a modification proposal in respect of an SCR.
It is not clear whether the definition of 'significant code review phase' at paragraph 14(a)(ii) is correct to cross-refer to paragraph 4BA.	This drafting reflects the policy intention. Where we exercise the backstop mechanism, the SCR phase re-starts.