

Modification proposal:	<b>Distribution Code DCRP/17/02: Align the Distribution Code and Distribution Code Constitution and Rules with changes to the Significant Code Review requirements</b>		
Decision:	The Authority <sup>1</sup> has decided to approve <sup>2</sup> this modification		
Target audience:	Distribution licensees, Distribution Code Review Panel, distribution network users and other interested parties		
Date of publication:	31 March 2017	Implementation date:	1 April 2017

## Background

Ofgem's Code Governance Review (CGR)<sup>3</sup> sought to update and improve the industry code governance arrangements to ensure that they could effectively meet the challenges facing the industry and aimed to reduce complexity to ensure transparency and accessibility for all industry participants. The CGR concluded in March 2010 with final proposals focusing primarily on the Balancing and Settlement Code (BSC), the Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC).

A second phase of the CGR (CGR2)<sup>4</sup> focused on extending the CGR conclusions to further industry codes, including introducing the Significant Code Review (SCR) process<sup>5</sup> to the Distribution Code.<sup>6</sup>

In May 2015 we published an open letter setting out our views on issues facing code governance arrangements and seeking responses from industry. This was followed in October 2015 by our Initial Proposals on the third phase of CGR (CGR3).<sup>7</sup> Our CGR3 Final Proposals built on arrangements introduced by CGR and CGR2. Licence modifications giving effect to our Final Proposals came into force on 10 August 2016, with the requirement that the consequential changes to industry codes would be in place by 31 March 2017.<sup>8</sup> The changes required to the governance arrangements of the Distribution Code are the addition of a fourth Applicable Objective to promote efficiency in the implementation and administration of the Distribution Code and a revised SCR process.

## The modification proposal

Modification Proposal DCRP/17/02: Align the Distribution Code and Distribution Code Constitution and Rules with changes to the Significant Code Review requirements<sup>9</sup> (DCRP/17/02) seeks to align the Distribution Code with the licence changes made by Ofgem to deliver more flexibility to the modification process. It includes legal text that seeks to modify the Distribution Code Introduction to include a fourth Applicable Objective. DCRP/17/02 also proposes to amend section 21<sup>10</sup> of the Distribution Code

<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

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

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

<sup>4</sup> We published our CGR2 final proposals in March 2013: <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-2-final-proposals>

<sup>5</sup> A process which provides a role for Ofgem to lead complex changes to the industry codes in a holistic manner.

<sup>6</sup> <http://www.dcode.org.uk/the-gb-distribution-code/>

<sup>7</sup> <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-initial-proposals>

<sup>8</sup> <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-final-proposals>

<sup>9</sup> <http://www.dcode.org.uk/dcrp/17/02.html>

<sup>10</sup> Consultation and Approval of Distribution Code Modifications

Constitution and Rules<sup>11</sup> to include three routes for taking forward an SCR. These are as follows:

1. Following an SCR Ofgem directs a licensee(s) to raise modification proposal(s)
2. Following an SCR Ofgem raises modification proposal(s)
3. Ofgem leads an end-to-end process to develop code modification(s) (Authority-led)

DCRP/17/02 also allows movement between these three routes. This would involve Ofgem issuing a “backstop direction” to cease progress of any modification proposal(s) resulting from an SCR that was following the usual industry process if, for example, the development of the modification proposal(s) was not meeting the expected policy direction or timescales for implementation. The issuing of this direction would cause the SCR phase to restart. Ofgem could also elect to end progression of an Authority-led SCR and direct a modification(s) to be raised or raise a modification(s) under the usual, industry-led Distribution Code process.

The modification was assessed against Applicable Objectives (c)<sup>12</sup> and (d)<sup>13</sup> as the principal aim of the modification is to efficiently discharge the obligations imposed upon the Distribution Network Operators (DNO) by the Distribution Licence.<sup>14</sup>

The three responses to the industry consultation on DCRP/17/02 agreed with the proposed changes. One respondent commented that, in its view, a more fundamental review of Distribution Code governance is needed.

### **Distribution Code Review Panel (DCRP)<sup>15</sup> comments and licensee recommendation**

At the DCRP Panel meeting on 9 March 2017, the DCRP considered that the modification proposal should be submitted to us for approval and subject to the agreement of the Authority the modification to the Distribution Code and Distribution Code Constitution and Rules should be effective from 1 April 2017.

### **Our decision**

We have considered the issues raised by the modification proposal and in the Final Report<sup>16</sup> received on 10 March 2017. We have considered and taken into account the responses to the consultation(s) on the modification proposal which are included in the Final Report. We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the applicable objectives of the Distribution Code;<sup>17</sup> and
- approving the modification is consistent with our principal objective and statutory duties.<sup>18</sup>

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<sup>11</sup> <http://www.dcode.org.uk/panel-constitution-and-rules.html>

<sup>12</sup> Efficiently discharge the obligations imposed upon distribution licensees by the distribution licences and comply with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency for the Co-operation of Energy Regulators

<sup>13</sup> Promote efficiency in the implementation and administration of the Distribution Code.

<sup>14</sup> For the avoidance of doubt, we note that modification proposals are assessed against the code objectives as set out in the Distribution Licence

<sup>15</sup> The DCRP is established in accordance with SLC 21 of the Electricity Distribution Licence.

<sup>16</sup> Distribution Code proposals, final reports and representations can be viewed at: <http://www.dcode.org.uk/>

<sup>17</sup> As set out in Standard Condition SLC 21.4 of the Electricity Distribution Licence available at: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Distribution%20Consolidated%20Standard%20Licence%20Conditions%20-%20Current%20Version.pdf>

<sup>18</sup> The Authority’s statutory duties are wider than matters which the Panel and licensees must take into consideration and are largely provided for in statute, principally in this case the Electricity Act 1989.

## Reasons for our decision

We consider this modification proposal will better facilitate Distribution Code objective (c) and (d) and has a neutral impact on the other Applicable Objectives.

### ***(c) efficiently discharge the obligations imposed upon distribution licensees by the distribution licences and comply with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency for the Co-operation of Energy Regulators***

We agree that this modification better facilitates this relevant objective. Licence modifications requiring the introduction of the CGR3 governance changes into the Distribution Code governance arrangements are now in force. Relevant licensees must ensure that these licence provisions are efficiently discharged. The changes proposed by this modification will ensure that the relevant licensee can discharge its licence obligations by bringing the Distribution Code modification procedures into line with the CGR3 governance changes (as reflected in the licence).

### ***(d) promote efficiency in the implementation and administration of the Distribution Code.***

Including new Applicable Objective (d) will support housekeeping modifications and modifications related to code administration progressing and being assessed against an appropriate objective in the Distribution Code.

In addition, the ability for Ofgem to run an end-to-end SCR process and have the ability to direct timetables for SCR modifications raised under the standard Distribution Code process should drive forward the implementation of our SCR conclusions thereby improving the efficiency in the administration of the Distribution Code and facilitate complex and significant changes to codes. In addition, providing a mechanism for the development of code modification text alongside our consultation with industry to inform our policy conclusions may provide a way of working through potential implementation issues earlier in the process thereby better facilitating the administration of the Distribution Code.

## Other issues

We note the comment made by one respondent that a fundamental review of the governance of the Distribution Code is needed. We consider that open governance could be beneficial for the Distribution Code. However we also recognise that implementation of the Competition and Market Authority's remedies in respect of code governance<sup>19</sup> is likely to impact on the governance framework of the codes. In addition, we recognise the expected impact on the Distribution Code of changes arising from implementing the electricity European Network Codes. We therefore acknowledge that now may not be the optimum time to undertake a fundamental review of the governance arrangements. Nonetheless, we consider this matter should be kept under review, and that the DNOs/DCRP should consider whether, and when, it may be appropriate to consider open governance reform.

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<sup>19</sup> <https://www.gov.uk/cma-cases/energy-market-investigation>

## **Decision notice**

In accordance with SLC 21.11 of the Electricity Distribution Licence, the Authority hereby directs that the modification to the Distribution Code set out in the Final Report received by the Authority on 10 March 2017 be made.

**Lesley Nugent**

**Head of Industry Codes and Licensing**

Signed on behalf of the Authority and authorised for that purpose