



Making a positive difference  
for energy consumers

Direct Dial: 020 7901 3907

Email: [SwitchingProgramme@ofgem.gov.uk](mailto:SwitchingProgramme@ofgem.gov.uk)

Date: 6 December 2018

Dear Licence Holder

**Decision to modify the Standard Conditions of the Gas Supplier, Electricity Supplier, Gas Transporter and Electricity Distribution licences.**

We issued a Statutory Consultation on 15 October 2018, informing you of our proposals to modify the Standard Conditions of the above licences. This letter and enclosed Notices are to inform you of our decision to make those modifications. They will come into effect on 1 February 2019.

For the licensees who are recipients of this letter the effect of the licence modifications are twofold. Firstly, you will be required to accede to and comply with a new dual fuel industry code, the Retail Energy Code (the REC). We will designate v1.0 of the REC, as previously consulted upon, once the licence modifications take effect on 1 February 2019. Prior to that date, we will issue further guidance on the accession process.

Secondly, we introduce a general Duty to Cooperate with the Authority or any person appointed by the Authority, to give full effect to the conclusions of a Significant Code Review, as defined in licence. This new duty will apply to all licensees.

In order for the Duty to Cooperate to be effective, we envisage issuing guidance and/or other material that would be specific to each Significant Code Review, that would amongst other things identify who the relevant licensees (and other stakeholders) are, what they are being asked to do and by when. In the case of the Switching Programme, such requirements will be supported by the REC and appropriate programme documents. Prior to the licence modification coming into effect, we will also revise our guidance on the Significant Code Review process.<sup>1</sup>

We received 39 responses to our consultation on the proposed licence modifications and REC drafting. We have published the non-confidential responses on our website. We append to this letter a summary of comments received on the licence drafting, and our views on them, including confirmation of where these have been incorporated into the final version. In the New Year we will publish a summary of responses and way forward on the REC drafting.

Yours faithfully

**Rachel Clark**  
**Switching Programme Director**

---

<sup>1</sup> [www.ofgem.gov.uk/system/files/docs/2016/06/scr\\_guidance.pdf](http://www.ofgem.gov.uk/system/files/docs/2016/06/scr_guidance.pdf)

### Annex A: Stakeholder Feedback on proposed licence modifications

Clause and Suggestion	Our view
Suggest explicit commitment to consulting upon SCRs, i.e.: “...Authority <u>has consulted upon and issued</u> a notice...”	We have already committed to SCRs having first been consulted upon, so happy to make explicit reference to this in the licence drafting.
Suggest duty to <b>cooperate</b> should be re-titled duty to <b>comply</b> ...	Disagree, the duty refers to non-licence and non-codified requirements – not necessarily prescriptive, needs to be collaborative. Could also relate to ‘advice’ and softer cooperate, not about box ticking.
Suggest alignment of the SCR definitions	Separate definitions were deliberate – duty is general to any licence whereas obligations to raise mods etc relate to specific codes. Agree it could be clearer though.
Suggest a small change to clause 3 ‘Duty to Cooperate’ to include an element of reasonableness, as follows:  ‘The licensee will cooperate, <del>as necessary</del> , with the Authority and/or any person(s) appointed by the Authority or appointed pursuant to a direction of the Authority, to undertake any <u>reasonable requests in relation to</u> planning, project assurance and/or coordination/systems integration in order to give full effect to the conclusions of a “significant code review”.’	We are happy to make this change.
The licence should reflect a degree of pragmatism on Ofgem’s part	We agree that it will be necessary to be pragmatic, and consider that this is covered by the point on ‘reasonableness’.
The references as part of the general duty to assurance, integration, etc risk baking in the approach being taken to the Faster and More Reliable Switching programme, which while sensible in this context, may not be appropriate in other contexts;	This drafting is not intended to be prescriptive, but most programmes with IS impacts will involve these elements. The bespoke nature of the duty will be clarified through accompanying programme-specific guidance.
There is no requirement of reasonableness placed on the actions to be required pursuant to the general duty. Complying with this general duty has the potential to place significant costs and overheads on licensees, and therefore any planning, assurance etc. must explicitly be subject to a requirement of reasonableness	Although all actions we take must in any case be reasonable in accordance with public law, we are happy to make this explicit in the drafting of the new duty.
Guidance must be developed to scope out for each SCR the effective and practical limits of application of this general duty,	We agree. The duty will only be effective when accompanied by programme-specific guidance and/or programme plans and

to aid in the construction of what is reasonable, e.g. assurance could be internal assurance and planning carried out internally	documentation. We will expand upon this as part of revised SCR guidance.
Unclear why this is considered necessary when a requirement to comply with the REC is being imposed	Switching and other programmes will remain dependent upon non-REC/code parties for successful and timely delivery – this duty to comply is therefore intended to ensure cooperation of those licensees and their agents who are not obligated to comply with relevant codes.
“remedial plans” imposed (potentially by a third party appointed by Ofgem) implies the licensee’s inaction or issues impacts the entire programme and it’s unclear where this would actually be the case	Our expectation is that remedial plans would only be required and enforced where there is an impact on other parties.
the obligation to secure third party cooperation is concerning, and concern is not mitigated by the obligation being subject to all reasonable steps	We expect licensees to be able to effect change with their agents, over which we have no direct jurisdiction. However, we are happy to engage with key service providers directly. The reasonableness test would include the extent to which licensees have such control. No change drafting required.
<p>As noted in the consultation, there are discrepancies between this generic definition of SCR and the various definitions of SCR in the existing “code owner” licence condition. We suggest the following amendments to the definition of significant code review in the duty to cooperate (based on text of paragraph 2.20 from the consultation) to ensure consistency with other definitions of SCR (as explained in the covering letter):</p> <p><u>“a review of matters in relation to its principal objective and/or general duties (under section 3A of the Electricity Act or section 4AA of the Gas Act), statutory functions and/or relevant obligations arising under EU law which the Authority considers are likely to relate to one or more of the documents referred to in this condition, or to which the licensee is required under this licence to be a party, and concerning which the Authority has consulted on and then issued a notice to the parties stating that the review will constitute a significant code review.”</u></p>	This is consistent with our policy intent and adds clarity, rather than being a substantive change to the effect of the licence drafting. We have incorporated this suggestion.
The broad scope of the obligation may not ensure that requests to licensees are proportionate and cost-effective, though some assurance is offered by Ofgem’s observation that the requirement to cooperate should be determined on a case by	We consider that this will be addressed through the addition of an explicit reasonableness test and commitment to programme specific guidance

case basis. Furthermore, we feel that it is not clear where the responsibilities for delivering activities on a project lie between licences on cross code issues	
The proposed licence modifications do not recognise the separate ESO licence that will take effect from 1 April 2019, when the ESO becomes a separate legal entity within the National Grid Group. After this time, National Grid Electricity Transmission will no longer be party to the Balancing and Settlement Code nor the Connection and Use of System Code. Therefore, the licence conditions that will have a new duty inserted should be amended to reflect the separate ESO licence.	We will address this once the relevant licence conditions have taken effect.
The list as to what constitutes the duty to cooperate should be an exhaustive one; we would, therefore, suggest the drafting of the start of proposed standard licence condition 20.11 should be "For the purposes of condition 20.10, cooperate shall mean:";	We disagree, as the requirements of each programme may differ on a case by case basis. We consider that the non-exhaustive list, which will be augmented with programme-specific guidance and other documentation, provides a degree of future-proofing. Whilst each programme involving IS changes are likely to rely on similar steps, we shouldn't preclude wider principle of cooperation on whatever is required on a case by case basis.
The proposed licence condition should include a materiality threshold, over which the licensee can recover efficiently incurred costs driven by this new obligation.	We would expect the cost implications of each SCR to be considered on a case by case basis, and recover of those costs by relevant licensees provided for where appropriate. No change to the licence drafting is required to give this effect.
For clarity, add "the later of either" after "from" in proposed (Electricity Distribution) standard licence condition 20.3 such that it is obvious that existing licensees must comply with the REC from the date on which it takes effect.	We no longer consider that it will be necessary to provide for the REC coming into effect at a later date as we will designate v1.0 with effect 1 February 2019, the day these licence modifications will also come into effect.
Remove the quotation marks and capitalise Significant Code Review in proposed (Electricity Distribution) standard licence condition 20.10.	We agree that this would be consistent with the style.
Proposed standard licence condition 20.11 a) should read "the sharing of such information as may reasonably be required in the circumstances and constructive participation in industry engagement in order to undertake appropriate planning of changes to IT systems or industry standard operational processes to give full effect to the conclusions of a Significant Code Review".	We do not consider that this elaboration is necessary in the licence condition, but will be considered for the supplementary guidance.

Proposed standard licence condition 20.11 a) should read "the provision of such test scripts and results of any testing as may be reasonably requested by any person appointed to assure the success of any testing; and".	We do not consider that this elaboration is necessary in the licence condition, but will be considered for the supplementary guidance.
In proposed standard licence condition 20.11 e) ii), insert an apostrophe in "the licensees" and change "the programme" to "a Significant Code Review".	We agree with these suggestions and have incorporated them into the revised drafting.
In proposed standard licence condition 20.11 e) iv), change "these obligations" to "the obligation under standard licence condition 20.10".	We did not consider this change to be appropriate.
Change the definition of Significant Code Review in proposed standard licence condition 20.12 to read " <b>Significant Code Review</b> means, for the purpose of standard licence condition 20.10, a review of matters which, following Consultation, the Authority considers ...".	We have included reference to an SCR having been consulted upon.
Include the following definition in proposed standard licence condition 20.12: " <b>Consultation</b> means, for the purpose of standard licence condition 20.10, a consultation specifying why the Authority considers a matter to be of particular significance in relation to its principal objective and general duties such that it warrants being progressed as a Significant Code Review."	We have included reference to an SCR having been consulted upon.
(Electricity Distribution) SLC 20.3(2) uses the phraseology "as the case may be". We do not believe that this is clear enough and that it would be better phrased as "the date on which the code takes effect, where this is later than the date in paragraph (1)".	Particular to E D SLC.
The last few words of paragraph 20.10 (namely "significant code review") should be capitalised.	We have capitalised all reference to the defined term Significant Code Review.
Paragraph 20.11 has a circular reference to 20.11, which we believe should be a reference to 20.10.	This typographical error has been corrected.
A cross reference to the GDPR should be added to paragraph 20.11 as any data provision will need to be compliant with these regulations.	Any data provisions will in any case have to be compliant with prevailing legislation. Not standard practice for licences to refer to external legislation.
The definition of Significant Code Review already exists in LC21, LC22 and LC23 – we believe that Ofgem should take the opportunity to review the definition in the three conditions	We are satisfied that each definition refers to a distinct obligation. There may be opportunity to consolidate drafting at some point in future, but not necessary at this time.

alongside the definition proposed in this statutory consultation to ensure that they are appropriate in each case.	
We believe that in paragraph 20.11 (e)(i), "programme milestones" would benefit from a definition to ensure all parties understand it in the same way.	We consider that this would be better defined within the accompanying guidance, specific to each SCR.
Within the definition of Significant Code Review, a capital N is required in "Notice".	We have Capitalised Notice throughout for consistency.
Ideally, there should be one definition of SCR per licence	
expect there to be reference in the new definition to the requirement on Ofgem to have undergone a period of consultation	
We also appreciate the clarification provided in regards to the application of the proposed duty (2.18, p15). However, we have noted that this doesn't seem to filter through into the SCR definition. We would suggest this be revised or that Ofgem issue a notice to each party which specifies in what way and how licensees are expected to engage under the Duty to Co-operate clause.	The guidance would be supplementary to the licence – don't think we can include much/any detail in licence drafting, but can commit to production of the guidance in accompanying notice, etc.
Both definitions are relevant to their specific Licence conditions and associated codes, but we believe that multiple definitions can create scope for confusion. Our preference would be a single encompassing definition that can then be applied to each industry code.	We consider that at this time it would be better to retain the separate definitions, specific to each obligation. We will consider whether there is scope to further consolidate drafting in due course.
Electricity Supply SLC 11.2: Should the REC be added to the list of codes that need to be complied with in SLC 11.2? Inclusion would create a clear and specific obligation for all licensees to comply with the REC.	The licensee is not obligated to accede to and comply with the codes listed in SLC11.2 other than through that condition (i.e. they are not the primarily responsible licensee for those codes), whereas they will be obligated to accede to and comply with the REC through SLC11B. Adding REC to the list of codes at SLC11.2 would therefore be superfluous.
Electricity Supply SLC 11.15: Change required to include the word 'only' to read: For the purposes of condition 11.13 only.	We have made this change.
Electricity Supply SLC 11.15: The definition refers to 'documents referred to in this condition', clarity is required as to what the specific documents are.	This will generally refer to Industry Codes, but not be limited to those to which the licensee is a party. We will consider whether it is possible to provide an exhaustive list of documents that may be within scope of each SCR on a case by case basis.

Electricity Supply SLC 11B.2: The term 'Consequential Change' has been included with capitals suggesting that it is a defined term, however we cannot see that it has been defined anywhere.	This is not a licence defined term, but currently used elsewhere, e.g. Electricity Distribution SLC20; capitalisation therefore removed.
Electricity Supply SLC 11B.8: Reference is made to the 'Code of Practice', which is defined in SLC 11B.14. This definition refers to the Code Administration Code of Practice, which itself is not defined anywhere.	We have added a definition of Code Administration Code of Practice into the electricity supply licence.
Gas Supply SLC 1: Should the 'insert "Code of Practice" definition, be modification of the existing Code of Practice definition and removal from its current location in SLC 30.15?	Code of Practice is already a defined term under SLC30 and will remain relevant to both the REC and for the time being the SPAA. We have removed duplication by deleting the definition from SLC30 and inserting it into SLC1.
Gas Supply SLC 1: This is not covered within the Notice, however we note that the definition of the Supply Point Administration Agreement should refer to SLC30 and not SLC34A.	The prevailing definition links to a specific version of the SPAA that was in effect on 31 July 2007. We agree that now is an opportune time to update the reference to SLC30.
Gas Supply SLC 1: Should 'insert' Small Participant definition, be modification of the definition and removal from its current location in SLC 30.15?	Deletion of current definition and insertion into SLC1 achieves this effect.
Gas Supply SLC 11.2: The term 'Consequential Change' has been included with capitals suggesting that it is a defined term, however we cannot see that it has been defined anywhere.	Capitalisation removed.
Gas Supply SLC 11.9: Clause 11.9(f) has a missing space and should read '...and 11.9(g)(i)' rather than '...and11.9(g)(i)'.	Typo corrected.
Gas Supply SLC 11.16: The definition refers to 'documents referred to in this condition', clarity is required as to what the specific documents are.	This will generally refer to Industry Codes, but not be limited to those to which the licensee is a party. We will consider whether it is possible to provide an exhaustive list of documents that may be within scope of each SCR on a case by case basis.
Gas Supply SLC 11.16: There is already a definition of a significant code review in SLC 30.15. Is the new definition in addition to SLC 30.15, as it states for the purpose of condition 11.14 only? Clarification is required to avoid confusion between the two definitions.	Yes, it is an additional definition. Have incorporated this suggestion.
Gas Supply SLC 30.2: The term 'Consequential Change' has been included with capitals suggesting that it is a defined term, however it has not been defined anywhere.	Capitalisation removed.
Gas Shipper SLC18: The definition refers to 'documents referred to in this condition', clarity is required as to what the specific documents are.	This will generally refer to Industry Codes, but not be limited to those to which the licensee is a party. We will consider whether it is possible to provide an exhaustive list of documents that may be within scope of each SCR on a case by case basis.

