

Modification proposal:	Distribution Code: Incorporating the Code Administration Code of Practice, Provisions for a Significant Code Review and Licence Changes relating to the European Third Package into Distribution Code Governance		
Decision:	The Authority ¹ directs that this proposal be made ²		
Target audience:	Parties to the Distribution Code and other interested parties		
Date of publication:	19 December 2013	Implementation Date:	31 December 2013

Background to the modification proposal

Code Governance Review Phase 2 changes

Ofgem's Code Governance Review (CGR)³ sought to update and improve the industry code governance arrangements to ensure that they could effectively meet the challenges facing the industry, and to reduce complexity to ensure transparency and accessibility for all industry participants.

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

Following a consultation on initial proposals in September 2012⁴, we published final proposals for CGR Phase 2 in March 2013.⁵ Licence modifications giving effect to these final proposals came into force on 5 August 2013.⁶

CGR Phase 2 introduced a number of changes to the Distribution Code governance arrangements including:

- the concept of an administrative body (the "Code Administrator") and the Code Administration Code of Practice ("CACoP").⁷ The CACoP establishes certain principles that are considered to capture the key elements of best practice in the administration of code modification procedures. It also provides a template for the ongoing

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

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

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

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

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

⁶ CGR Phase 2 licence modifications: <https://www.ofgem.gov.uk/publications-and-updates/modification-gas-and-electricity-licences-implement-code-governance-review-phase-2-final-proposals>

⁷ The CACoP is for energy code administrators and users of those codes. It was developed by industry as part of the CGR: <https://www.ofgem.gov.uk/licences-codes-and-standards/codes/industry-codes-work/code-administration-code-practice-cacop>

convergence and simplification of existing code rules. The licence also sets out a role for the Code Administrator to facilitate the code modification processes and, where reasonably requested, assist code users wishing to engage with the Distribution Code modification procedures;

- the Significant Code Review (SCR) process. The SCR process provides a role for Ofgem to lead complex changes to the industry codes in a holistic manner;⁸
- the 'send back' process. The send back process allows the Authority to send a final report on a modification proposal back to the Distribution Network Operator (DNO) licensees where we consider that we cannot make a decision based on the original report submitted to us. A send back direction would allow deficiencies (for example, relating to proposed legal text or incomplete analysis) in the original report to be addressed.

Third Package licence changes

The EU Third Package for Electricity and Gas Markets came into force in the UK on 10 November 2011 by amending domestic legislation. The changes were given effect by The Electricity and Gas (Internal Markets) Regulations 2011, SI 2704⁹, and changes have been made to electricity licences (transmission, distribution, supply and interconnector) and gas licences (transporter, supply and interconnector).

This Distribution Code modification proposal updates the Distribution Code to reflect the changes that were made to Standard Licence Condition (SLC 21) of electricity distribution licences.

The modification proposal

In summary, this Distribution Code modification proposal seeks to amend:

- the Distribution Code General Conditions and the Constitution and Rules of the Distribution Code Review Panel (DCRP) to reflect the CGR Phase 2 licence changes regarding the introduction of the Code Administrator and the CACoP;
- the Constitution and Rules of the DCRP and the DCRP's Standard Procedure 1 (Governance of Qualifying Standards) to reflect the CGR Phase 2 licence changes regarding the introduction of the SCR process and the send back process; and
- the Distribution Code Introduction, the Constitution and Rules of the DCRP and the DCRP's Standard Procedure 1 (Governance of Qualifying Standards) to reflect the Third Package licence changes.

In addition, minor housekeeping changes have been proposed to the definitions of Distribution Code Review Panel and Distribution General Conditions in the Distribution Code Glossary and Definitions as they contained an incorrect reference.

The industry consultation process

The DCRP published a consultation on the proposed changes on 26 November 2013. The consultation closed on 4 December 2013. One response was received which suggested some further minor housekeeping changes to clarify whether certain terms should not be

⁸ Ofgem guidance on SCRs: <https://www.ofgem.gov.uk/ofgem-publications/61740/guidanceinitiating-and-conducting-scrsfinal-draft110810.pdf>

⁹ Schedule 8 Part 3 http://www.legislation.gov.uk/ukxi/2011/2704/pdfs/ukxi_20112704_en.pdf

shown as bold as they are not defined in the Distribution Code Glossary and Definitions. The proposed legal text was amended to reflect these comments.

DCRP recommendation

At its meeting on 5 December 2013, the DCRP reviewed the draft final report and unanimously recommended that the proposed changes to the Distribution Code are approved. The final report with the proposed changes, and a revised version of the Distribution Code (Issue 21), was sent to us on 9 December 2013.

The Authority's decision

We have considered the report sent to us on 9 December 2013 and the comments received from one respondent during the consultation process. We conclude that:

1. implementation of the modification proposal will better facilitate compliance with the Applicable Objectives of the Distribution Code;¹⁰ and
2. directing that the modification is made is consistent with our principal objective and statutory duties.¹¹

Reasons for our decision

We set out below our views on which of the Applicable Distribution Code objectives are better facilitated by the modification. We consider that the modification has no impact on the other Distribution Code objectives.

Distribution Code Objective (a) 'permit the development, maintenance, and operation of an efficient, co-ordinated, and economical system for the distribution of electricity'

Whilst we do not consider that this modification in itself directly impacts upon the operation of the distribution system, by clarifying and codifying the Code Administrator role, adopting best practice principles and improving transparency and ease of engagement for code users, we consider that this modification will facilitate effective Distribution Code governance. This will permit the development and operation of an efficient distribution system, and will facilitate the introduction of effective code changes in the future.

Distribution Code Objective (b) 'facilitate competition in the generation and supply of electricity'

Creating a Code Administrator role and introducing best practice principles for the code administration and modification processes should assist all participants engaging with the Distribution Code, especially smaller participants and new entrants. This can be expected to result in benefits to competition, for example, by facilitating a greater degree of participation than has historically been the case, aiding understanding, and facilitating the raising and discussion of Distribution Code issues by code users.

¹⁰ The Applicable Objectives of the Distribution Code are set out in SLC 21.4 of the Electricity Distribution Licence.

¹¹ 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 (as amended most recently by the Energy Act 2010), as well as arising from directly effective European Union law.

Distribution Code Objective (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'

The licence modifications made to introduce the various elements of CGR Phase 2 and the provisions in relation to the EU Third Package (as referred to above) to the Distribution Code governance arrangements are now in force. The DNOs therefore must ensure that these licence provisions can be efficiently discharged. The modification will ensure that the DNOs can discharge these obligations through the Distribution Code governance procedures.

Outstanding legal text issues

We have reviewed the legal text submitted by the DNOs in the final report. While the majority of the legal text does reflect the licence changes made, in our view, there are some further minor changes that could be made for clarity, namely:

- The substitution of 'amendment' with 'modification' in the Constitution and Rules of the DCRP (21(e)) and in the DCRP's Standard Procedure 1 (Governance of Qualifying Standards) (4.1 (xi)), to provide consistency across the Code
- The removal of bold text from 'Code of Practice' in the Constitution and Rules of the DCRP (20.4) as 'Code of Practice' is not a defined term in the Distribution Code

Decision notice

In accordance with SLC 21.11 of the Electricity Distribution Licence, the Authority hereby directs that the modifications to the Distribution Code set out in the Report to the Authority of 9 December 2013 be made.

Lesley Nugent

Head of Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose