

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

Email: industrycodes@ofgem.gov.uk

Date: 14 June 2016

Dear colleague,

Decision to modify gas and electricity licences to implement Code Governance Review (Phase 3) Final Proposals

On 10 May 2016 we published statutory notices¹ consulting on licence modifications necessary to give effect to our Code Governance Review (Phase 3) (CGR3) Final Proposals².

The CGR3 Final Proposals apply to holders of the relevant licences listed in the table below and also affect industry code parties and other interested parties.

Licence type	Licence conditions to be modified
Electricity Transmission	<ul style="list-style-type: none">• SLC B12 (System Operator – Transmission Owner Code (STC))• SLC C3 (Balancing and Settlement Code (BSC))• SLC C5 (Use of system charging methodology)• SLC C10 (Connection and Use of System Code (CUSC))• SLC C14 (Grid Code)
Electricity Distribution	<ul style="list-style-type: none">• SLC 21 (The Distribution Code)• SLC22 (Distribution Connection and Use of System Agreement)• SLC22 A (Governance and change control arrangements for Relevant Charging Methodologies)• SLC23 (Master Registration Agreement)
Gas Transporter Licence	<ul style="list-style-type: none">• Standard Special Condition A11 (Network Code and Uniform Network Code)
Gas Transporter Licence	<ul style="list-style-type: none">• SLC 9 (Network Code and Uniform Network Code)
Gas Supply Licence	<ul style="list-style-type: none">• SLC30 (Supply Point Administration Agreement)

The statutory consultations on the proposed licence modifications closed on 7 June 2016. We received seven responses, none of which were marked as confidential. All are available

¹ <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-final-proposals-statutory-consultation-licence-modifications-0>

² https://www.ofgem.gov.uk/system/files/docs/2016/03/code_governance_review_phase_3_final_proposals_2.pdf

on our website.³ A summary of these responses is set out in Appendix 1 to this letter, alongside our views.

In light of the responses received, we have made minor amendments to the licence drafting. These changes correct typographical and grammatical errors; they do not amount to a substantive change to the modifications proposed in the statutory consultation.

The modifications are set out in the appendices to this letter as follows.

Appendix	Licence
2	Electricity Transmission Licence
3	Electricity Distribution Licence
4	Gas Transporter Licence (Standard Special Conditions)
5	Gas Transporter Licence (Standard Conditions)
6	Gas Supply Licence

Where applicable, we expect modification proposals to be taken forward to reflect these changes within the relevant codes.

Alongside these modifications, we have also published updated guidance in respect of the Significant Code Review (SCR) process.⁴ This guidance takes account of the responses we received to our statutory consultation and our Code Governance Review (Phase 3) Final Proposals – consultation on licence modifications, which are available on the Ofgem website.⁵

Yours faithfully,

Lesley Nugent
Head of Industry Codes and Licensing

³ <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-final-proposals-statutory-consultation-licence-modifications-0>

⁴ <https://www.ofgem.gov.uk/publications-and-updates/ofgem-guidance-launch-and-conduct-significant-code-reviews-scrs>

⁵ <https://www.ofgem.gov.uk/publications-and-updates/code-governance-review-phase-3-final-proposals-consultation-licence-modifications>

Appendix 1 – Responses to statutory consultation

Licence drafting

Respondents welcomed the clarifications and updates to the previous drafting that had been consulted on and made a number of specific comments, which are set out in the table.

Licence type and condition^{6,7}	Response⁸	Comments
Electricity Distribution SLC23 Gas Supply SLC 30 Electricity Transmission SLC B12	In SLC23.6A (c), reference to 'network code' should be to 'MRA'	We agree that this is an incorrect reference. In addition, in SLC 30, 30.10A(c) the reference to 'network code' should be to 'SPAA' and in B12, 6GA the reference to 'CUSC' should be to STC. We have amended the drafting accordingly.
Electricity Transmission SLC B12 Electricity Distribution SLC 21, 22, 23 Gas Transporter SLC 9 Gas Supply SLC 30	In SLC 21.11A(b) the inserted words 'or made by' don't seem to make sense. Need to remove 'made'	We have amended the drafting accordingly
Electricity Distribution SLC 21	21.11AA first line 'that' should be deleted	We have amended the drafting accordingly
Electricity Transmission SLC B12, C3, C10, C14 Electricity Distribution SLC 21, 22, 23 Gas Transporter SSC A11 Gas Transporter SLC 9 Gas Supply SLC 30	21.11B second line of subparagraph (c) 'has' should be 'have'	We have amended the drafting accordingly
Electricity Transmission SLC B12, C3, C10, C14 Electricity Distribution SLC 21, 22, 23 Gas Transporter SSC A11 Gas Transporter SLC 9 Gas Supply SLC 30	21.11C end of the fourth line the word 'either' should be deleted	We have amended the drafting accordingly
Electricity Transmission SLC B12, C3, C10, C14 Electricity Distribution SLC 21, 22, 23 Gas Transporter SSC A11 Gas Transporter SLC 9 Gas Supply SLC 30	21.11F final line 'recommence' should not be hyphenated	We have amended the drafting accordingly
Electricity Distribution SLC 22	22.9A first line para 9 should be para 22.9 (existing error)	We have amended the drafting accordingly
Electricity Distribution SLC 22	22.10 (c) sixth line 'with' should be inserted immediately after accordance	We have amended the drafting accordingly
Electricity Distribution SLC 22A	22A.10 second line 'facilities' should be 'facilitates' (existing error)	We have amended the drafting accordingly
Electricity Distribution SLC 22A	22A.12 third line 'incorporation' should be 'incorporating' (existing error)	We have amended the drafting accordingly
Electricity Distribution SLC 23	23.5(i) first line a comma should be inserted after opening word 'that' (existing error)	We have amended the drafting accordingly
Electricity Distribution SLC 21	In paragraph 21.11B(c) there is a closing bracket after the word "issued" which does not have an equivalent opening parenthesis	We have amended the drafting accordingly
Electricity Distribution SLC 21	In paragraph 21.11F there is a cross	We agree that the reference to

⁶ Standard Licence Condition (SLC), Standard Special Condition (SSC).

⁷ Where the response was also applicable to other licence conditions we have included them in this table, despite not necessarily being referenced in the response.

⁸ The reference to a paragraph or sub-paragraph relates to that referred to in the specific response. Where the same amendment is made in another condition, the numbering will not be applicable.

	reference to paragraph 21.11A(e) which does not exist	21.11A(e) is incorrect and have removed it
Electricity Distribution SLC 22A	22A.19 is redundant and could be removed	We recognise that this paragraph may be redundant, but do not consider it appropriate to delete without further consideration and consultation if appropriate
Electricity Distribution SLC 21	21.11B inseting of new subparagraphs (ba) and (bb) should match that of existing subparagraphs (a), (b) and (c)	This is a formatting issue which we have corrected.
Electricity Distribution SLC 21, 22, 22A, 23	There are a number of issues with left-hand alignment in these conditions	This is a formatting issue which we have corrected.
Electricity Distribution SLC 21	Propose renumbering of paragraphs and cross-references	As stated previously, we have sought to simplify the new paragraph numbering as much as possible. We have added new paragraphs using a standard numbering convention, that avoids the requirement to renumber existing paragraphs
Electricity Distribution SLC 21	We acknowledge that, in respect of the use of words and numbers to describe the length of time in these conditions, they are internally consistent; however we are unclear as to why this opportunity has not been taken to bring them in line with the format used in the rest of the distribution licence.	As stated previously, we consider that the proposed amendments to the licence conditions are internally consistent with the drafting in existence within that condition

Other comments

One respondent welcomed that revised SCR guidance would be issued. Another respondent reiterated a number of concerns regarding the revised SCR guidance. This respondent also requested that the licence conditions include a term obliging the Authority to issue guidance and to consult on that guidance before the licence condition comes into effect. As noted above, we have today also published revised SCR guidance. In this revised guidance, we have taken into account the comments that we have received in respect of the draft guidance that we consulted on previously. We do not consider it appropriate to put obligations on the Authority within a licence (the purpose of which is to set out the terms and conditions authorising another party to undertake a particular activity), however, we would note that we have consulted on the guidance before the licence conditions have come into effect.

Condition 21. The Distribution Code

Licensee's obligation

- 21.1 The licensee must take all steps within its power to ensure that the Distribution Code in force under this licence at 31 May 2008 remains a code approved by the Authority that complies with each of the following requirements.
- 21.2 The first requirement is that the Distribution Code must cover all material technical aspects relating to connections to and the operation and use of the licensee's Distribution System or (so far as is relevant to such operation and use) the operation of electric lines and electrical plant connected to that system.
- 21.3 The second requirement, which is without prejudice to the first requirement, is that the Distribution Code must make express provision for the matters referred to in paragraphs 21.5 to 21.7A.
- 21.4 The third requirement is that the Distribution Code, so far as is consistent with the first two requirements, must be designed so as to better facilitate the achievement of the Applicable Distribution Code Objectives, which are to:
- (a) permit the development, maintenance, and operation of an efficient, co-ordinated, and economical system for the distribution of electricity; and
 - (b) facilitate competition in the generation and supply of electricity; and
 - (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; and
 - (d) promote efficiency in the implementation and administration of the Distribution Code.

Specific contents of the Distribution Code

- 21.5 The Distribution Code must include a Distribution Planning and Connection Code (see paragraph 21.6) and a Distribution Operating Code (see paragraph 21.7).
- 21.6 The Distribution Planning and Connection Code must contain:
- (a) planning conditions that specify the technical and design criteria and procedures that are to be applied by the licensee in the planning and development of its Distribution System and taken into account by persons having a connection or seeking a connection to that system in the planning and development of their own plant and systems; and
 - (b) connection conditions that specify the technical, design, and operational criteria to be complied with by any person having a connection or seeking a connection to the licensee's Distribution System.
- 21.7 The Distribution Operating Code must specify the conditions under which the licensee must operate its Distribution System, and under which persons must operate their own plant and systems in relation to that system, so far as is necessary to protect the security, quality of supply, and safe operation of the licensee's Distribution System under both normal and abnormal operating conditions.

21.7A The Distribution Code must provide for:

- (a) a panel body, as specified in the Distribution Code (the “panel”), whose functions shall include the matters required by this condition and as set out in the Distribution Code and any ancillary documents; and
- (b) a secretarial or administrative person or body, as specified in the Distribution Code, to perform the role of code administrator (the “code administrator”). In addition to any powers, duties, or functions set out in the Distribution Code and any ancillary documents, the code administrator shall:
 - (i) together with other code administrators, publish, review, and (where appropriate) amend from time to time the Code of Practice approved by the Authority (any amendments to the Code of Practice are to be approved by the Authority);
 - (ii) facilitate the procedures for making a modification to the Distribution Code;
 - (iii) have regard to, and in particular (to the extent relevant) be consistent with the principles contained in, the Code of Practice; and
 - (iv) provide assistance, insofar as is reasonably practicable and on reasonable request, to Authorised Electricity Operators (including, in particular, Small Participants) and, to the extent relevant, consumer representatives that request the code administrator’s assistance in relation to the Distribution Code including, but not limited to, assistance with:
 - i. understanding the operation of the Distribution Code;
 - ii. their involvement in, and representation during, the modification procedure processes (including, but not limited to, code panel and/or workgroup meetings);
 - iii. accessing information relating to modification proposals and/or modifications.

Procedure for modifying the Distribution Code

21.8 The licensee must (in consultation with other Authorised Electricity Operators likely to be materially affected) periodically review (including at the Authority’s request) the Distribution Code and its implementation.

21.8A The review undertaken under paragraph 21.8 must

- (a) where the Authority reasonably considers it necessary to comply with or implement the Regulation and/or any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators proceed in accordance with any timetable(s) directed by the Authority under this paragraph in relation to the progress of the review and/or implementation of any modifications to the Distribution Code; and
- (b) involve an evaluation of whether any modification or modifications to the Distribution Code would better facilitate the achievement of the Applicable Distribution Code Objectives and, where the impact is likely to be material, this must include an assessment of the quantifiable impact of any such modification on greenhouse gas emissions, to be conducted in accordance with any such guidance (on the treatment of carbon costs

and evaluation of greenhouse gas emissions) as may be issued by the Authority from time to time.

21.9 After completing any such review, the licensee must send to the Authority:

- (a) a report on the outcome of the review conducted in accordance with paragraphs 21.8 and 21.8A;
- (b) a statement of any proposed modifications to the Distribution Code that the licensee (having regard to the outcome of the review) reasonably thinks are appropriate for the continuing achievement of the objectives referred to in paragraph 21.4 and a detailed explanation of the reasons for this assessment; and
- (c) any written representations or objections from Authorised Electricity Operators (including any proposals by such operators for modifications to the Distribution Code that have not been accepted by the licensee in the course of the review) that were received during the consultation process and have not been withdrawn.

21.10 Modifications to the Distribution Code ~~that are proposed by the licensee and sent to the Authority under paragraph 21.9(b)~~ must not be implemented without the Authority's approval.

21.11 The Authority (having regard to any representations or objections referred to in paragraph 21.9(c) and after any further consultation that it considers appropriate), or having regard to a report submitted in accordance with paragraph 21.11AA(b) or 21.11E(b), may give a direction to the licensee that requires it to modify the Distribution Code in such manner as may be specified in the direction and the licensee must forthwith comply with any such directions.

21.11A The procedures for modifying the Distribution Code must provide:

- (a) for the revision and resubmission of the report provided for under paragraph 21.9(a), paragraph 21.11AA(b) or paragraph 21.11E(b) upon, and in accordance with, a direction issued to the licensee by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal;
- (b) without prejudice to paragraph 21.11D, that proposals for the modification of the Distribution Code falling within the scope of a Significant Code Review may not be made during the Significant Code Review Phase, except:
 - (i) where 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
 - (ii) at the direction of, or made by, the Authority;
- (c) that, where a modification proposal is made during a Significant Code Review Phase, the licensee must:
 - (i) unless exempted by the Authority, notify the Authority as soon as practicable of:
 - any representations received in relation to the relevance of the Significant Code Review; and

- the licensee's assessment of whether the proposal falls within the scope of the Significant Code Review and its reasons for that assessment; and
 - (ii) if the Authority so directs, not proceed with the modification proposal until the Significant Code Review Phase has ended;
 - (d) that the Authority may make a proposal for modification of the Distribution Code where that modification proposal is in respect of a Significant Code Review;
- 21.11AA The procedures for modifying the Distribution Code must provide that, where the Authority makes a modification proposal in accordance with paragraph 21.11A(d), for the licensee:
- (a) to evaluate whether the modification to the Distribution Code would better facilitate the achievement of the Applicable Distribution Code Objectives and, where the impact is likely to be material, this must include an assessment of the quantifiable impact of any such modification on greenhouse gas emissions, to be conducted in accordance with any such guidance (on the treatment of carbon costs and evaluation of greenhouse gas emissions) as may be issued by the Authority from time to time;
 - (b) to send to the Authority a report on the outcome of the evaluation conducted in accordance with sub-paragraph (a) above;
 - (c) to send to the Authority any written representations or objections from Authorised Electricity Operators that were received during the consultation process and have not been withdrawn; and
 - (d) to proceed in accordance with any timetable(s) directed by the Authority in relation to the procedural steps outlined in this paragraph and/or in relation to implementation of such modification to the Distribution Code.
- 21.11B 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, the licensee must comply with those Directions and must treat the Significant Code Review Phase as ended;
 - (b) the Authority issues to the licensee a statement that no Directions under sub-paragraph (a) will be issued in relation to the Distribution Code, the licensee must treat the Significant Code Review Phase as ended;
 - (ba) the Authority makes a modification proposal in accordance with paragraph 21.11A(d), the licensee must 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 must treat the Significant Code Review Phase as continuing until it is brought to an end in accordance with paragraph 21.11C;
 - (c) neither Directions under sub-paragraph (a) nor a statement under sub-paragraphs (b) or (bb) have been issued, nor a modification proposal under sub-paragraph (ba) has been made, the Significant Code Review Phase will be deemed to have ended.

The Authority's published conclusions and Directions to the licensee will not fetter any voting rights of the members of the panel or the procedures informing the report described at sub-paragraph 21.9(a).

21.11C The procedures for modification of the Distribution Code shall provide that, if the Authority issues a statement under paragraph 21.11B(bb) and/or a direction in accordance with paragraph 21.11F, 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 21.11B(a) or (ba) occurs (irrespective of whether such circumstance occurs within twenty-eight (28) days after the Authority has published its Significant Code Review conclusions); or
- (c) the Authority makes a decision consenting or otherwise to the modification of the Distribution Code following the submission of the report under paragraph 21.11E(b).

21.11D The procedures for modification of the Distribution Code shall provide that, where the Authority has issued a statement in accordance with paragraph 21.11B(bb) and/or a direction in accordance with paragraph 21.11F, the Authority may submit to the licensee a modification proposal for a modification in respect of a Significant Code Review.

21.11E The procedures for modification of the Distribution Code shall provide, where the Authority submits a Significant Code Review modification proposal in accordance with paragraph 21.11D:

- (a) for the evaluation of whether the proposed modification would better facilitate the achievement of the Applicable Distribution Code Objectives and, where the impact is likely to be material, this must include an assessment of the quantifiable impact of any such modification on greenhouse gas emissions, to be conducted in accordance with any such guidance (on the treatment of carbon costs and evaluation of greenhouse gas emissions) as may be issued by the Authority from time to time;
- (b) for the licensee to send to the Authority a report on the outcome of the evaluation conducted in accordance with sub-paragraph (a); and
- (c) for the licensee to proceed in accordance with any timetable(s) directed by the Authority in relation to the procedural steps outlined in this paragraph and/or in relation to implementation of such modification to the Distribution Code.

The Authority's published conclusions and Significant Code Review modification proposal will not fetter any voting rights of the members of the panel or the procedures informing the report described at sub-paragraph 21.11E(b).

21.11F The procedures for modification of the Distribution Code shall provide that, where a proposal has been made in accordance with paragraph 21.11B(a) or 21.11A(e), or by the Authority under paragraph 21.11B(ba), the Authority may issue a direction (a "backstop direction"), which requires such proposal(s) and any alternatives to be withdrawn and which causes the Significant Code Review Phase to re-commence.

Availability of the Distribution Code

21.12 The licensee must give or send a copy of the Distribution Code (as from time to time modified):

- (a) to the Authority; and
- (b) to any person who requests it.

21.13 The licensee may make a charge for any copy of the Distribution Code given or sent under paragraph 21.12(b) but this must not exceed the amount specified in directions issued by the Authority for the purposes of this condition generally, based on its estimate of the licensee's reasonable costs of providing the copy.

Performance of obligations

21.14 The licensee must fulfil its obligations under this condition in conjunction and co-operation with all other Electricity Distributors and in accordance with such arrangements for that purpose as are approved by the Authority.

21.15 Without prejudice to any rights of approval, veto or direction the Authority may have, the licensee must use its best endeavours to ensure that procedures are in place that facilitate its compliance with the requirements of this condition including, but not limited to, modifying the Distribution Code and any ancillary documents where necessary no later than ~~31 December 2013~~ 31 March 2017.

Interpretation

21.16 For the purposes of this condition:

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 of sub-paragraph 21.11B(a), direction(s) issued following publication of Significant Code Review conclusions which will contain:

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

Significant Code Review

means a review of one or more matters which the Authority considers likely to:

- (a) relate to the Distribution Code (either on its own or in conjunction with any 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 licensee (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, or
 - (ii) on the date the Authority makes a direction under paragraph 21.11F (a "backstop direction"), and
- (b) ending either:
 - (a) ~~(i)~~ on the date on which the Authority issues a statement under sub-paragraph 21.11B(b) that no Directions will be issued in relation to the Distribution Code; or
 - (b) ~~(ii)~~ if no statement is made under sub-paragraph 21.11B(b) or (bb), on the date on which the licensee has made a modification proposal in accordance with Directions issued by the Authority, or the Authority makes a modification proposal under sub-paragraph 21.11B(ba); or
 - (c) ~~(iii)~~ immediately under sub-paragraph 21.11B(c), if neither a statement, a modification proposal nor Directions are issued by the Authority within (and including) twenty-eight (28) days from the Authority's publication of its Significant Code Review conclusions; or
 - (iv) if a statement has been made under sub-paragraph 21.11B(bb) or a direction has been made under paragraph 21.11F (a "backstop direction"), on the date specified in accordance with paragraph 21.11C.

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.