

## Distribution Code Review Panel

### Meeting 61 – Thursday 8 September 2016

#### Code Administrator Update

Paper by Secretary

The purpose of this paper is to provide the Panel with a brief update on the key issues relating to the provision of the Code Administration service to the Distribution Code Review Panel.

#### Issues

##### **Code Governance Ph 3 Final Proposals.**

In 2010, Ofgem's Code Governance Review implemented measures to improve the governance arrangements in three of the main Industry codes which underpin the gas and electricity industry arrangements. In 2013, the second phase of their Code Governance Review extended many of the outcomes to the remaining industry codes. Their code governance reforms were aimed at reducing unnecessary barriers and red tape. They were also aimed at ensuring significant code change could be delivered more effectively.

In May 2015, Ofgem issued an open letter noting that they continued to have concerns that the code governance arrangements may not be operating in the best interests of consumers and that it was timely to review the code governance reforms that they had implemented. In October 2015, they published their Initial Proposals for further reform, taking into account the responses to their May letter.

On the 31 March 2016 Ofgem issued its Code Governance Review (Phase 3) Final Proposals for further reform. The proposals take account of the responses that they received to their May letter and their Initial Proposals and also feedback from their July industry workshop and December code administrators' workshop.

Ofgem considers that the changes they are proposing will make important incremental improvements and believe the changes will help code administrators and the wider industry prepare for what could be more fundamental changes proposed by the CMA. Ofgem also consider that these final proposals are in line with their commitment to Better Regulation principles and to reducing regulatory burdens on industry while maintaining effective consumer protection.

##### **Four key areas were identified in the Final Proposals:**

###### *1. Significant Code Review (SCR) process*

The Final Proposals provide three options that could be followed under an SCR process. Ofgem will retain the ability to follow the current SCR process, under which they direct a licensee(s) to raise modification proposals at the end of the SCR. In addition, they are introducing the ability for them to raise a modification proposal(s) at the end of an SCR. Under these two options the modifications would follow the standard industry process. The third option would enable Ofgem to lead an end-to-end process to develop code

modification(s). They consider that these changes will provide additional flexibility in how the Authority may choose to lead an SCR and enhance the existing SCR process.

**Work to date** – ENA are currently reviewing what impacts this may have on the DCode and what changes/update to the code may be required. Target for this review/change to be completed is March 2017

## 2. *Self-governance process*

The Final Proposals on the self-governance process require industry to assess whether a modification requires Authority consent, i.e. why it is material, rather than why it is not material, which is the current situation. They also expect code administrators to work together to produce guidance that can be applied across codes to help proposers assess whether their change should follow a self-governance path.

**Work to date** – ENA will review this self-governance process and work up a modification proposal that will include a requirement in the Code that the Panel should assess whether a modification is material, and therefore requires the consent of the Authority, in deciding whether to use the self-governance route. ENA intend to have this ready for the December DCRP meeting. The Code Administrators have also been working collaboratively to produce a draft guidance document outlining the self-governance process for proposers assessing whether their change should follow a self-governance path. Copy of the early draft is attached as appendix A. Comments from the Panel are very welcome.

## 3. *Code administration*

In the area of code administration, Ofgem have identified a number of changes that they consider would make code administration and related arrangements more effective, in particular in supporting smaller parties and in driving consistency across the code change processes. These changes include the development of **forward work plans** by the code administrators and **increased cross-code coordination**, through the development of a **modification proposals register** and the use of an agreed process for modification proposals that may affect more than one code. They have also put forward changes to the way that the code administrators **report on metrics**.

**Work to date** – On 3/6 ENA responded to Ofgem's Code Governance Ph 3 Final Proposals setting out a detailed implementation plan. Although a number of the reforms will take a period of time to deliver there are some that can be implemented in the short term and the plan indicates those that the DCRP and ENA intend to act upon immediately. A copy of the plan and latest implementation progress can be found at appendix B. Comments from the Panel are very welcome.

ENA and National Grid Code Administrators are also working collaboratively to develop a joint forward work plan for the implementation of the EU Network Codes. The first draft should be available 31/8.

A new central codes modification register developed by ENA has now been adopted by all industry Code Administrators and is available to view on their respective websites. You can find it [here](#) on the DCode website. Regarding the metrics reporting requirements, ENA are now reporting back to Ofgem on 17 separate metrics and these are submitted on a quarterly basis. The latest Q2 (April – June) metrics update was submitted to Ofgem on 11/7.

## 4. *Charging methodologies*

The Final Proposals also propose a number of ways in which Ofgem expect to see improvements to the governance of charging methodologies (for example DCUSA), which should lead to increased participation in governance processes over time. Several of their proposals for the charging methodologies relate to self-governance and code administration.

In addition, they anticipate that increased use of the self-governance route for charging modifications (where appropriate) would create a more effective balance to the decision-making framework that applies industries and their resources more efficiently.

**Work to date** – No work at this time as charging methodologies do not directly affect the DCode.

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

On 10 May 2016 Ofgem published statutory notices consulting on licence modifications necessary to give effect to their Code Governance Review (Phase 3) (CGR3) Final Proposals. The CGR3 Final Proposals apply to holders of the relevant licences and also affect industry code parties and other interested parties. With regards to the Distribution Code Licence condition SLC 21 requires to be modified. The Ofgem modifications to LC21 can be found in appendix C

**Work to date** - ENA has asked Herbert Smith Freehills (DCRP legal advisors) to undertake a review of the DCode to ensure the necessary modifications are identified and appropriate legal text is drafted.

## **Ofgem questionnaire relating to contractual arrangements between Code administrator and DCRP**

On 23/8 Lesley Nugent Head of Industry, Codes and Licensing at Ofgem wrote to ENA to request some information on the current contract that the Distribution Code Review Panel has in place with the appointed code administrator for the Distribution Code.

As you will be aware, the CMA has published its final report and Ofgem are now working on setting out how they will implement the CMA's Codes Remedies package, including the remedy of licensing code administration (and delivery) bodies.

As part of this Ofgem would like to understand more about how code administrators are currently contracted by the relevant bodies - in the case of the Distribution Code, the Distribution Code Review Panel. They are similarly interested in understanding how any IT services required under the Distribution Code are contracted either directly or through contracts with the code administrators.

A set of questions have been submitted by Ofgem and they would like ENA to take forward this request with the Distribution Code Review Panel, as Ofgem would find the information requested a valuable input to their work on implementing the CMA's remedies. The questions can be found in appendix D.

**Work to date** – ENA currently preparing a response.

**Distribution Code Self Governance Guidance.**

Effect on	Likely to require Authority decision if your proposal....
Existing or future electricity consumers	<ul style="list-style-type: none"> <li>• Materially increases costs that are passed on to consumers, or may do in future.</li> </ul>
Competition in, or commercial activities related to, the distribution of electricity	<ul style="list-style-type: none"> <li>• Reduces competition, or choice, in the marketplace.</li> <li>• Significantly increases complexity of processes (where this potentially leads to confusion for consumers).</li> <li>• Entails parties incurring an additional cost (eg significant cost for few or additional costs for many).</li> <li>• Introduces different treatment according to class of parties, whether you believe it is justified or not – see also the note below the table).</li> </ul>
Operation of one or more Distribution Networks	<ul style="list-style-type: none"> <li>• Has the potential to create stranded regulated assets.</li> <li>• Increase investment in network assets.</li> <li>• Transfer obligations or rights between the TSO and one or more of the DNOs.</li> </ul>
Sustainable development, safety or security of supply, or the management of network emergencies	<ul style="list-style-type: none"> <li>• Has the potential to result in a widespread increase in carbon emissions or greenhouse gases</li> <li>• Would entail network operators seeking approval of HSE,EA,SEPA,DBEIS</li> <li>• Reduces the availability of Electricity.</li> </ul>
DCRP governance or modification procedures	<ul style="list-style-type: none"> <li>• Affects the rights of the industry to be engaged in proposed changes to the Distribution Code.</li> <li>• Changes the User or Distribution representation obligations.</li> <li>• Changes any Authority decision-making capacity.</li> </ul>

Proposers should also remember that modifications likely to introduce any kind of discrimination between classes of parties across the industry normally require Authority direction.

## CGR3 – Key actions and Progress

#	Change	Key Actions	Approach	By When	Who	Progress to date
<b>Individual Code modifications</b>						
1	Modifications to codes to implement SCR proposals	Undertake modification to Distribution Code where required to implement the SCR proposals	Code Modification	March 31 2017	DCRP/ENA	Herbert Smith Freehills LLP (DCode legal advisors) have commenced work w/c 29/8/16 to review DCode
2	Modifications to codes such that Industry assesses whether a modification <b>is</b> material, and therefore requires the consent of the Authority, in deciding whether to use the self-governance route	Undertake a modification to Distribution Code to include a requirement in the Code that the Panel should assess whether a modification <b>is</b> material, and therefore requires the consent of the Authority, in deciding whether to use the self-governance route	Code Modification	March 2017	DCRP/ENA	As above
<b>Code administrators to develop and/or implement proposals to individual codes or processes</b>						
3	All codes to make better use of the self-governance provisions	This requirement will be included in the Distribution Code	Code Modification	March 2017	DCRP/ENA	As above
4	Code administrators to publish and follow Critical Friend 'Top 5'	The D Code website currently includes a section for Code Administration and the Critical Friend Top 5 will be published to it. The ENA will abide with the Critical Friend Top 5	Review and update D Code website	Aug 2016	DCRP/ENA	This has been published on the D Code website and can be found <a href="#">here</a> .

5	All codes to have a dedicated CACoP web page	The D Code website already has a section for Code Administration including CACoP. This will be reviewed on a regular basis.	Review and update D Code website	August 2016	DCRP/ENA	A CACoP page is available on the DCode website and can be found <a href="#">here</a> .
6	All new Modification Proposals to follow the new standard modification templates (including a consumer impacts section)	The D Code website will include the new standard modification templates (including a consumer impacts section). Users will also be provided with simple instructions on how the modification process works.	Publish new modification form to D Code website include User instructions	November 2016	DCRP/ENA	The D Code website now includes the new standard modification template and can be found <a href="#">here</a>
7	All cross-code Modification Proposals to follow the new joint process	The DCRP and ENA will ensure that any cross-code Modification Proposals follow the new joint process. This new requirement will be included within the modification section of the Distribution Code	Code Modification	November 2016	DCRP/ENA	Work in progress
8	The development of Forward Work plans by code administrators and ensure that they are consistent across all codes	The DCRP and ENA will develop Forward Work plans ensuring they are consistent across all codes. The final DCRP agreed/approved plan will be published to the Distribution Code website	Final plan will be published on D Code Website. Possible modification may be required to D Code.	September 2016	DCRP/ENA	The Distribution and Grid Code Administrators are working collaboratively to develop a joint Technical forward work plan. The first draft of this plan is expected to be available end of August 2016 and will be presented to

						both Panels for approval and therefore going forward the Panel will undertake the role of overall role of "project manager" to ensure delivery of the work plan.
9	The development of Project Management and Assurance provisions by code administrators	The ENA will consider the development of Project Management and Assurance provisions	ENA to develop Project Management and Assurance process	March 2017	DCRP/ENA	Work in progress. See above
10	All parties to ensure that clear reasons are given in modification reports	The requirement to ensure all parties provide clear reasons in modification reports will be included in a revised modification section within the Distribution Code	Code Modification	November 2016	DCRP/ENA	Work in progress
11	The Code Administrator to act as Workgroup Chair (unless there is a conflict of interest)	The ENA staff/ members will act as Workgroup Chair (unless there is a conflict of interest)	Ensure all future workgroups are chaired by ENA	June 2016	DCRP/ENA	Work in progress
12	All relevant Code Administrators to ensure better use of the pre-modification process for charging methodologies	Not applicable to Distribution Code				
13	DCUSA and SPAA Panels to review Panel Voting	Not applicable to Distribution Code				
14	All relevant papers to be made	Not applicable to				

	available on the DCUSA website	Distribution Code				
15	DCUSA Panel to explore the role of panel sponsors	Not applicable to Distribution Code				
<b>Code administrators to work together to develop proposals</b>						
16	The development of guidance in respect of materiality for self-governance	DCRP/ENA will develop guidance in respect of materiality for self-governance	Guidance will be developed.	*November 2016	DCRP/ENA	Work in progress. First draft is available
17	Code administrators to implement the use of the Lead Code Administrator	ENA will implement the use of the Lead Code Administrator	ENA will fulfil its role as a lead code administrator	*June 2016	DCRP/ENA	From June 2016 ENA undertaking role of lead administrator and will facilitate the 2016 review of CACoP.
18	Code administrators to capture CACoP minor changes on an ongoing basis	ENA will capture CACoP minor changes on an ongoing basis and ensure they are included in the regular review by Code Administrators	ENA will include on its website a means for Users to provide comments on use of CACoP. Comments will then be fed into the Code Administration regular review process.	*June 2016	DCRP/ENA	Website updated so that users can submit comments. Link can be found <a href="#">here</a> .
19	Code administrators to develop and implement a cross-code Modifications Register	ENA will assist in the development and implementation of a cross code Modifications Register.	ENA will publish to its website a final cross code register.	*August 2016	DCRP/ENA	This has been developed and is now available on the DCode website and can be found <a href="#">here</a>
20	Development of a process to ensure consistency in code Forward Work plans where appropriate	ENA will assist in the development and implementation of consistent Code Administration Forward	DCRP forward work plans will be published to the D Code website.	*August 2016	DCRP/ENA	Work ongoing with CAs



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

Email: [industrycodes@ofgem.gov.uk](mailto: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 notices<sup>1</sup> consulting on licence modifications necessary to give effect to our Code Governance Review (Phase 3) (CGR3) Final Proposals<sup>2</sup>.

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

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

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

<sup>2</sup> [https://www.ofgem.gov.uk/system/files/docs/2016/03/code\\_governance\\_review\\_phase\\_3\\_final\\_proposals\\_2.pdf](https://www.ofgem.gov.uk/system/files/docs/2016/03/code_governance_review_phase_3_final_proposals_2.pdf)

on our website.<sup>3</sup> 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.

<b>Appendix</b>	<b>Licence</b>
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.<sup>4</sup> 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.<sup>5</sup>

Yours faithfully,

**Lesley Nugent**  
**Head of Industry Codes and Licensing**

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

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

<sup>5</sup> <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.

<b>Licence type and condition<sup>6,7</sup></b>	<b>Response<sup>8</sup></b>	<b>Comments</b>
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

<sup>6</sup> Standard Licence Condition (SLC), Standard Special Condition (SSC).

<sup>7</sup> 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.

<sup>8</sup> 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.



Making a positive difference  
for energy consumers

Direct Dial: 0207 901 0503  
Email: CMACodeGov@ofgem.gov.uk

Date: 23 August 2016

Dear David,

**Implementing the CMA's code governance remedies: Ofgem questions on current contractual arrangements**

I am writing to you, as discussed with Steve Cox, to request some information on the current contract that the Distribution Code Review Panel has in place with the appointed code administrator for the Distribution Code.

As you will be aware, the CMA has published its final report<sup>1</sup> and we are now working on setting out how we will implement the CMA's Codes Remedies package, including the remedy of licensing code administration (and delivery) bodies.

As part of this we would like to understand more about how code administrators are currently contracted by the relevant bodies - in the case of the Distribution Code, the Distribution Code Review Panel.<sup>2</sup> We are similarly interested in understanding how any IT services required under the Distribution Code are contracted either directly or through contracts with the code administrators.

I have set out our questions in the table at Annex 1, overleaf. I would be most grateful if you could take forward this request with the Distribution Code Review Panel, as we would find the information requested a valuable input to our work on implementing the CMA's remedies.

The questions we have identified are in three broad areas:

1. **Contract details** (including contract terms, extensions, and terminations)
2. **Required outputs** (focusing on quantitative and qualitative performance metrics)
3. **Incentives** (including any explicit bonuses and penalties)

We kindly ask that you use this Annex as a template to provide the outline information for the full range of code administration and IT services (using a separate form for each please). You are welcome to append longer pieces of text and additional relevant information, but we are not asking for the full contracts.

I would be grateful if you could respond to us by Friday 2<sup>nd</sup> September where possible, but please do not hesitate to get in touch if you would like to discuss the timings, or any other aspect of this letter. You can email [CodeGovRemedies@Ofgem.gov.uk](mailto:CodeGovRemedies@Ofgem.gov.uk) or call Lewis Heather on 0207 901 0503.

Yours faithfully,

Lesley Nugent  
**Head of Industry Codes and Licensing**

<sup>1</sup> <https://www.gov.uk/cma-cases/energy-market-investigation>

<sup>2</sup> As provided for under the Distribution Code DGC4.

## Annex 1: Contract information query

Please fill out the fields and table below (expanding the table as necessary). Do use appendices or attachments as necessary, but please do not attach any contracts.

Contract covered in this table	
Relevant code	Distribution Code
Headline role of contracted company	Industry Body (Trade Association) Represents the 'wires and pipes' transmission and distribution network operators for gas and electricity in the UK and Ireland.
Company contracted to undertake role	Energy Networks Association (ENA)
Brief summary of service provided under this contract	<p>The ENA undertakes the role of Code Administrator on behalf of the Distribution Code Review Panel (DCRP) and has done so since Privatization in 1990. The ENA was formally appointed as Service Provider (ie Code Administrator) in 2004 following the Ofgem led review of technical code governance.</p> <p>The DNOs appoint the ENA and other advisers to assist with their responsibilities under the Distribution Code, including work on standards and operation of the Distribution Code website.</p> <p>The formal arrangements<sup>1</sup> are set down in schedule 20 of the current Constitution and Rules of the Distribution Code Review Panel of Great Britain.</p> <p>The Panel approve the functional specifications (but not the commercial arrangements) for the Service Provider contracted to the DNOs. The Panel maintain a schedule of the main duties and responsibilities of the Service Provider. The current duties and responsibilities are set out in the Constitution and Rules Standard Procedure 2 – <i>Service Provider Functional Requirements</i>.</p> <p>The DNOs appoint a Service Provider to be the Code Administrator in accordance with DGC 11.3 of the Distribution Code. In the absence of such an appointment, the Secretary shall be the Code Administrator.</p> <p>Copy of the Distribution Code and the Distribution Code Review Panel (DCRP) and the Industry Technical Codes Group (ITCG) Constitution and Rules are attached with this response.</p>
Contract details	
Start and end date of contract	Annual financial year is between 1 April and 31 March, but the service is provided through an ongoing arrangement between DNOs and ENA
Are there any outlined potential contract extensions? What are the	No

terms for granting those extensions?	
Are there any outlined arrangements for contract termination? What are the terms?	No
Contract value (base contract term and any extensions)	<p>There is no contract value as the cost of this service is included in the annual DNO ENA subscription costs, ie the whole cost of D Code and DCRP administration is funded by the DNOs.</p> <p>The DNOs fund and share the costs incurred by or on behalf of the DNOs in relation to the operation of the Panel in accordance with the Constitution and Rules of the ITCG and as referred to in DGC 4.8 of the Distribution Code.</p>
What terms does the contract place on intellectual property (where relevant)?	None.
<b>Required outputs</b>	
What specific requirements (outputs, obligations) are outlined in the contract? (qualitative and quantitative)	The requirements are laid down in Standard Procedure 2 of the Constitution and Rules of the Distribution Code Review Panel of Great Britain (Sept 2014).
How is performance of those requirements measured?	Annual Report as laid down in schedule 23 of the Constitution and Rules of the Distribution Code Review Panel of Great Britain (Sept 2014)
How are performance metrics collected?	As per the metrics laid down in the CACoP v4.
<b>Incentives</b>	
What incentives are in place to encourage performance? Including details of any financial bonuses or penalties.	<p>Industry reputation.</p> <p>No financial penalties or bonuses exist.</p>
Are there any provisions in place for you to retender the contract if certain performance requirements aren't met? If so, please provide details.	No