

Modification proposal:	Uniform Network Code (UNC) 0623: Governance Arrangements for Alternatives to Self-Governance Modification Proposals (UNC623)		
Decision:	The Authority ¹ directs this modification be made ²		
Target audience:	UNC Panel, Parties to the UNC and other interested parties		
Date of publication:	22 March 2018	Implementation date:	To be confirmed by the code administrator

Background

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. Our CGR final proposals introduced, among other things, the self-governance process for some industry codes.⁴

The second phase of CGR (CGR2) extended the arrangements implemented through the CGR to other industry codes.⁵ CGR2 also introduced the 'fast track' self-governance process to the UNC.⁶

Phase 3 of our CGR⁷ built on changes introduced under CGR and CGR Phase 2. This included, among other things, a change to how the governance route of a modification should be assessed. Prior to our CGR3 changes, when raising a modification the industry and the UNC Panel assessed whether a modification met the self-governance (SG) criteria. In effect, this involved identifying why a proposal did not have a material impact on consumers and competition. Our CGR3 Final Proposals required a changed approach whereby a positive identification of the reasons why a modification is material (ie why it *does not* meet the SG criteria, where applicable) was required.⁸

This change to the UNC was implemented by UNC Modification 0596⁹ (UNC596). Since implementation of UNC596 the number of SG modifications has increased. However, under the current UNC rules, should a party propose an alternative to a SG modification, the Code Administrator's view is that it would not be able to accept the alternative as the modification rules do not provide for this.

The modification proposal

UNC623 was raised by Wales & West Utilities. The modification aims to set out rules that are consistent with how alternative modifications that require Authority consent proceed.

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

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

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

⁴ https://www.ofgem.gov.uk/sites/default/files/docs/2010/12/unc324d_0.pdf

⁵ The CGR focussed primarily on the Balancing and Settlement Code, Connection and Use of System Code and UNC.

⁶ <https://www.ofgem.gov.uk/sites/default/files/docs/2014/01/unc462d.pdf>

⁷ https://www.ofgem.gov.uk/system/files/docs/2016/03/code_governance_review_phase_3_final_proposals_2.pdf

⁸ No licence modification was required for this proposal to be implemented.

⁹ <https://www.gasgovernance.co.uk/0596>

It looks to enable the Panel to provide effective and timely governance of SG alternatives and addresses the issues raised if an original modification and all of its alternatives do not meet the SG criteria.

In particular, UNC623 aims to clarify the governance rules in circumstances where the Panel considers that more than one modification (ie. the original SG modification or SG alternative) better facilitate the relevant objectives. In these circumstance the Panel must, in addition to assessing them against the relevant objectives, weigh each up against the other in deciding whether to implement them.

UNC623 also aims to clarify the governance arrangements when the original and alternative modifications could be a combination of SG modifications or those identified as having a material impact and requiring our consent. In these circumstances, the Panel would be able to *treat* the SG modifications as following the Authority consent governance path.

The Proposer considers UNC623 would better facilitate relevant objective (c)¹⁰ as it supports compliance with Standard Special Condition A11(9)(c) of its licence by facilitating the making of alternative modification proposals. They also consider it better facilitates relevant objective (f)¹¹ as it makes the process for making determinations for SG modification which have alternatives more likely to produce a decision to implement one of the proposals.

UNC Panel¹² recommendation

At the UNC Panel meeting on 15 February 2018, the UNC Panel unanimously considered that UNC623 would better facilitate relevant objectives (c) and (f) of the UNC. The Panel recommended that UNC623 should be implemented.

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 15 February 2018. We have considered and taken into account the responses to the industry consultation on the modification proposal which are attached to the FMR¹³ We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the UNC;¹⁴ and
- directing that the modification be made is consistent with our principal objective and statutory duties.¹⁵

¹⁰ Efficient discharge of the licensee's obligations.

¹¹ Promotion of efficiency in the implementation and administration of the Code.

¹² The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

¹³ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

¹⁴ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, available at: <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

¹⁵ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986 as amended.

Reasons for our decision

The Joint Office received six responses to its consultation on UNC623. Of these all supported the implementation of UNC623 and considered that UNC623 better facilitated relevant objectives (c) and (f).

We note the support for UNC623 from the Panel and respondents and agree that the modification better facilitates relevant objectives (c) and (f). We consider it has a neutral impact on the other relevant objectives.

(c) so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence

The obligations¹⁶ in the gas transporter licence set out that the modification procedures should provide for the making of alternative modification proposals and proper evaluation of the suitability of the modification to follow the SG route. We agree with the respondents and Panel that UNC623 clarifies how alternatives to SG modifications should be considered by the Panel thereby ensuring that licensees can more efficiently discharge their licence obligations.

(f) so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code

We agree that the UNC should include clear rules in respect of SG modifications, and UNC623 aims to put these in place thereby better facilitating this objective. Allowing the Panel to determine a preference in circumstances where there are alternative modifications is more likely to result in a Panel decision, which therefore promotes efficiency in the administration of the UNC.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters licence, the Authority hereby directs that modification proposal UNC623: Governance Arrangements for Alternatives to Self-Governance Modification Proposals be made.

Lesley Nugent

Head of Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose

¹⁶ Gas Transport licence Standard Special Condition A11(9)(c) and A11(9)(da)