Joint Office of Gas Transporters

**Stage 01:** Proposal

# 0372V:

## Code Governance Review Licence Compliance Changes

What stage is this document in the process?

01 Proposal
02 Workgroup Report
03 Draft Modification Report
04 Final Modification Report

This proposal aims to implement the changes required to address the licence compliance concerns raised by the Authority in their decision letters for the suite of Code Governance Review Modification Proposals (0318 – 0325V).

The Proposer recommends

This Proposal is sent directly to Consultation

High Impact:
N/A

Medium Impact:
Joint Office

Low Impact:
UNC Panel, Shipper Users, Gas Transporters and the Authority

## Contents



## About this document:

This document is a proposal, which will be presented by the Proposer to the Panel on 17th March 2011. The Panel will consider the Proposer's recommendation, and agree whether this modification should proceed to consultation or be referred to a Workgroup for assessment.

**Any questions?**


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# 1 Summary

## Is this a Self-Governance Modification

The proposer believes this is not a Self Governance Modification as it includes a considerable number of changes to the Modification Rules and is raised in response to the Authority's concerns regarding National Grid Gas's compliance with certain aspects of standard special condition A11.

## Why Change?

On the 17th December 2010 the Authority approved the implementation of the suite of Modification Proposals (0318 – 0325V) that were raised by National Grid to implement the Code Governance Review Final Proposals. In the Authority's decision letters it indicated that it had raised a number of concerns regarding National Grid Gas's compliance with certain aspects of standard special condition A11 and that National Grid had agreed to raise a further proposal (this proposal) to address these issues.

## Solution

National Grid has liaised with Ofgem to gain an understanding of their concerns and agreed which changes should be progressed by this proposal. National Grid proposes that the Modification Rules be amended to reflect the corresponding changes contained in the suggested legal text.

## Impacts & Costs

No major impacts or costs have been identified.

## Implementation

No specific date is proposed.

## The Case for Change

The Proposal better facilitates the efficient discharge by the licensee of the obligations imposed upon it following the Ofgem Code Governance Review, under Standard Special Condition A11 and will provide a number of administrative efficiencies as the changes will improve consistency between industry codes.

## Recommendations

The Proposer invites the Panel to DETERMINE that this Modification Proposal progress to Consultation.

# 2 Why Change?

## Code Governance Review

On the 17th December 2010 the Authority approved the implementation of the following Modification Proposals that were raised by National Grid to implement the Code Governance Review Final Proposals:

- 0318 - Code Governance Review: The approach to be taken when raising alternative Modification Proposals
- 0319V - Code Governance Review: Role of Code Administrators and Code Administration Code of Practice
- 0320V - Code Governance Review: Appointment and Voting Rights for a Consumer Representative and Independent Panel Chair
- 0321V - Code Governance Review: Approach to environmental assessments within the UNC
- 0322V - Code Governance Review: Inclusion of the NTS Transportation and Connection Charging Methodologies within the UNC
- 0323V - Code Governance Review: Self Governance
- 0324V – Code Governance Review: Significant Code Reviews
- 0325V - Code Governance Review: DN Transportation Charging Methodology and Change Governance

## Authority Decision Letters

In the Authority's decision letters it indicated the following concern:

*"We have raised a number of issues with NGG regarding compliance of certain aspects of the legal text for this proposal with requirements of standard special condition A11 in NGG's licence. We note NGG's letter of 15 December 2010 which sets out a process for dealing with the outstanding legal text issues through a further modification proposal. We note that NGG will meet with Ofgem to review the outstanding comments and gain a common understanding of the further change required. We consider that this is an appropriate way forward".*

A link to the aforementioned letter issued by National Grid is included in the decision letters for each of the Code Governance Review Modification Proposals and is also included below.

http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=372&refer=LICENSING/INDCODES/CGR

The letter also includes a table of the further changes suggested by the Authority and an amended version of the table is provided in Appendix 1.

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# 3 Solution

## Nature of the proposal

National Grid has liaised with Ofgem to gain an understanding of their concerns and agreed which changes should be progressed by this proposal (Appendix 1 indicates the actual changes to be addressed by this proposal). In summary, the proposed changes to the Modification Rules are:

- a number of relatively minor wording or drafting changes;
- an amendment to 2.4 (Electronic Publication) to clarify that related email notices will be sent by the Code Administrator;
- an amendment to paragraph 6.2 (Content of Modification Proposals) to reinstate aspects recently deleted by Modification Proposal 0319V;
- the removal of the 12 month timescale for completing a Workgroup Report in 8.3.2, due to its potential conflict with the timetable set in 12.9.2; and
- the introduction of a new clause to cover the licence obligation for a Transporter to raise an SCR Modification Proposal.

National Grid proposes that the Modification Rules be amended to reflect the corresponding changes contained in the suggested legal text.

## Suggested Legal Text

The suggested legal text has been included as a separate document due its size.

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# 4 Relevant Objectives

The Proposer believes that implementation will better facilitate the achievement of **Relevant Objectives c and f.**

| Proposer's view of the benefits against the Code Relevant Objectives | |
|---|---|
| Description of Relevant Objective | Identified impact |
| a) Efficient and economic operation of the pipe-line system. | None |
| b) Coordinated, efficient and economic operation of<br>(i) the combined pipe-line system, and/ or<br>(ii) the pipe-line system of one or more other relevant gas transporters. | None |
| c) Efficient discharge of the licensee's obligations. | Yes – see explanation below |
| d) Securing of effective competition:<br>(i) between relevant shippers;<br>(ii) between relevant suppliers; and/or<br>(iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers. | None |
| e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards… are satisfied as respects the availability of gas to their domestic customers. | None |
| f) Promotion of efficiency in the implementation and administration of the Code | Yes – see explanation below |

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## c) Efficient discharge of the licensee's obligations.

The Proposer feels that the Proposal better facilitates the efficient discharge by the licensee of the obligations imposed upon it following the Ofgem Code Governance Review, under Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters' Licence.

## f) Promotion of efficiency in the implementation and administration of the Code

The proposer believes that this Modification Proposal will better facilitate this relevant objective by providing a number of administrative efficiencies as the changes will improve consistency between industry codes, providing clarity to smaller parties and consumer representatives who may otherwise be restricted in their ability to fully participate in the UNC processes.

# 5 Impacts and Costs

## Costs

| Indicative industry costs – User Pays |
|---|
| Classification of the proposal as User Pays or not and justification for classification |
| The proposal is not Users Pays as there are no additional costs or changes to the services provided by Xoserve. |
| Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification |
| N/A |
| Proposed charge(s) for application of Users Pays charges to Shippers |
| N/A |
| Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from Xoserve |
| N/A |

## Impacts

| Impact on Transporters' Systems and Process | |
|---|---|
| Transporters' System/Process | Potential impact |
| UK Link | • None |
| Operational Processes | • None |
| User Pays implications | • None |

| Impact on Users | |
|---|---|
| Area of Users' business | Potential impact |
| Administrative and operational | • None |
| Development, capital and operating costs | • None |
| Contractual risks | • None |
| Legislative, regulatory and contractual obligations and relationships | • None |

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| Impact on Transporters | |
|---|---|
| Area of Transporters' business | Potential impact |
| System operation | • None |
| Development, capital and operating costs | • None |
| Recovery of costs | • None |
| Price regulation | • None |
| Contractual risks | • None |
| Legislative, regulatory and contractual obligations and relationships | • None |
| Standards of service | • None |

| Impact on Code Administration | |
|---|---|
| Area of Code Administration | Potential impact |
| Modification Rules | • Some changes are required and are detailed in the suggested text for this proposal. |
| UNC Committees | • None |
| General administration | • The Joint Office would be required to ensure that processes reflect the changes to the Modification Rules. |

| Impact on Code | |
|---|---|
| Code section | Potential impact |
| Uniform Network Code – Modification Rules | Medium |
| | |

| Impact on UNC Related Documents and Other Referenced Documents | |
|---|---|
| Related Document | Potential impact |
| Network Entry Agreement (TPD I1.3) | None |
| Network Exit Agreement (Including Connected System Exit Points) (TPD J1.5.4) | None |
| Storage Connection Agreement (TPD R1.3.1) | None |

**Where can I find details of the UNC Standards of Service?**

In the Revised FMR for Transco's Network Code Modification **0565 Transco Proposal for Revision of Network Code Standards of Service** at the following location: http://www.gasgovernance.co.uk/sites/default/files/0565.zip

| Impact on UNC Related Documents and Other Referenced Documents | |
|---|---|
| UK Link Manual (TPD U1.4) | None |
| Network Code Operations Reporting Manual (TPD V12) | None |
| Network Code Validation Rules (TPD V12) | None |
| ECQ Methodology (TPD V12) | None |
| Measurement Error Notification Guidelines (TPD V12) | None |
| Energy Balancing Credit Rules (TPD X2.1) | None |
| Uniform Network Code Standards of Service (Various) | None |

| Impact on Core Industry Documents and other documents | |
|---|---|
| Document | Potential impact |
| Safety Case or other document under Gas Safety (Management) Regulations | None |
| Gas Transporter Licence | Authority licence compliance concerns adressed. |

| Other Impacts | |
|---|---|
| Item impacted | Potential impact |
| Security of Supply | None |
| Operation of the Total System | None |
| Industry fragmentation | None |
| Terminal operators, consumers, connected system operators, suppliers, producers and other non code parties | None |

# 6 Implementation

## Implementation Date

No specific date is proposed.

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Insert text here

# 7 The Case for Change

## Advantages

## Licence Compliance

The Proposal better facilitates the efficient discharge by the licensee of the obligations imposed upon it following the Ofgem Code Governance Review, under Standard Special Condition A11.

## Disadvantages

None identified.

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# 8 Legal Text

## Suggested text

The suggested legal text has been included as a separate document due its size and is published alongside this proposal on the Joint Office web site at:
http://www.gasgovernance.co.uk/0372

# 9 Recommendation

The Proposer invites the Panel to:

- DETERMINE that this Modification Proposal progress to Consultation.

## Appendix 1 – Table of Ofgem comments and proposed changes to the Modification Rules

### Modification 0319V: Code Administrators & Small Participants

| Paragraph | Comment | Proposal |
|---|---|---|
| 1.5.1 | The words "but not limited to" are omitted – required for compliance with standard special condition A11(9)(aa). Assistance does not appear to extend to Consumer Representatives as reference is to "Users" – required for compliance with standard special condition A11(9)(aa). | Amendments to be made to 1.6 |
| 1.5.1(d) | Reference to "Modifications" omitted - required for compliance with standard special condition A11(9)(aa)(iv). | Amendments to be made to 1.6 |
| Definition "small participant" | In (a) reference to "legitimate need of assistance" should be "particular need of assistance" – required for compliance with definition of 'small participant' in A11(24). The words legitimate and particular have different meanings. Arguably 'legitimate' is narrower than 'particular'. | Amendment to be made to definition. |
| 2.4 electronic publication | How does this interrelate with the particular obligations to draw attention to proposals to small participants (SSLC A11(9)(d)) and provide assistance to small participants / materially affected parties / other parties (SSLC A11(9)(aa) and (9)(ac)(iii), noting the latter is subject of another proposal) if electronic publication on the website discharges any obligation to send, provide or make available any information to another person? Presumably where assistance is required and you are required to provide information, you will at least send the link to the information to the relevant party? | Amendment required to clarify that email notices from the JO will be sent to all those that have provided email contacts to the JO – major notifications only (Mod proposals, workgroups, etc.) |
| 6.2 | We consider that where the detail which has been struck through is consistent with the CoP, it should be reinstated to assist parties' understanding of the modification procedures. In fact, we suggest generally it may be best/prudent to keep in the all the requirements and specifically state that these apply unless inconsistent with the COP, for example, section 6.2. (Content of Modification Proposals) could be reinstated and include a provision that paragraph 6.2 applies unless inconsistent with the COP or otherwise provided for in the COP? | It is proposed that aspects of the old deleted section 6.2 be re-instated but some revisions should be made to reflect the CoP. |

| | | |
|---|---|---|
| 8.3.2 | The 12 month timescale set out in this paragraph is not consistent with either the COP and should be amended to comply. | It is proposed that the 12 month timescales be removed and 8.3.2 be amended accordingly. |
| 9.3.3(b) | The test set out in SSLC A11 is "better facilitate achievement of" the relevant objectives and not "better achieve" the relevant objectives. We consider this paragraph should be therefore amended. | 9.3.3 (b) to be amended. |
| 9.3.8 | We note that you have amended this in light of our comment. However we think the words "with the aim of sending" should be "and shall send" so that the obligation is clear and the reference to the "Authority directs" should be a reference to "Authority may direct" and for consistency and include "pursuant to standard special condition A11" for clarity. | 9.3.8 to be amended. |
| 9.4.1 | The test set out in SSLC A11 is "better facilitate achievement of" the relevant objectives and not "better achieve" the relevant objectives. We consider this paragraph should be therefore amended. | 9.4.1 to be amended. |

**Modification 0320: Voting rights & Independent Chair**

| **Paragraph** | **Comment** | **Proposal** |
|---|---|---|
| Definition of "Panel Chairman" | Should refer to "independent" in line with SSLC A11(6)(d)(i). | Definition to be amended. |
| 4.1.3 and 4.4.2(e) | In line with previous comment, which was accepted, the reference to "individual" should be reference to "representative". | It is proposed that 3.8 (Consumer Representatives) be amended to address this comment. |

**Modification 0321: Environmental Assessments**

| **Paragraph** | **Comment** | **Proposal** |
|---|---|---|
| 9.4.1(b) | We consider that to comply with SSLC A11(15)(a)(iv)(bb), this paragraph should only refer to "in the opinion of the Modification Panel" or refer to both the Panel's opinion and the proposer's opinion. | The amendment to 9.4.1 was not included in the consolidated text, so no change can be made/is necessary |

**Modification 0322: NTS Charging Methodologies**

| Paragraph | Comment | Proposal |
|---|---|---|
| Definition of "NTS Charging Methodology" | Reference to standard special condition 4B should be standard condition 4B. | An amendment was made to correct the error in the consolidated text implemented by the CGR Consent to Modify. No further change is necessary. |
| Conflicts | This proposal amends certain paragraphs which are being completely deleted/or substantially amended by 0319V i.e. paragraph 6.2.1 and 9.41. | 6.2.1 and 9.4.1 changes proposed by 0322 have been included in the consolidated text, so no further change is required. |

**Modification 0323: Self Governance and Appeals**

| Paragraph | Comment | Proposal |
|---|---|---|
| 2.1 Definition of "Appeal Criteria" | This definition is not in compliance with SSLC A11(15E). There should be an "or" in between (i) and (ii) and an "and" is required after (ii)(2). As drafted all the criteria listed need to be fulfilled to raise an appeal however the licence does not require all the criteria to be fulfilled. | Amendment to be made to definition |
| 6.6.2 | The reference to the Authority accepting a Self-Governance Statement is not in compliance with SSLC A11(15D)(c) which does not require this. SSLC A11(15D)(c) is a veto type provision, the Authority may reject the Self-Governance Statement by the determination date but if it is not rejected by that date, it will not expressly accept it either. | Reference to accepting to be removed and the words "accept or" to be deleted. |

| | | |
|---|---|---|
| 9.3.9(a) | We remain of the view that the paragraph should reflect the licence requirement (SSLC A11(15D)(d)) to consider the relevant objectives: whether or not the Self-Governance Modification Proposal should be implemented on the basis that it would (or would not), as compared to the then existing provisions of the Uniform Network Code and any alternative modification, better facilitate the achievement of the applicable objective(s). We note you state that standard proposals are evaluated against the relevant objectives and same should apply to self-governance proposals. However, reference to panel determination against relevant objectives is expressly made in paragraph 9.4.1 and 9.3.3 in relation to standard proposals except for self-governance proposals under modification proposal 0319V. Therefore, if 0319V is approved, for consistency we think reference should be made in 9.3.9(a). | 9.3.10 to be amended to reflect this comment. |
| 13.6 | If the Authority rules that the Panel's determination has no further effect i.e. quashes it, it will be remitted back to the Panel for decision or the Authority will decide it. Therefore, to comply with the process envisaged by SSLC A11(15D)(e)(ii), this paragraph requires amendment. | Amendments to be made to 13.6 to 13.10. |
| 13.7 | This paragraph is not a step required by the appeals process set out in SSLC A11(15D) to (15E). | See above. |
| 13.9 | The modification panel's determination is not treated as its recommendation in all cases. It is only so in the case of 13.9(b) – where the Authority quashes the panel determination and takes the decision itself. To comply with SSLC A11(15F)(b) this paragraph requires amendment so that the panel's determination is only treated as its recommendation in the case of 13.9(b). | See above |

**Modification 0324V: SCRs**

| Paragraph | Comment | Proposal |
|---|---|---|
| New paragraph | We note your view that the obligation to raise an SCR modification proposal is in the licence (SSLC A11(10)(aa)). However, SSLC A11(15C) requires that the Network Code Modification Procedures themselves must provide for this too. We therefore consider that the requirement on the Transporter to raise an SCR proposal should be express in the UNC to comply with. In your consolidated draft text of 15 September 2010 this was contained in paragraph 6.1.3 and we consider that this should go back in with following amendments:<br><br>(1) include a reference to "and/or the Individual Network Code in accordance with that direction" after the reference to "Uniform Network Code" and<br><br>(2) include reference to "such a proposal shall proceed in accordance with the Modification Procedures" for avoidance of doubt. | New paragraph to be inserted. |
| 6.1.4 and 6.1.5 | SSLC A11(15A)(b) provides that a mod falling within an SCR cannot be raised unless it is a mod raised by the licensee pursuant to an SCR i.e. for example another SCR. This is not reflected in 6.1.4 and 6.1.5 and is required to be for compliance with SSLC A11(15A)(b). | Amendment to be made to include link to 15A (b). |

| | | |
|---|---|---|
| 6.6.2 (now 6.7.3) | SSLC A11(15B)(c) provides that upon giving the required notice to the Authority, the panel must not proceed with the mod if the Authority directs. Therefore 6.6.2(b) is not in compliance with this licence provision and should be deleted. The Authority is not required to positively direct that a proposal proceeds, it should proceed unless the Authority directs otherwise.<br><br>Therefore, to comply with the licence provision we consider that 6.6.2 should be amended to the effect that: "Where a direction from the Authority under paragraph 6.6.1 not to proceed with the Modification Proposal or Third Party Modification Proposal that relates to the subject of an ongoing Significant Code Review is received by the Secretary, that Modification Proposal or Third Party Modification Proposal shall become a Significant Code Review Suspended Modification Proposal and shall continue to be so until either the end of the Significant Code Review Phase or the Authority directs otherwise (having taken into account, among other things, the urgency of the subject matter of such proposal). Otherwise the Modification Proposal or Third Party Modification Proposal shall proceed in accordance with the Modification Procedures."<br><br>Please note that the direction may be made at any time during the modification process. The revised paragraph will allow for this and also means that paragraph 6.6.4 is no longer necessary.<br><br>Further paragraph 6.6.3(b) also applies where the Authority has not previously made a determination – so in the case of 6.6.2 (SSLC A11(15A)). Therefore to comply with the licence 6.6.2 will require amendment. | Amendments to be made to 6.7.3 & 6.7.2. 6.7.4 to be removed |