

Modification proposal:	Uniform Network Code (UNC) 596: Implementing CGR3 decisions on Significant Code Reviews and self-governance (UNC 596).		
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:	31 January 2017	Implementation date:	Immediately following decision

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 Significant Code Review (SCR) process⁴ and a self-governance process for some industry codes.⁵

The second phase of CGR (CGR2) extended the arrangements implemented through the CGR to other industry codes.⁶ CGR2 also introduced the 'fast track' self-governance process to the UNC.⁷

In May 2015 we published an open letter setting out our views on issues facing code governance arrangements and seeking responses from industry. This was followed in October 2015 by our Initial Proposals on the third phase of CGR (CGR3). Our CGR3 Final Proposals⁸ built on arrangements introduced by CGR and CGR2. Licence modifications giving effect to our Final Proposals came into force on 10 August 2016, with the requirement that the consequential changes to industry codes would be in place by 31 March 2017. The changes required to the governance arrangements of the UNC relate to the revised SCR. In particular, at the end of an SCR the ability for the Authority to:

- raise a modification(s) under the UNC which would follow the standard code modification process;
- direct timetables for the development of modifications directed to be raised by a licensee;
- lead the consultation and engagement needed with stakeholders to develop UNC modifications (Authority led modification). In this instance the standard industry process would not apply.

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 A process which provides a role for Ofgem to lead complex changes to the industry codes in a holistic manner.

⁵ https://www.ofgem.gov.uk/sites/default/files/docs/2010/12/unc324d_0.pdf

⁶ The CGR focussed primarily on the BSC, CUSC and UNC.

⁷ <https://www.ofgem.gov.uk/sites/default/files/docs/2014/01/unc462d.pdf>

⁸ https://www.ofgem.gov.uk/system/files/docs/2016/03/code_governance_review_phase_3_final_proposals_2.pdf

The changes also allow the Authority to issue a 'back stop direction' if, for example, following an SCR, the development of the modification proposal(s) under the standard industry code process is not meeting the expected policy direction or timescales for implementation. The issuing of this direction would recommence the SCR phase.

In addition, the existing requirement under the UNC is that when raising a modification the industry and the UNC Panel must assess whether a modification meets the self-governance criteria. In effect, this involves identifying why a proposal does 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 self-governance criteria, where applicable) is also required.⁹

The modification proposal

Wales and West Utilities (the Proposer) raised UNC596 on 20 October 2016. UNC596 seeks to implement changes to the modification process following an SCR. These main changes are:

- the ability for the Authority to raise SCR modification proposals; it allows existing UNC procedures to be utilised with minimal supporting changes;
- the provision of legal text by the Authority for a modification proposal raised by the Authority;
- enabling the Authority to submit a modification proposal directly for Panel recommendation on implementation (in respect of an Authority led SCR);
- the capability for the Authority to direct a timetable; and
- new powers relating to alternatives.

UNC596 also proposes to put in place arrangements to ensure that the presumption is that the self-governance process applies unless the UNC panel determines that the self-governance criteria are not met. Specifically that there is a material impact on one or more of the self-governance criteria.¹⁰ A new rule is proposed to provide for the provision of a materiality statement to us if required.

The proposer considers that UNC596 will better facilitate UNC relevant objective (c)¹¹ by enabling parties to adhere to the CGR3 licence changes, and Relevant Objective (f)¹² by implementing the decisions of Ofgem's CGR3. It ensures that the Joint Office administration of the UNC complies with those decisions.

UNC Panel¹³ recommendation

At the UNC Panel meeting on 15 December 2016, a majority of the UNC Panel considered that UNC596 would better facilitate the UNC objectives and the Panel therefore recommended that it be implemented.

⁹ No licence modification was required for this proposal to be implemented.

¹⁰ As set out at paragraph 24 of SSSA11 of the gas transporter licence.

¹¹ (c) so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence.

¹² (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.

¹³ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

Our decision

We have considered the issues raised by UNC596 and the Final Modification Report (FMR) dated 15 December 2016. We have considered and taken into account the responses to the industry consultation on UNC596 which are attached to the FMR¹⁴. We have concluded that:

- implementation of the modification proposal will better facilitate the achievement of the relevant objectives of the UNC;¹⁵ and
- directing that the modification be made is consistent with our principal objective and statutory duties.¹⁶

Reasons for our decision

We consider UNC596 will better facilitate UNC objectives (c) and (f) and 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

We agree with the proposer, most consultation respondents and the Panel that this modification better facilitates relevant objective (c). Licence modifications to introduce the CGR3 governance changes in to the UNC governance arrangements are now in force. Relevant licensees must ensure that these licence provisions can be efficiently discharged. The changes proposed by this modification should ensure that these licensees can discharge their obligations relating to the CGR3 governance changes through the UNC governance procedures. We therefore consider that this modification better facilitates this objective.

(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 with the majority of respondents and the Panel that this modification better facilitates relevant objective (f). By assessing whether a modification requires Authority consent may help avoid any potential undue caution that parties may have towards self-governance and help ensure that modifications follow the most appropriate route thereby promoting efficiency in the administration of the UNC.

We disagree with the view expressed by some respondents/Panel members that objective (f) is negatively impacted due to the potential for Authority-led modifications to be less efficient than where progressed by industry following a SCR. We do not believe that the revised SCR process has a detrimental impact on objective (f) as the new end-to-end process route aims to provide a more effective and efficient process in certain circumstances, and is not proposed to be used for all SCRs.

¹⁴ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

¹⁵ 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>

¹⁶ 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.

The ability for us to run an end-to-end SCR process and have the ability to direct timetables will drive forward the implementation of our SCR conclusions thereby improving the efficiency in the administration of the UNC. In addition, providing a mechanism for Ofgem to lead the drafting of code modification text alongside consultation with industry may provide a way of working through issues thereby better facilitating 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 UNC596: *Implementing CGR3 decisions on Significant Code Reviews and self-governance* be made.

Lesley Nugent

Head of Industry Codes and Licensing

Signed on behalf of the Authority and authorised for that purpose