

Workgroup Report	At what stage is this document in the process?
<p>0596:</p> <p>Implementing CGR3 decisions on Significant Code Reviews and self-governance</p>	
<p>Purpose of Modification: This modification implements Ofgem’s decisions in respect of self-governance and SCR process resulting from the Code Governance Review 3 consultation.</p>	
	<p>The Workgroup recommends that this modification should:</p> <ul style="list-style-type: none"> • proceed to Consultation. <p>The Panel will consider this Workgroup Report on 17 November 2016. The Panel will consider the recommendations and determine the appropriate next steps.</p>
	<p>High Impact: None</p>
	<p>Medium Impact: None</p>
	<p>Low Impact: All UNC Parties</p>

Contents		 Any questions?
1	Summary	3
2	Governance	3
3	Why Change?	4
4	Code Specific Matters	5
5	Solution	5
6	Impacts & Other Considerations	6
7	Relevant Objectives	7
8	Implementation	8
9	Legal Text	8
10	Recommendations	9
11	Appendices	9
Timetable		
Modification timetable:		
Initial consideration by Workgroup	31 October 2016	
Workgroup Report presented to Panel	17 November 2016	
Draft Modification Report issued for consultation	17 November 2016	
Consultation Close-out for representations	08 December 2016	
Final Modification Report available for Panel	10 December 2016 (short notice)	
Modification Panel decision	15 December 2016	

 Any questions?

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1 Summary

What

This modification amends the Modification Rules (MR) to implement two decisions resulting from Ofgem Code Governance Review phase 3 (CGR3). First it implements changes to the self-governance process whereby modifications follow self-governance procedures as the default unless the UNC Modification Panel (Panel) determines that the proposal has a material impact according to the existing Self-Governance Criteria (see Appendix). Second it implements changes to the Significant Code Review (SCR) process implemented as a result of changes to Standard Special Condition A11 of Gas Transporters' licence resulting from CGR3.

Why

Failure to do so would put Gas Transporters in breach of Standard Special Licence Condition A11 in respect of the SCR process and Ofgem's decision in respect of self-governance. A11 requires the SCR changes to be implemented by 31st March 2017.

How

For self-governance, the existing arrangements remain in force and the amendments introduce requirements to demonstrate materiality of modifications for which Authority Direction is required (that is an Ofgem decision on implementation);

For SCRs, the amendments allow for Ofgem direction of the UNC governance.

2 Governance

Justification for Authority Direction

The modification is not suitable for self-governance as it will have a material effect on UNC governance procedures – see SG Criteria (i)(ee) – since it introduces arrangements that permit Ofgem to raise, or direct governance for, SCR-related modifications.

Workgroup participants considered the matter further, and understood that the changes in this proposal represented simple implementation of the revised Licence condition; however they were cognisant that the self-governance criteria were the determinant of such matters. Ultimately, participants agreed with Panel that the changes represented a material impact on criteria (i)(ee), requiring an Authority Decision.

Requested Next Steps

This modification should:

- be subject to Authority Direction
- proceed to Consultation

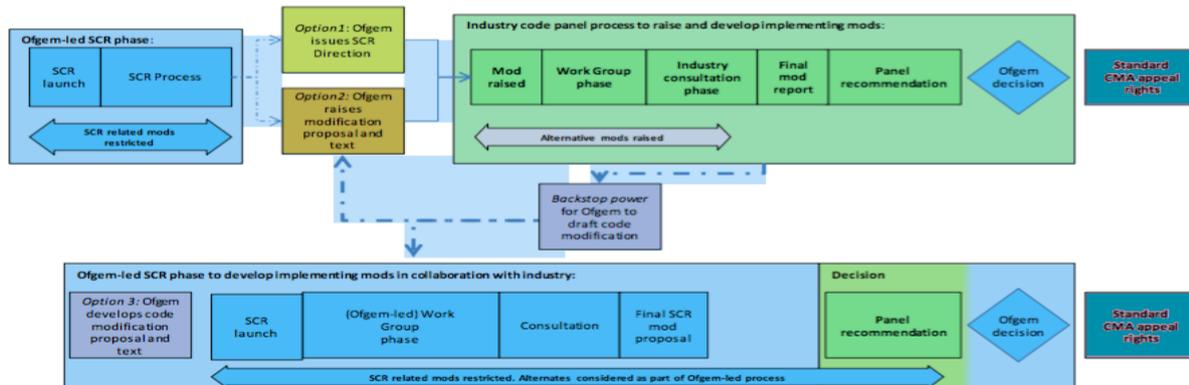
Workgroup participants reviewed the changes and the Legal Text, agreeing that they were a proportionate response to the CGR3-related changes and that the report was suitable for consultation.

3 Why Change?

These changes are required to implement the Ofgem final decisions resulting from its CGR3 consultation in respect of self-governance and the SCR process.

For SCR amendments to the Modification Rules are required to enable the arrangements shown in the diagram below.

Figure 2.1 Diagram illustrating the proposed SCR process



Source: Code Governance Review (Phase 3): Final Proposals – 31 March 2016

Ofgem’s CGR3 decision document can be accessed from the link below:

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

and the letter to the chair of the UNC modification panel:

<http://www.gasgovernance.co.uk/sites/default/files/Ofgem%20CGR3%20implementation%20letter%20to%20UNC%20Panel%20Chair.pdf>

and the revised GT licence Standard Special Condition A11:

https://www.ofgem.gov.uk/system/files/docs/2016/05/appendix_4_-_schedule_1_-_gas_transporter_licence_slc_a11_unc.pdf

4 Code Specific Matters

Reference Documents

Links to relevant documents are given above.

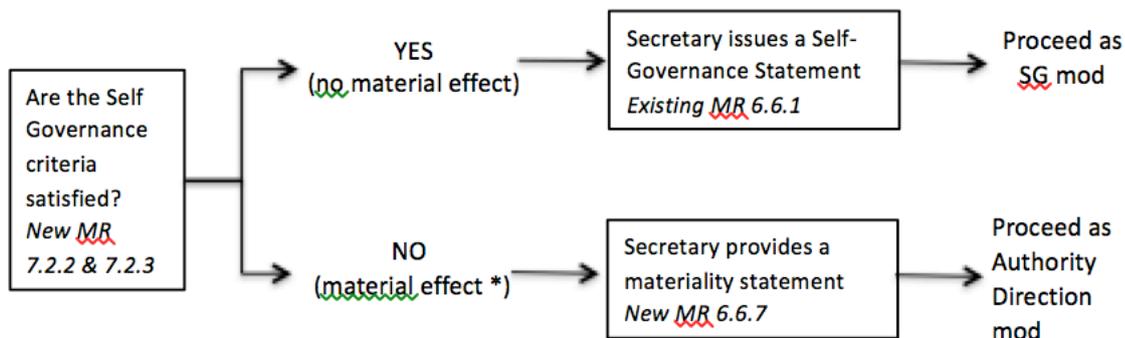
Knowledge/Skills

The key issue is whether the changes correctly reflect the decision document and licence changes and whether they result in Modification Rules that are understandable and can be operated by the industry and applied by the Joint Office. Therefore assessment requires legal skills and an appreciation of the practical operation of the Modification Rules.

5 Solution

Self-governance

The requirement is essentially to reverse the current presumption (that modifications are material unless the Panel determines that the self-governance criteria are met) to a presumption that self-governance applies unless the Panel determines that the self-governance criteria are **not** met – that is that a material impact on one or more of the Criteria (reproduced in Appendix 1) is likely to exist. Appendix 2 contains a discussion of the difference between “likely” and “not unlikely” and explains the reasons for adopting the solution proposed.



*Refer to Self Governance Guidance for help: www.gasgovernance.co.uk/mods

The changes proposed to the Modification Rules will put in place arrangements to ensure that this process happens and for the Panel to provide the necessary materiality statement to Ofgem where the Panel determines that the Self-Governance Criteria are not met.

For the avoidance of doubt, although the normal process would be to follow self-governance procedures, there remains an obligation on Proposers to demonstrate the impact on the Self-Governance Criteria and, where they are met, for Panel to provide a Self-Governance Statement (Modification Rules 6.6).

The key changes to the Modification Rules are:

Amend 7.2.2 and 7.2.3 to put in place a process to check whether the self-governance guidelines are satisfied.

New rule 6.6.7 to provide for the provision of a materiality statement if required.

Significant Code Review

The implementation of these changes will provide Ofgem with a range of options in relation to SCRs ranging from directing a Party to raise a modification, Ofgem raising a modification, through to Ofgem raising modification with legal text directing the timescales and submitting it to Panel for recommendation and then following Panel recommendation to directing implementation or non-implementation.

Specifically the changes to the licence give Ofgem powers to:

1. Raise a modification as a result of an SCR (that would follow normal assessment processes); and/or,
2. Provide legal text (as part of the modification); and/or,
3. Issue the modification straight for Panel recommendation (where Ofgem uses its power to develop the code modification proposal outside of the normal UNC assessment process); and/or,
4. Direct the UNC modification development timetable (for SCR Modifications); and,
5. Powers relating to alternates, where they relate to SCRs or to comply with EU law.

The Panel retains its powers in relation to voting on modifications and the existing rules relating to Ofgem's powers to direct implementation or to direct non-implementation remain.

The resulting key changes to the Modification Rules are:

- The definition of a Modification Proposal has been changed, as has MR 6.1.2 which is amended to allow the Authority to raise SCR Modifications Proposals, as well as Modification Proposals (EU law, etc.). It allows existing UNC procedures to be utilised with minimal supporting changes.
- 6.2 q: provision of legal text by the Authority for a Modification Proposal raised by the Authority.
- 6.4.5 c: ability for the Authority to prohibit Alternatives where a Modification Proposal relates to an SCR or is driven by EU requirement.
- [9.3.3]: amended allows the Authority to submit a Final Modification Report directly for Panel recommendation on implementation (in respect of an SCR-related modification proposal raised by the Authority) where it then follows the usual process – that is no further consultation.
- 9.3.19: an Authority-raised Modification Proposal does not fetter Panel.
- 9.4.1 f: a requirement to consider greenhouse gas emissions in a Modification Report for an SCR Modification Proposal raised by the Authority.

6 Impacts & Other Considerations

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

No – though it is recognised that both this proposal and Modification 0565 are changing the Modification Rules (though different parts). See section 9 – legal text.

Consumer Impacts

It is not believed that there are any direct consumer impacts. This change relates to governance of UNC change processes not to any specific change itself. The change in the processes may indirectly impact consumers, for example, by their impact on whether changes are self-governance or not.

Cross Code Impacts

Changes to other codes such as SPAA are being raised to make those codes compliant with the Ofgem decision regarding CGR3.

EU Code Impacts

None

Central Systems Impacts

None

User Pays

User Pays	
Classification of the modification as User Pays, or not, and the justification for such classification.	No User Pays service would be created or amended by implementation of this modification and it is not, therefore, classified as a User Pays Modification.
Identification of Users of the service, the proposed split of the recovery between Gas Transporters and Users for User Pays costs and the justification for such view.	n/a
Proposed charge(s) for application of User Pays charges to Shippers.	n/a
Proposed charge for inclusion in the Agency Charging Statement (ACS) – to be completed upon receipt of a cost estimate from Xoserve.	n/a

7 Relevant Objectives

Impact of the modification on the Relevant Objectives:	
Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	Positive
d) Securing of effective competition:	None

(i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	
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.	Positive
g) Compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.	None

Relevant objective (c) is furthered by this modification, as part of it is required to enable the Gas Transporters to comply with amended Standard Special Condition A11 of their licence.

Relevant objective (f) is furthered as it implements the decisions of Ofgem's CGR3 and ensures that the Joint Office administration of the Code complies with those decisions.

8 Implementation

No costs are anticipated for UNC Parties.

Implementation will be immediately following an Ofgem decision on implementation.

9 Legal Text

The Workgroup considered the Legal Text and was satisfied that it met the Solution.

Text Commentary

The legal text commentary is provided as a separate document, published alongside this report. For the SCR changes it maps the changes to the GT licence to changes to the Modification Rules as this makes it clearer that the necessary changes have been made.

Text

See separate documents published alongside this report, note pre-Nexus and post Nexus text is provided.

Note that Modification Proposal 0565 will also modify the Modification Rules; however the changes currently proposed do not affect the same clauses. We expect this modification will be implemented before 0565. The proposer of this modification and the proposer of 0565 are aware of potential interactions and will work together to ensure that appropriate legal text is provided to the Joint Office for implementation.

10 Recommendations

Workgroup's Recommendation to Panel

The Workgroup asks Panel to agree that:

- This modification should proceed to consultation.

11 Appendices

Appendix 1 Self-Governance Criteria

The criteria have been reproduced here for convenience. They can be found in the Gas Transporter Licence Standard Special Condition A11, para 24 (defined terms):

<https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

The modification:

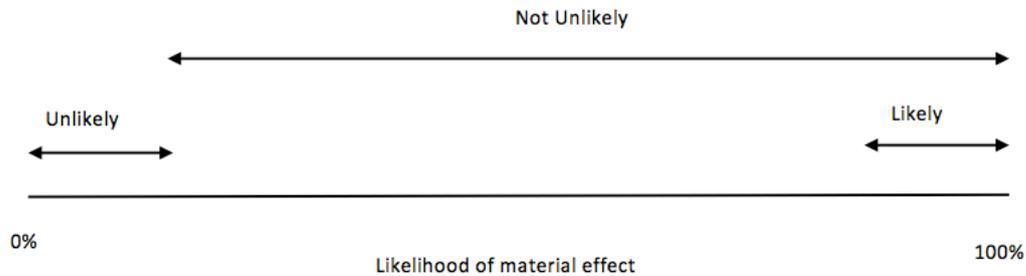
(i) is unlikely to have a material effect on:

- (aa) existing or future gas consumers; and
- (bb) competition in the shipping, transportation or supply of gas conveyed through pipes or any commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes; and
- (cc) the operation of one or more pipe-line system(s); and
- (dd) matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies; and
- (ee) the uniform network code governance procedures or the network code modification procedures; and

(ii) is unlikely to discriminate between different classes of parties to the uniform network code/relevant gas transporters, gas shippers or DN operators.

Appendix 2 Discussion of difference between “likely” and “not unlikely”

Strictly the test is that the self-governance criteria do not apply, that is that the modification is “not unlikely” to have a material effect. Depending on the subjective probabilities individual Panel Members give to “likely” (for example probability of over 70%) and “unlikely” (for example probability of under 30%) there is a difference between “not unlikely” and “likely”.



In practice using a double negative is difficult and so the solution adopted is to base the decision on whether the proposal is likely to have a material effect. Using the approach adopted means that:

- Proposals are pushed towards self-governance which is the intention of the final proposals
- The Modification Rules are easier to understand and more likely to lead to consistent decisions by Panel