

CODE MODIFICATION PROPOSAL No xxxx
Role of Code Administrators and Code Administration Code of Practice
Version x.x

Date: 14/07/2010
Proposed Implementation Date: 1st November 2010
Urgency: Non Urgent

1 The Modification Proposal

a) Nature and Purpose of this Proposal

Where capitalised words and phrases are used within this Modification Proposal, those words and phrases shall usually have the meaning given within the Uniform Network Code (unless they are otherwise defined in this Modification Proposal). Key UNC defined terms used in this Modification Proposal are highlighted by an asterisk (*) when first used.

This Modification Proposal*, as with all Modification Proposals, should be read in conjunction with the prevailing Uniform Network Code* (UNC).

Background

In November 2007, Ofgem announced the Industry Codes Governance Review, which concluded at the end of March 2010 when Ofgem published their Final Proposals for the Code Governance Review (CGR). The Final Proposals covered the following work strands:

- Significant Code Review and Self Governance proposals;
- Proposals on the governance of network charging methodologies;
- Proposed approach to environmental assessment within the code objectives ;
- Proposals on the role of code administrators and small participant and consumer initiatives; and
- The Code Administration Code of Practice (subset of the above code administrators proposals).

The licence modifications necessary to implement the Final Proposals for the Code Governance Review and the Code Administration Code of Practice (CoP) were published on 3 June 2010 and become effective on the 31 December 2010.

This Modification Proposal* aims to implement the Code Governance Review Final Proposals with regards to the main elements of the code administrators work strand and the Code Administration Code of Practice.

Joint Office

Following National Grid's sale of four regional gas networks in 2005 the UNC was introduced to mitigate the need to have each network operating

under the terms of its own network code. Previously National Grid acted as the code administrator but the governance process for the UNC was changed to introduce a new code administrator, the Joint Office of Gas Transporters (Joint Office). The Joint Office is independent of all participants in the gas market and is constituted in accordance with the gas transporters' licence conditions.

The heart of the role of the Joint Office (JO) is the efficient administration and governance of the processes for modifying the commercial regime which underpins the GB gas industry. It does this by publishing industry information, primarily through its web site, and by hosting industry meetings. Whilst this service is provided on behalf of the major Gas Transporters, it seeks to provide a professional and even handed service to all parties with an interest in the gas industry. The JO continually seeks to improve the service it provides and values any feedback received.

Code Governance Review

As part of the CGR Ofgem indicated that they had become concerned that the industry code arrangements have become complex and difficult for new entrants, small participants and consumers to engage in. These problems are often compounded by the fact that these industry participants are often less well resourced than large incumbent energy market participants and find it difficult to engage in the codes arrangements, including the code modification process.

In addition, Ofgem highlighted that the code arrangements are highly fragmented. Therefore, these small industry participants need to devote significant resources to understand each of the many industry code processes (across the gas and electricity regimes), to engage in and influence policy outcomes.

A key objective of the CGR was to deliver a set of code arrangements that are more accessible, efficient, and transparent, particularly from the perspective of new entrants, small participant and consumer representatives.

The CGR Final Proposals require that code administrators:

- Act as a 'critical friend', in particular to small participants; and
- Act consistently in line with the Code Administrator Code of Practice.

This proposal aims to implement the changes to the UNC to enable the Joint Office to be able to comply with the above requirements. It is anticipated that the implementation of this proposal will further the accountability of the Joint Office in terms of their quality of service, and better enable all market participants to engage in the UNC modification process. The aforementioned elements of the CGR addressed by this proposal are summarised below.

Role of Code Administrators

The key aspects of the Ofgem Final Proposals with regards to the role of code administrators are as follows:

- ‘Send back’ powers – will allow the Authority to formally return reports to the code panel where it considers the analysis, legal text, or any other aspect of the report is deficient, or inhibiting its ability to take a robust decision.
- Critical Friend obligation – code administrators will upon request be required to assist interested parties, particularly small participants (which may include new entrants) and consumer groups. This assistance may involve advice on the fundamentals of the modifications process, help understanding the implications of a proposal or even help in the drafting of a proposal.
- Code of Practice (CoP) – establishment of common principles, procedures and templates to reduce complexity of operating across several codes and to ensure best practice is adopted by all code administrators. The CoP will set out in a greater level of detail and prescription the services that Ofgem expect of the code administrators acting in a “critical friend” role. See below for more detail on the CoP.
- The code administrators and more generally the code processes must adhere to the principles of the CoP. The code administrators need to review the CoP from time to time and any modifications are subject to the agreement of the Authority.
- Adoption of and reporting on Key Performance Indicators (KPIs) by code administrators as defined within the CoP. *Please note that Transporters are to implement the KPIs for the Joint Office through changes to the Joint Governance Arrangements Agreement.*
- Panels to provide reasons for their recommendations and decisions - a specific requirement that recommendations are made in a transparent and robust manner, with reference to the relevant objectives of the code.

The Code Administration Code of Practice

The CoP formed an integral part of the Code Governance Review Final Proposals. It sets out the principles that Ofgem consider should underpin the administration of the industry code modification processes.

The Code Administrators’ Working Group¹ (CAWG) looked at improvements which could be made to the code modification processes without structural change, for instance through modification to the existing rules or simply changing custom and practice. The CAWG provided Ofgem with its interim report in early 2009, which included amongst other things, a recommendation that Code Administrators be subject to a Code of Practice.

¹ The CAWG comprised of members from the code administrators (Elexon, Joint Office, and National Grid) in addition to participants from all sectors of the gas and electricity industries, including EDF Energy, Good Energy, RWE, Centrica, E.ON, MEUC, Association of Electricity Producers and Cornwall Energy. Representatives from Consumer Focus and the Better Regulation Executive also attended.

Following Ofgem's Initial Proposals, the Code Administrators of the Balancing and Settlement Code (BSC), Connection and Use of System Code (CUSC) and UNC produced a draft Code of Practice. This document built upon the principles agreed by the CAWG and set out a standard process that the BSC, CUSC and UNC modification rules should follow, generally simplifying the processes.

On 31 March 2010 Ofgem issued an open letter consultation on the Code of Practice and associated Key Performance Indicators (KPIs) alongside the Final Proposals for the Code Governance Review. The CoP is mandatory and a copy of the CoP can be found in [appendix 1 \[not included yet\]](#).

Nature of the Proposal

The Code of Practice expressly states that the codes take precedence and therefore there should be no conflict between the two. However, to ensure there are no such issues and to aid understanding as to how the code interacts with the Code of Practice it is proposed that as far as practical both elements (role of code administrator and the CoP) are implemented within the UNC. Where this is not practical it is proposed that sufficient cross reference is made within the UNC to the CoP.

It is proposed that the Uniform Network Code Modification Rules be amended to:

a). Role of Code Administrators

Implement SSC A11 paragraph 6 (c) to establish the Code Administrator and clarify their role in relation to the CoP.

- Provide further clarity to the UNC by establishing a body (the "Code Administrator") who shall exercise the powers, duties and functions ascribed to the Code Administrator in the Modification Rules.
- It is proposed that a definition of Code Administrator be included as a means of setting out the role and responsibilities and the appointment process (i.e. Transporters shall appoint the Code Administrator in accordance with A12 Joint Office Governance Arrangements). This amendment will also require multiple references to Transporters to be replaced with Code Administrator.
- To recognise the concept of a CoP that is established in accordance with Standard Special Condition A12 of the Transporter Licence and provide a general statement that clarifies that the Code Administrator is obliged to follow its requirements.
- The UNC Code Administrator, in conjunction with other code administrators will; maintain, publish, review and (where appropriate) amend from time to time the CoP. Any amendments to the CoP will be subject to the Authority's approval.

Implement SSC A11 paragraph 9 (aa) to embed the “critical friend” role

- Better facilitate competition by embedding the “critical friend” role and placing an obligation on the Code Administrator to comply with the CoP. This obligation will include a specific requirement to assist all parties and in particular small participants and consumer groups. This provision of help will include assistance with:
 - drafting a modification proposal,
 - understanding the operation of the Uniform Network Code,
 - the involvement in, and representation during, the Modification Procedures* (including but not limited to panel, and/or workgroup meetings), and
 - accessing information relating to Modification Proposals and/or Modifications.

Implement SSC A11 paragraph 9 (h) so that the modification procedures are consistent with the principles contained in the CoP.

- To aid consistency and understanding between all the major codes, it is proposed that the Modification Rules be amended to change several definitions and/or the use of such terminology as specified within the CoP:

CoP Principle	Current Definition/terminology	New Definition/terminology or change required
Common Modification Process	Development Phase	Assessment Phase
Common Modification Process	Development Work	Assessment Work. Definition needs to cross reference to Terms of Reference section within Modification Rules.
Common Modification Process	Development Work Group	Not required.
Common Modification Process	Development Work Group Report	Not required.
Common Modification	Review Group	Not required.

Process		
Common Modification Process	Review Proposal	Not required.
Common Modification Process	Section 6.2 Form of Modification Proposals	Section updated to reflect that a Modification shall be proposed in accordance with the form stipulated in the CoP.
Common Modification Process	Section 7.4 Modification Proposal discussed by workstream Section 8.2 Proceedings of Development Work Groups Section 8.3 Liaison with the Modification Panel Section 8.4 Consideration of representations Section 8.5 Monthly reports	Not required as workgroup principles and activities are defined in the CoP.
Common Modification Process	Section 8.6 Development Work Group Report Section 8.7 Circulation of Development Workgroup reports 8.8 Discussion of development Work Group Report	Create new section "Workgroup Report" and update to indicate that the Code Administrator will prepare the report in accordance with the CoP and reflect the timescales within the CoP.
Common Modification Process	Section 9.4 Form of a Modification Report	Update to reflect that Modification Reports shall be in the format prescribed in the CoP.
Common Modification Process	Section 11 Review Procedures	Not required.

Modification Process	Procedures	
Principle 1	Workstream	Workgroup
Principle 1	Modification Proposal Definition	Not required
Principle 1	Modification Modification Proposal Transporter Proposal Third Party Modification Proposal	Modification Definition updated to encompass elements of Modification Proposal definition (to be removed) Modification used instead of Modification Proposal, Transporter Proposal and Third Party Modification Proposal throughout. Any specific points with regards to a Transporter Proposal and Third Party Modification Proposal are no longer required.
Principle 6	None	“Workgroup Report” Definition (new) required : the report of a workgroup prepared in relation to any Modification referred to it by the Modification Panel

Implement SSC A11 paragraph 15 (b) (ii) – Send Back Powers

- Specify that the Authority will have the power to ‘send back’ proposals where analysis, legal text or any other aspect of the Final Modification Report (FMR) is deficient. This will be provided for through a new provision to allow the Authority to send back a FMR prior to a determination on whether or not to implement a proposal.
- For clarity the Panel will consider in accordance with Section 7.2 of the Modification Rules, the Authority’s direction at its next meeting and makes a decision on the course of action required and the timetable to which it must work to.

Implement SSC A11 paragraph 15 (a) (aa) - Modification Panel to provide reasons for recommendations

- To improve transparency of the Modification Procedures obligate the Modification Panel to provide reasons for recommendations on whether or not a Modification Proposal should be implemented and base these decisions on the Relevant Objectives*. The reasons for a recommendation will also be recorded in the Final Modification Report (FMR).

b) Code of Practise

The following amendments will implement specific requirements with regards to the CoP that are required to remove any potential duplication or conflict with the governance process set out in CoP.

Implement CoP Principle 11 – Enable the Authority to consult the Modification Panel in respect of whether a Modification Proposal should follow urgent procedures

- Enable the Authority to consult the Modification Panel in respect of an application for a proposal to be subject to urgent procedures.

Implement CoP Principle 9 – Legal Text

- To aid understanding of a proposal, amend the Modification Rules to ensure legal text is made available prior to the Consultation Phase. The Modification Panel may by exception, agree that legal text is not required for consultation in certain circumstances, including instances where the proposer has produced suggested text as part of the Modification Proposal. Furthermore, if changes to the legal text are proposed after the Consultation Phase but prior to final recommendation by the Modification Panel, the panel may, where it believes the changes to be minor corrections, agree to the changes. Alternatively where the changes are considered to be material by the Modification Panel, the panel shall instruct the Code Administrator to carry out a further consultation on the revised text.

Implement CoP Principle 8 – Estimates of implementation costs

- To capture GT cost information as part of any consultation by requiring that cost assessments (covering development, implementation and operating costs) shall be applicable to all Proposals and not just User Pays proposals.
- As a result of the above, Section 9.2 UK Link System is no longer required.

c) Other [possibly a follow up Modification Proposal if development of suggested text is delayed]

- Implement a number of house keeping and minor grammar changes that aim to make the Modification Rules more relevant and easier to understand.

- Remove “consultation phase” definition
- Update Relevant Objectives definition
- Update Proposer” definition
- Remove 3.7 - The Secretary shall notify the Authority of any changes to the composition of the Modification Panel
- Update 5.3: Notice convening meetings
- Remove 5.6.3 – amendments to Panel Chairman’s guidelines
- Update 5.10 Observers and invitees to reflect any individual may attend
- Update where relevant the use of the word “issue” and/or “provide” with “make available”
- Update where relevant the use of the word “made” with “propose/d”
- Update and simplify 5.11.2 to clarify that minutes will be made available within 5 (five) Business Days.
- Update 5.11.3 to reflect that the Secretary will record the individuals who attended that meeting.
- Update 7.1.1 (c) to indicate that a Modification needs to be received at least 8 (eight) Business days prior to a Modification Panel meeting.
- Refine wording in Section 7.3 Modification Proposal to proceed to Consultation

Further details of the above amendments can be found in the text that accompanies this proposal [not included yet].

b) Justification for Urgency and recommendation on the procedure and timetable to be followed (if applicable)

Not applicable.

c) Recommendation on whether this Proposal should proceed to the review procedures, the Development Phase, the Consultation Phase or be referred to a Workstream for discussion.

The proposer believes that this Modification Proposal is sufficiently clear to proceed directly to consultation

2 User Pays

a) **Classification of the Proposal as User Pays or not and justification for classification**

This Modification Proposal does not affect xoserve systems or procedures and therefore it is not affected by User Pays governance arrangements.

b) **Identification of Users, proposed split of the recovery between Gas Transporters and Users for User Pays costs and justification**

Not applicable.

c) **Proposed charge(s) for application of Users Pays charges to Shippers**

Not applicable.

d) **Proposed charge for inclusion in ACS – to be completed upon receipt of cost estimate from xoserve**

Not applicable.

3 Extent to which implementation of this Modification Proposal would better facilitate the achievement (for the purposes of each Transporter's Licence) of the Relevant Objectives

The proposal implements the changes to paragraph 6 and 9 of Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters' Licence as provided below:

*6. The licensee shall, together with the other relevant gas transporters, by the date at which this condition becomes effective (unless the Authority consents otherwise in writing), have prepared a document (the "**uniform network code**") setting out:*

a. the terms of transportation arrangements established by the licensee and other relevant gas transporters, to the extent that such terms are common, or are not in conflict, between relevant gas transporters; and

b. the network code modification procedures established pursuant to paragraph 7 including procedures required by paragraphs 15A to 15C, which are, subject to paragraph 8, incorporated by reference into each network code prepared by or on behalf of each relevant gas transporter,; and

*c. the arrangements establishing a secretarial or administrative person or body, as specified in the uniform network code and the joint governance arrangements established in accordance with Standard Special Condition A12 (Joint Office Governance Arrangements) (the "**code administrator**") and setting out the code administrator's powers, duties and functions, which shall:*

(i) include a requirement that, in conjunction with other code administrators, the code administrator will maintain, publish, review and (where appropriate) amend from time to time the Code of Practice approved by the Authority and any amendments to the

Code of Practice are to be approved by the Authority;
(ii) include facilitating the procedures established in accordance with paragraph 7; and
(iii) have regard to and, in particular to the extent that they are relevant, be consistent with the principles contained in, the Code of Practice; and

9. *The network code modification procedures shall provide for:*
- a. without prejudice to paragraphs 15A and 15B a mechanism by which any of*
 - (i) the uniform network code; and*
 - (ii) each of the network codes prepared by or on behalf of each relevant gas transporter, may be modified;*
 - aa. the provision by the code administrator of assistance, insofar as is reasonably practicable and on reasonable request, to parties (including, in particular, small participants and consumer representatives) that request the code administrator's assistance in relation to the uniform network code including, but not limited to, assistance with:*
 - (i) drafting a modification proposal;*
 - (ii) understanding the operation of the uniform network code;*
 - (iii) their involvement in, and representation during, the network code modification procedures (including but not limited to panel, and/or workgroup meetings) as required by this condition, specified in the uniform network code, or described in the Code of Practice; and*
 - (iv) accessing information relating to modification proposals and/or modifications;*

.....

- d. the giving of adequate publicity to any such proposal including, in particular, drawing it to the attention of all relevant gas transporters, and, all relevant shippers, small participants and consumer representatives, and sending a copy of the proposal to any person who asks for one;*
- da. proper evaluation of the suitability of the significant code review or selfgovernance route for a particular modification proposal;*
- e. except in respect of proposals falling within the scope of paragraph 15D, the seeking of the views of the Authority on any matter connected with any such proposal;*
- f. the consideration of any representations relating to such a proposal made (and not withdrawn) by the licensee, any other relevant gas transporter, any relevant shipper, or any gas shipper or other person likely to be materially affected were the proposal to be implemented including representations made by small participants and/or consumer representatives; and*
- g. where the Authority accepts that the uniform network code or a network code prepared by or on behalf of a relevant gas transporter may require modification as a matter of urgency, the exclusion, acceleration or other variation, subject to the Authority's approval, of any particular procedural steps which would otherwise be applicable; and*
- h. for each of the procedural steps outlined in this paragraph 9, to the extent that they are relevant, to be consistent with the principles contained in the Code of Practice.*

15. *Where a proposal is made in accordance with the network code modification procedures to modify the network code prepared by or on behalf of the licensee,*

(excluding the terms of the uniform network code incorporated within it) or the uniform network code the licensee shall unless, in the case of a proposal falling within the scope of paragraph 15D, otherwise directed by the Authority:

a. as soon as is reasonably practicable in accordance with the time periods specified in the uniform network code, which shall not be extended unless approved by the panel and not objected to by the Authority after receiving notice, give notice to the Authority:

(i) giving particulars of the proposal;

(ii) where an alternative proposal is made in respect of the same matter as the original proposal, giving particulars of that alternative proposal;

(iii) giving particulars of any representations by:

(aa) the licensee,

(bb) any other relevant gas transporter,

(cc) any relevant shipper identified in the network code modification procedures as being entitled to propose a modification,

(dd) in respect of modifications to a network code (excluding the terms of the uniform network code incorporated within it) only, a DN operator with whom the licensee has entered into transportation arrangements in respect of the pipe-line system to which this licence relates, or

(ee) any other person with respect to those proposals;

(iv) including a recommendation (or, in the case of a proposal falling within the scope of paragraph 15D, a determination) (on the part of such person or body as may be provided for in the network code modification procedures) by the panel as to whether any proposed modification should or should not be made, and the factors which (in the opinion of the panel such person or body) justify the making or not making of a proposed modification, which shall include:

(aa) a detailed explanation of whether and, if so how, the proposed modification would better facilitate the achievement of the relevant objectives; and

.....

b. without prejudice to paragraph 15D comply with any direction of the Authority

(i) to make a modification to the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or the uniform network code in accordance with a proposal described in a notice given to the Authority under paragraph 15(a) which, in the opinion of the Authority, will, as compared to the existing provisions of the network code prepared by or on behalf of the licensee (excluding the terms of the uniform network code incorporated within it) and/or (as the case may be) the uniform network code or any alternative proposal, better facilitate, consistent with the licensee's duties under section 9 of the Act, the achievement of the relevant objectives; or

(ii) to revise and re-submit a notice provided in accordance with paragraph 15(a) to reflect the additional steps (including drafting or amending existing drafting of the amendment to the uniform network code), revisions

(including timetable revisions), analysis or additional information specified in the direction to enable the Authority to form such an opinion in accordance with paragraph 15(b)(i) as soon after the Authority's direction as is appropriate (taking into account the complexity, importance and urgency of the modification).

23A. *Without prejudice to any rights of approval, veto or direction the Authority may have, the licensee shall use its best endeavours to ensure that procedures are in place that facilitate its compliance with the requirements of this condition, and shall create or modify industry documents including, but not limited to, the uniform network code and industry codes where necessary no later than 31 December 2010.*

24. a. *In 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.*

....

"small participant" means

- (i) a shipper, a supplier, or new entrant to the gas market in Great Britain that can demonstrate to the code administrator that it is resource-constrained and, therefore, is in particular need of assistance;*
- (ii) any other participant or class of participant that the code administrator considers to be in particular need of assistance; and*
- (iii) a participant or class of participant that the Authority has notified the code administrator as being in particular need of assistance.*

4 The implications of implementing this Modification Proposal on security of supply, operation of the Total System and industry fragmentation

Not applicable.

5 The implications for Transporters and each Transporter of implementing this Modification Proposal, including:

a) The implications for operation of the System:

Not applicable.

b) The development and capital cost and operating cost implications:

Operating costs associated with the requirement to produce an increased quantity of legal drafting are expected to increase. Any JO costs?

c) Whether it is appropriate to recover all or any of the costs and, if so, a proposal for the most appropriate way for these costs to be recovered:

Not applicable.

- d) **The consequence (if any) on the level of contractual risk of each Transporter under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal**

Not applicable.

- 6 **The extent to which the implementation is required to enable each Transporter to facilitate compliance with a safety notice from the Health and Safety Executive pursuant to Standard Condition A11 (14) (Transporters Only)**

Not applicable.

- 7 **The development implications and other implications for the UK Link System of the Transporter, related computer systems of each Transporter and related computer systems of Users**

Not applicable.

- 8 **The implications for Users of implementing the Modification Proposal, including:**

- a) **The administrative and operational implications (including impact upon manual processes and procedures)**

All parties will need to review their administrative processes in light of the substantial changes to the Modification Rules.

- b) **The development and capital cost and operating cost implications**

The proposer is not specifically aware of any such implications.

- c) **The consequence (if any) on the level of contractual risk of Users under the Uniform Network Code of the Individual Network Codes proposed to be modified by this Modification Proposal**

The proposer is not specifically aware of any such implications.

- 9 **The implications of the implementation for other relevant persons (including, but without limitation, Users, Connected System Operators, Consumers, Terminal Operators, Storage Operators, Suppliers and producers and, to the extent not so otherwise addressed, any Non-Code Party)**

Not applicable.

- 10 **Consequences on the legislative and regulatory obligations and contractual relationships of the Transporters**

Implementation of the proposal would allow the new licence obligation effective on

31 December 2010 to be met.

11 Analysis of any advantages or disadvantages of implementation of the Modification Proposal not otherwise identified in paragraphs 2 to 10 above

Advantages

The proposal would allow the new licence obligation effective on 31 December 2010 to be met.

The Proposal will reduce complexity and fragmentation of the existing UNC governance making it more transparent and accessible. Such complexity is an obstacle for all market participants, but presents a particular barrier to new entrants and smaller parties seeking to engage in codes processes. Removing these barriers is likely to promote competition.

This proposal will also make the governance arrangements more consistent between industry codes.

Disadvantages

12 Summary of representations received as a result of consultation by the Proposer (to the extent that the import of those representations are not reflected elsewhere in this Proposal)

13 Detail of all other representations received and considered by the Proposer

14 Any other matter the Proposer considers needs to be addressed

15 Recommendations on the time scale for the implementation of the whole or any part of this Modification Proposal

It is recommended that this be implemented the next working day after Authority decision.

16 Comments on Suggested Text

17 Suggested Text

[for assistance in developing the suggested text please refer to the Mod Rules

changes as identified by Tim Davis (based on Final proposals).

Code Concerned, sections and paragraphs

To be added

Uniform Network Code

Transportation Principal Document

Section(s)

Proposer's Representative

Chris Shanley, National Grid NTS

Proposer

National Grid NTS