

Modification Report
Code Governance Review: Significant Code Reviews
Modification Reference Number 0324V
Version 3.0

This Modification Report is made pursuant to Rule 9.3.1 of the Modification Rules and follows the format required under Rule 9.4.

1 The Modification Proposal

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 Review of Industry Code Governance, 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 administrator's proposals).

The licence modifications necessary to implement the Final Proposals for the Code Governance Review and the Code Administration Code of Practice 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 management of Modification Proposals raised during a Significant Codes Review (SCR).

The purpose of reviewing the SCR process within the CGR was to ensure that changes recommended as a result of an SCR can be facilitated quickly and effectively. The speed and efficiency of implementing SCR recommendations will be particularly important given the need for the industry to rise to the challenge of the Government's social and environmental energy goals and possible changes required as a result of European legislation.

The current UNC Modification Rules* allow for any Transporter*, User* or

Third Party Participant* to raise a Modification Proposal irrespective of whether an SCR has been initiated to consider the same topics raised within a proposal. The Code Governance Review considered whether the current process remained suitable or whether permitting such Modification Proposals to be raised and pursued in parallel to an SCR could be detrimental to the efficient administration of the code and generate undue confusion on the changes being pursued.

A brief overview of the key recommendations regarding a SCR and the UNC can be found below. It is important to note that the following points provide a summary of the CGR Final Proposals and not necessarily the views of the proposer;

- Prior to the commencement of a SCR Ofgem will, at the earliest opportunity, signal to the industry its intention to conduct a SCR. This notification will detail the commencement date of the SCR and the matters within the scope of the review.
- A SCR will be deemed to have been completed via one of the following methods;
 - (a) The Authority issues a statement deeming that no further action is required
 - (b) The licensee has, following a direction from the Authority, raised a proposal containing the recommendations of the SCR, or
 - (c) In the absence of either (a) or (b), 28 (twenty-eight) calendar days following the Authority's publication of its SCR conclusions
- The period between the commencement date and completion date of the SCR is deemed to be the SCR Phase.
- A SCR related proposal may be raised and pursued via the relevant code development process prior to the commencement of a SCR. However the Authority will not necessarily approve such proposals where they overlap with an imminent SCR, and nor will such proposals delay the commencement of an SCR.
- For the avoidance of doubt, if a proposal has been raised prior to an SCR and issued to the Authority for determination but is subsequently sent back into the code development process, that proposal will not be subject to the SCR.
- If during an SCR Phase an urgent proposal has been raised concerning the topic being covered within the SCR, only the Authority* can decide whether the proposal can proceed via the usual code development processes with decisions judged on a case-by-case basis.

- For any non-urgent proposals raised in relation to a SCR topic, the relevant code panel, with the assistance of the Code Administrator, should assess whether a proposal falls within a SCR.
- The relevant code panel shall assess whether or not they consider that the non-urgent proposal relates to an ongoing SCR and will provide details of this assessment in a written statement to the Authority. Any subsequent code development process for the proposal will be suspended if the Authority determines that the proposal relates to an ongoing SCR.
- If the Authority determines that a proposal relates to a commenced SCR then the proposal will be subsumed by the SCR and the code development procedure for the particular Modification Proposal will be suspended until the SCR is complete. If the Authority determines that the proposal does not relate to a commenced SCR or the Authority directs that the proposal should pursue the code development procedures irrespective of a proposal's relationship to an SCR then the proposal shall continue its prevailing progress through the code development procedures.
- Once the SCR is complete, the code development procedure related to each suspended proposal will recommence with proposers able to withdraw their proposal if they deem that the proposal is no longer valid. If the Authority decides that a non-urgent proposal is not related to an ongoing SCR the proposal will continue as per the relevant code development process.
- If the SCR is completed via method (b) above, the proposal raised by the licensee and containing conclusions of the SCR will then pursue the relevant code development procedures and may only be withdrawn upon agreement of the Authority.
- Finally, once the SCR has ended via one of the above methods the 'barring' of raising proposals in relation to the relevant SCR will be lifted. Specifically, relevant parties will be able to raise alternate proposals if they believe improvements can be made to the original SCR proposal raised as per method (b) above.

Nature

To implement the above recommendations from the Code Governance Review Final Proposals into the UNC it is proposed that the UNC Modification Rules be amended to reflect the required amendments to the assessment and progression of Modification Proposals during a SCR.

First, it is proposed that 'Significant Code Review' and 'Significant Review Phase' be included as defined terms with the meaning given in the Gas Transporters' Licence Standard Special Condition A11.

Preventing a SCR related non-urgent Modification Proposal being raised during an associated SCR period

Section 6.1 'Relevant Persons' within the UNC Modification Rules describes

the parties that can raise a Modification Proposal from time to time. To implement the Code Governance Review Final Proposals it is proposed that the Modification Rules be amended to state that 'Relevant Persons' may not, unless the Authority determines otherwise and informs the Secretary of its determination, raise a non-urgent Modification Proposal to amend either the UNC or an Individual Network Code if the Modification Proposal relates to the area of the UNC already under analysis via a commenced SCR.

Section 7.2 'Discussion of Modification Proposals' within the UNC Modification Rules states the discussion of a recently raised Modification Proposal by the Modification Panel to determine whether the Modification Proposal should be pursued via Development Phase or the Consultation Phase. It is proposed that the Modification Rules be amended to state that the Modification Panel will in the first instance assess whether a Modification Proposal relates to a commenced SCR.

Treatment of Modification Proposals determined as relating to a SCR

It is proposed that the Modification Rules are also amended to state that, should a non-urgent Modification Proposal be raised during an SCR phase, the Modification Panel shall determine whether the proposal may be related to the commenced SCR. The Panel shall also instruct the Secretary to submit to the Authority a written assessment (as described below).

The written assessment will seek an Authority direction as to whether or not the proposal is related to the commenced SCR and it will contain:

- the Panel determination and the reasons for that assessment;
- a copy of the Modification Proposal;
- any representations received in relation to the suitability of the proposal following the significant code review route; and
- whether any exceptions are applicable, which mean the Modification Proposal should proceed through the Modification Procedures. The exceptions that could apply are contained in Gas Transporters Licence SSC A11 15A (a) or (b)

If the Authority directs that the proposal is related to the commenced SCR, the proposal shall become a 'Significant Code Review Suspended Modification Proposal' and will be suspended until the SCR has finished. For clarity, if the Authority determines that a relevant Modification Proposal is not related to a commenced SCR, or directs that a Modification Proposal should continue irrespective of any relationship to a commenced SCR, the code development process will not be suspended and the proposal will continue its prevailing progress through the Modification Procedures.

It is also proposed that the Modification Rules be amended to oblige the Secretary* to inform the proposer and other interested parties if the proposal has become a Significant Code Review Suspended Modification Proposal and

the proposal shall be suspended until the SCR has finished.

Once the Authority has published its significant code review conclusions, the SCR phase will be deemed to have ended on the date that either:

- the Authority has issued a direction to a licensee (User or relevant gas transporter(s)) to raise a Modification Proposal to implement the recommendations of the SCR; or
- the Authority has issued a statement that no SCR direction will be issued in relation to the UNC; or
- where neither the above direction nor statement has been issued within twenty eight (28) days of the Authority's review conclusions being published.

Once the SCR has finished, the suspension of any Significant Code Review Suspended Modification Proposals shall be lifted and the Modification Procedures for the proposals shall continue. As such the proposer does not propose an amendment to the Modification Rules to cater for this process. The proposer will be able to withdraw their Proposal, during the period of suspension, if they deem that the proposal is no longer valid.

Withdrawal or variation of SCR driven Modification Proposals'

It is also proposed that for instances where a licensee has, following a direction from the Authority, raised a Modification Proposal containing the recommendations of the SCR, the Modification Rules shall allow for Modification Proposals to be clearly identified as such in the related Modification Report.

Section 6.5 'Withdrawal or variation of Modification Proposals' of the UNC Modification Rules states that the proposer of a Modification Proposal may withdraw or vary the proposal at any time prior to the proposal being submitted to the Authority for determination. It is proposed that this section be amended to reflect that where a Gas Transporter has been directed to raise a Modification Proposal by the Authority following the completion of a SCR, a request by the relevant Transporter to withdraw or vary the proposal must be accompanied by written notice by the Authority agreeing to such a request.

Additional Points

The proposer believes that the current process for raising Urgent Modification Proposals satisfies the requirements identified as part of the Code Governance Review Final Proposals.

Further, the proposer believes section 11.8 'View' of the UNC Modification Rules provides the opportunity for the Transporters* to seek a view of the Authority on matters relating to possible SCR related Modification Proposals should clarity be required.

It is proposed that where the Authority reconsiders its previous determination regarding whether a Proposal is an SCR related proposal, it shall inform the

Secretary of its revised determination and the proposal shall be treated in line

with such revised determination.

It is proposed that if implemented the following transitional arrangements are used;

All modification proposals that have been allocated a number by the JO at the time of implementation will continue on the arrangements prior to implementation of this proposal, however from the date of implementation any new modifications will progress using the new arrangements.

Suggested Text

Suggested legal text is provided in a separate document.

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 the proposed modification would better facilitate the relevant objectives

Standard Special Condition A11.1 (a): the efficient and economic operation of the pipe-line system to which this licence relates;

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (b): so far as is consistent with subparagraph (a), the 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;

Implementation would not be expected to better facilitate this relevant

objective.

Standard Special Condition A11.1 (c): so far as is consistent with subparagraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence;

This Proposal is raised in accordance with paragraphs 1c, 1f and 9 of Standard Special Condition A11 Network Code and Uniform Network Code.

Paragraph 1f of the Licence states that “*so far as is consistent with subparagraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;*”.

Paragraph 2 of the Licence states that “*In relation to a proposed modification of the network code modification procedures, a reference to the relevant objectives is a reference to the requirements in paragraphs 9 and 12 of this condition (to the extent that those requirements do not conflict with the objectives set out in paragraph 1).*” Paragraph 9 of the Licence describes the procedures which must be included within the Modification Rules to allow amendments to the UNC to occur including but not limited to; the raising of proposals and alternates, providing publicity to a proposal and the consideration of any representations.

This proposal is raised in accordance with paragraph 1c of Standard Special Condition A11 Network Code and Uniform Network Code. 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 paragraph 15 of Standard Special Condition A11. Network Code and Uniform Network Code, of the Gas Transporters’ Licence as provided below:

Significant code reviews

15A. The network code modification procedures shall provide that proposals for modification of the uniform network code falling within the scope of a significant code review may not be made by the parties listed in paragraph 10(a)(i-iv) and 10(ab) during the significant code review phase, except where:

- a. the Authority determines that the modification proposal may be made, having taken into account (among other things) the urgency of the subject matter of the proposal; or*
- b. the modification proposal is made by the licensee in accordance with paragraphs 10(aa) and 15C.*

15B. The network code modification procedures shall provide that where a modification proposal is made during the significant code review phase, unless otherwise exempted by the Authority, the panel shall:

- a. comply with the steps in paragraph 9; and*
- b. as soon as practicable notify the Authority of:*
 - (i) any representations received in relation to the suitability of the significant code review route; and*
 - (ii) the panel's assessment of whether the proposal falls within the scope*

of a significant code review and the applicability of the exceptions under paragraph 15A(a) or (b), and its reasons for that assessment; and

c. not proceed with the modification proposal without the Authority's prior consent.

15C. The network code modification procedures shall provide that if within twenty-eight(28) days after the Authority has published its significant code review conclusions, the Authority issues to the licensee:

a. directions, the licensee shall comply with those directions;

b. a statement that no directions under sub-paragraph (a) will be issued in relation to the uniform network code, the licensee shall treat the significant code review phase as ended;

c. neither directions under sub-paragraph (a), or a statement under subparagraph (b), the significant code review phase will be deemed to have ended. The Authority's published conclusions and directions to the licensee/relevant gas transporter(s), shall not fetter the voting rights of the members of the panel or the procedures informing the recommendation described at paragraph 15(a)(iv).

Standard Special Condition A11.1 (d): so far as is consistent with subparagraphs (a) to (c) the securing of effective competition:

(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;

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (e): so far as is consistent with subparagraphs (a) to (d), the 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;

Implementation would not be expected to better facilitate this relevant objective.

Standard Special Condition A11.1 (f): so far as is consistent with subparagraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code;

The Proposer considers that this Modification Proposal (which is seeking to implement an element of the Code Governance Review Final Proposals) will better facilitate paragraph 1f and 9 by providing a number of administrative and implementation efficiencies:

- Reducing unnecessary barriers and red tape within the UNC;
 - Reducing or eliminating inefficiencies and delays associated with the existing processes which can potentially hamper the implementation of important Modification Proposals and can have direct negative impacts on competition, new entrants and ultimately customers.
 - Making existing governance processes more transparent and accessible, particularly important for small participants and consumer groups.
 - Simplifying the UNC change processes and increase consistency between industry codes..
- Supporting large scale and complex Modification Proposals
 - Allowing for Ofgem led Significant Code Reviews

4 The implications of implementing the 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 the Modification Proposal, including:

a) Implications for operation of the System:

Not applicable.

b) Development and capital cost and operating cost implications:

Not applicable.

c) Extent to which it is appropriate to recover the costs, and proposal for the most appropriate way to recover the costs:

Not applicable.

d) Analysis of the consequences (if any) this proposal would have on price regulation:

Not applicable.

6 The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposal

Not applicable.

7 The high level indication of the areas of the UK Link System likely to be affected, together with the development implications and other implications for the UK Link Systems and related computer systems of each Transporter and Users

Not applicable.

8 The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk

Administrative and operational implications (including impact upon manual processes and procedures)

Not applicable.

Development and capital cost and operating cost implications

Not applicable.

Consequence for the level of contractual risk of Users

Not applicable.

9 The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non Code Party

Not applicable.

10 Consequences on the legislative and regulatory obligations and contractual relationships of each Transporter and each User and Non Code Party of implementing the Modification Proposal

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

Advantages

- None identified

Disadvantages

- None identified

12 Summary of representations received (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

The following representations were received in respect of UNC0324 and UNC0324V.

Of the four representations previously received in respect of UNC0324, three supported implementation of the Proposal and of the eight representations received in respect of UNC0324V, seven supported implementation of the Proposal.

Organisation	0324	0324V
British Gas	Supports	-
E.ON UK	Not in Support	Not in Support
First Utility	-	Supports
National Grid Distribution	Supports	Supports
National Grid NTS	-	Supports
Northern Gas Networks	-	Supports
RWE Npower	-	Supports
Scotia Gas Networks	-	Supports
SSE	Supports	-
Wales & West Utilities	-	Supports

E.ON UK were not in support but suggested their view might change if:

- A higher threshold of support was required for the UNC Panel to recommend implementation of a proposal that effectively originates from an SCR (such as that set out in UNC 0312 – “Introduction of Two-Thirds Majority Voting to the UNC Modification Panel”); and
- There was a limit introduced on the time that work on an industry proposal could be suspended during an SCR.

RWE npower noted that, although their support for 0324V is not contingent on any further changes being made or variations being raised, it is their view that additional checks and balances need to be included in relation to the SCR process in order to avoid the situation whereby Ofgem are effectively able to raise and decide upon UNC Modification Proposals. Whilst Modification 0312 – ‘Introduction of Two-Thirds Majority Voting to the UNC Modification Panel’ goes some way toward this by preserving the right of appeal to the Competition Commission, this may prove to be insufficient.

13 The extent to which the implementation is required to enable each Transporter to facilitate compliance with safety or other legislation

Not applicable.

14 The extent to which the implementation is required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence

Not applicable.

15 Programme for works required as a consequence of implementing the Modification Proposal

No programme of works would be required as a consequence of implementing the Modification Proposal.

16 Proposed implementation timetable (including timetable for any necessary information systems changes and detailing any potentially retrospective impacts)

It is recommended that this modification be implemented on 31st December 2010, if this date has already past at the time of the Authority decision then it is recommended that it is implemented on the next working day after the decision.

17 Implications of implementing this Modification Proposal upon existing Code Standards of Service

No implications of implementing this Modification Proposal upon existing Code Standards of Service have been identified.

18 Recommendation regarding implementation of this Modification Proposal and the number of votes of the Modification Panel

At the Modification Panel meeting held on 18 November 2010, of the 10 Voting Members present, capable of casting 11 votes, 9 votes were cast in favour of implementing this Modification Proposal. Therefore the Panel did recommend implementation of this Proposal.

Members considered the report was in the correct form and discussed whether or not to recommend implementation of the Proposal. They did not determine that new issues had been raised that justified seeking further views from a Workstream or Development Work Group, with no votes cast in favour.

Members agreed that the Proposal seeks to introduce processes in support of the Significant Code Review process. This creates clarity about the processes to be followed and avoids Modifications being taken forward which would otherwise duplicate effort expended on a Significant Code Review, and potentially reach a conflicting conclusion such that resources may be wasted. This would, therefore, facilitate the relevant objective of efficient administration of the UNC. However, one member suggested the SCR process as defined could not be considered independent, and therefore it is not facilitating efficient administration of the UNC which currently has an impartial administrator.

Being a change to the Modification Rules, Members also recognised that implementation of the Proposal should be judged against Para 9 of Condition A12, and it was suggested that the same case could be made as for facilitating, or harming, the efficient administration of the UNC.

The Proposal also includes transitional rules such that the new approach would only apply to Proposals raised subsequent to implementation of this Proposal. It could be questioned how, if implementation facilitated the relevant

objectives, it could be considered that not applying the approach to existing Proposals could be justified. However, having a clean cut off would ensure that each Proposal would follow a holistic process throughout its life cycle, and this would be consistent with efficient administration of the UNC.

19 Transporter's Proposal

This Modification Report contains the Transporters' proposal to modify the Code and the Transporters now seek direction from the Gas and Electricity Markets Authority in accordance with this report.

20 Text

Legal text in support of Proposal 0324V has been published, alongside and as part of this Report, in a separate file.

For and on behalf of the Relevant Gas Transporters:

Tim Davis
Chief Executive, Joint Office of Gas Transporters