














CUSC Modification Proposal Form	At what stage is this document in the process?								
<p>CMP309:</p> <p>Mod Title: CUSC changes in the event the UK leaves the EU without an agreement</p>	<table border="1"> <tr> <td data-bbox="1134 315 1209 383">01</td> <td data-bbox="1214 315 1433 383">Proposal Form</td> </tr> <tr> <td data-bbox="1134 398 1209 488">02</td> <td data-bbox="1214 398 1433 488">Code Administrator Consultation</td> </tr> <tr> <td data-bbox="1134 504 1209 651">03</td> <td data-bbox="1214 504 1433 651">Draft self-governance CUSC Modification Report</td> </tr> <tr> <td data-bbox="1134 667 1209 815">04</td> <td data-bbox="1214 667 1433 815">Final self-governance CUSC Modification Report</td> </tr> </table>	01	Proposal Form	02	Code Administrator Consultation	03	Draft self-governance CUSC Modification Report	04	Final self-governance CUSC Modification Report
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Purpose of Modification: The proposed modification aims to ensure that retained EU law will function effectively in the context of the CUSC. In the event the United Kingdom leaves the European Union without an agreement, it will ensure that the CUSC takes into account the provisions in the relevant Statutory Instruments that have been prepared under the European Union (Withdrawal) Act 2018 as well as relevant consequential licence modifications.

	<p>The Proposer recommends that this modification should be: subject to self-governance.</p> <p>This modification was raised 15 February 2019 and will be presented by the Proposer to the Panel on 25 February 2019. The Panel will consider the Proposer's recommendation and determine the appropriate route.</p>
	<p>High Impact: none</p>
	<p>Medium Impact: none</p>
	<p>Low Impact: none</p>

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5 Solution	6	 Sophie.vancaloen@nationalgrid.com
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7 Relevant Objectives	7	National Grid Representative: As above
8 Implementation	7	 As above
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Timetable		
The Code Administrator recommends the following timetable:		
Modification proposal issued to the CUSC Panel	15 February 2019	 As above
Panel agree for CMP309 to follow self-governance criteria	25 February 2019	 As above
Code Administration Consultation Report issued to the Industry (15 days)	28 February 2019	
Code Administration Consultation closes	21 March 2019	
Draft Final Modification Report presented to Panel	25 March 2019	
Panel Self Governance vote	1 April 2019	
Appeal window opens for 15 Working Days	1 April 2019	
Appeal window closes	24 April 2019	
Implementation into the CUSC	25 April 2019	

Proposer Details

Details of Proposer: (Organisation Name)	National Grid ESO
Capacity in which the CUSC Modification Proposal is being proposed: (i.e. CUSC Party, BSC Party or "National Consumer Council")	CUSC Party
Details of Proposer's Representative: Name: Organisation: Telephone Number: Email Address:	Sophie van Caloen National Grid ESO 07790 947180 Sophie.vancaloen@nationalgrid.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Mike Oxenham National Grid ESO 07554 413864 Michael.Oxenham1@nationalgrid.com
Attachments: No	

Impact on Core Industry Documentation.
Please mark the relevant boxes with an "x" and provide any supporting information

BSC	<input type="checkbox"/>
Grid Code	<input type="checkbox"/>
STC	<input type="checkbox"/>
Other	<input type="checkbox"/>

It is understood that other energy Codes will require revision in the event the UK leaves the EU without an agreement. However, this Modification is not dependant and will not impact other energy Codes.

1 Summary

Defect

In the event the UK leaves the EU without an agreement, the CUSC needs to be amended to ensure the provisions in the relevant Statutory Instruments that have been prepared under the European Union (Withdrawal) Act 2018, as well as relevant consequential licence modifications, will function effectively in the context of the CUSC.

What

The CUSC contains a small number of references to EU Regulation and EU entities that require revision. The proposed modifications will ensure that the CUSC is aligned with retained EU law and licence obligations, in the event of 'no deal' and from 'Exit Day'.

Why

In absence of agreements concerning the UK's withdrawal from the EU and future trade and political relationship with the EU ('no deal'), from Exit Day, EU Regulations will no longer be directly applicable in the UK and EU entities will no longer have a part to play in the creation of UK policy and legislation.

However, the approach specified in the European Union (Withdrawal) Act 2018 is to incorporate EU law into UK law (where possible) and the UK Government has published statutory instruments with the aim of correcting or removing inoperable provisions of EU Regulations, relevant to the electricity industry, such that they reflect the UK no longer being an EU Member State. The Authority is also proceeding with a statutory consultation on consequential licence modifications.

How

It is proposed to modify existing references to EU Regulations with appropriate references so that the references appropriately reflect the changes as foreseen in the relevant Statutory Instruments that have been prepared under the European Union (Withdrawal) Act 2018.

2 Governance

Justification for Self-Governance Procedures

Application of Self-Governance procedures is sought because the changes proposed are unlikely to discriminate between different classes of CUSC Parties and is unlikely to have a material effect on:

- i) Existing or future electricity customers;
- ii) Competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution or supply of electricity,
- iii) The operation of the National Electricity Transmission System
- iv) Matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies

- v) The CUSC's governance procedures or the CUSC's modification procedures

The Proposal follows the principle of minimal changes required to ensure continued operability of the prevailing CUSC arrangements and minimise disruption in the energy market following Exit Day.

Requested Next Steps

This modification should:

- be subject to self-governance
- proceed to Consultation

As set out above the changes proposed in this modification proposal are not considered material, therefore the proposed changes should be suitable for Self-Governance procedures and not require to proceed to working group.

3 Why Change?

The CUSC contains a small number of references to EU Regulations and EU entities. These were introduced as a consequence of the integration of the UK into the EU Internal Energy Market (IEM) and more specifically in order to comply with a number of EU Regulations which were directly applicable in UK Law.

Following the outcome of a referendum on UK membership of the EU on 23 June 2016, the UK government notified its intention to leave the EU in March 2017 (as permitted by Article 50 of the Treaty on European Union). This departure will become effective on 'Exit Day' (currently legislated for 23:00 on 29 March 2019). In absence of agreements concerning the UK's withdrawal from the EU and future trade and political relationship with the EU ('no deal'), from Exit Day, EU Regulations will no longer be directly applicable in the UK and EU entities will no longer have a part to play in the creation of UK policy and legislation.

However, the approach specified in the European Union (Withdrawal) Act 2018 is to incorporate EU law into UK law (where possible) and the UK Government has published statutory instruments with the aim of correcting or removing inoperable provisions of EU Regulations, relevant to the electricity industry, such that they reflect the UK no longer being an EU Member State. The Authority is also proceeding with a statutory consultation on consequential licence modifications.

As a consequence, the CUSC needs to be changed so that the references appropriately reflect this change in approach.

Should a Withdrawal Agreement between the UK and the EU be concluded and take effect from Exit Day, this Modification in this form and timescale will no longer be required.

4 Code Specific Matters

Technical Skillsets

Knowledge of EU Exit principles.

Reference Documents

[European Union \(Withdrawal\) Act 2018](#)

[The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)

[The Electricity Network Codes and Guidelines \(Markets and Trading\) \(Amendment\) \(EU Exit\) Regulations 2019](#)

[The Electricity Network Codes and Guidelines \(System Operation and Connection\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)

[The Electricity and Gas \(Market Integrity and Transparency\) \(Amendment\) \(EU Exit\) Regulations 2019](#)

[Statutory Consultation on licence modification in the event the UK leaves the EU without a deal](#)

5 Solution

In section 11 (interpretation and definitions), it is proposed to update some definitions where there are references to EU legislation or EU entities.

It is also proposed to add a definition on “Legally Binding Decisions of the European Commission and/or the Agency”, aligned with the modification proposed in the statutory consultation of the licence. In the event the UK leaves the EU without an agreement, future decisions of the Commission and the Agency will no longer have any legal effect in the UK. However, decisions made prior to “Exit Day” are to continue to have effect.

In section 8 (CUSC Modification), some reformatting is proposed to reflect the new definition.

Proposed legal text has been added to section 9 of this proposal form.

6 Impacts & Other Considerations

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

None

Consumer Impacts

None

7 Relevant Objectives

Impact of the modification on the Applicable CUSC Objectives (Standard):

Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Positive
(b) Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;	None
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	None
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	None

*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

8 Implementation

No implementation costs are associated with this Modification.

No implementation timescales are proposed, although implementation of this Modification would be sought as soon as practicable following UK's exit from the EU, in the event the UK leaves the EU without an agreement. However, implementation is specifically dependent upon the implementation of the relevant Statutory Instruments that have been prepared under the European Union (Withdrawal) Act 2018 as well as relevant consequential licence modifications and so implementation of this proposal should align with the Statutory Instruments and licence modifications.

The legal text has been drafted using the baseline of August 2018 text and as the modification progresses through the governance process, the text may need to be revised in light of other ongoing CUSC Modifications. The Code Administrator will ensure that the Proposer is aware of the approval of any of the other CUSC Modifications and the Proposer will take into account any relevant amendments that may need to be made prior to a final decision and notify the CUSC Panel should anything require further change as a result of this occurring in future.

9 Legal Text

CUSC - SECTION 8 - CUSC MODIFICATION

8.16.10 Subject to Paragraph 8.17A.8 (which deals with rejection by the **Panel Secretary of CUSC Modification Proposals** which are necessary to comply with or implement the **Electricity Regulation** and/or any relevant **Legally Binding Decisions of the European Commission and/or The Agency** ~~legally binding decisions of the European Commission and/or the Agency~~), Paragraph 8.17A.4 (which deals with withdrawal of an **CUSC Modification Proposal** in relation to a **Significant Code Review**) and Paragraph 8.17C.1 [...]

8.17A.1 The **Authority** may: (a) itself; or (b) direct **The Company** to raise a **CUSC Modification Proposal** where the **Authority** reasonably considers that such **CUSC Modification Proposal** is necessary to comply with or implement the **Electricity Regulation** and/or any relevant **Legally Binding Decisions of the European Commission and/or The Agency** ~~legally binding decisions of the European Commission and/or the Agency~~ or in respect of a Significant Code Review.

8.17A.9

In relation to any **CUSC Modification Proposal** raised by **The Company** other than pursuant to Paragraph 8.17A.1, where the **Authority** reasonably considers such **CUSC Modification Proposal** to be necessary to comply with or implement the **Electricity Regulation** and/or any relevant **Legally Binding Decisions of the European Commission and/or The Agency** ~~legally binding decision of the European Commission and/or the Agency~~, the provisions of Paragraphs 8.17A.2 to 8.17A.8 shall apply.

CUSC - SECTION 11 - INTERPRETATION AND DEFINITIONS

"**Competent Authority**" the **Secretary of State**, the **Authority** and any local or national agency, authority, department, inspectorate, minister (including Scottish ministers), ministry, official or public or statutory person (whether autonomous or not) of, or of the government of, the United Kingdom ~~or the European Community~~;

Legally Binding Decisions of the European Commission and/or the Agency" means any relevant legally binding decision or decisions of the **European Commission** and/or the **Agency**, but a binding decision does not include a decision that is not, or so much of a decision as is not, **Retained EU Law**;

"**Retained EU Law**" has the same meaning as that given by section 6(7) of the European Union (Withdrawal) Act 2018;

"**Significant Code Review**" a review of one or more matters which the **Authority** considers is likely to: (a) relate to the **CUSC** (either on its own or in conjunction with other Industry Codes); and (b) be of particular significance in relation to its principal objective and/or general duties (under section 3A of the Act), statutory functions and/or relevant obligations arising under **Retained EU Law** ~~EU law~~, and concerning which the **Authority** has issued a notice to the **CUSC Parties** (among others, as appropriate) [...];

10 Recommendations

Proposer's Recommendation to Panel

Panel is asked to:

- Agree that Self Governance procedures should apply
- Issue this modification directly to Consultation