

## Final Modification Report

# CMP390: Updating application forms to enable disclosure of information to government for purposes of the National Security and Investment (NSI) Act 2021

**Overview:** The National Security and Investment (NSI) Act 2021 enables Government to scrutinise the acquisition of rights in entities and assets and intervene where there is a risk to national security. This modification seeks to amend the CUSC application forms to recognise and provide consent to ESO sharing information about the applicant with Government. Enabling BEIS to carry out any initial national security checks in line with the NSI Act and identify any issues at an early opportunity.

## Modification process & timetable

1	<b>Proposal Form</b> 12 April 2022
2	<b>Code Administrator Consultation</b> 09 May 2022 - 30 May 2022
3	<b>Draft Final Modification Report</b> 16 June 2022
4	<b>Final Modification Report</b> 06 July 2022
5	<b>Implementation</b> 10 working days after Authority decision

**Have 5 minutes?** Read our [Executive summary](#)

**Have 10 minutes?** Read the full [Final Modification Report](#)

**Have 20 minutes?** Read the full Final Modification Report and Annexes.

**Status summary:** This report has been submitted to the Authority for them to decide whether this change should happen.

**Panel Recommendation:** The CUSC Panel held their recommendation vote on 24 June 2022. The Panel unanimously recommended that the Original solution should be implemented.

**This modification is expected to have a: Low Impact** on Generators, ESO and BEIS.

### Governance route

Standard Governance modification to proceed to Code Administrator Consultation.

<b>Who can I talk to about the change?</b>	<b>Proposer:</b> Claire Huxley <a href="mailto:Claire.huxley@nationalgrideso.com">Claire.huxley@nationalgrideso.com</a> 07971672772	<b>Code Administrator Contact:</b> Shazia Akhtar <a href="mailto:Shazia.Akhtar2@nationalgrideso.com">Shazia.Akhtar2@nationalgrideso.com</a> 07787266972
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## Contents

<b>Contents</b> .....	<b>2</b>
<b>What is the issue?</b> .....	<b>3</b>
Why change? .....	3
<b>What is the Proposer’s solution?</b> .....	<b>3</b>
<b>Legal text</b> .....	<b>3</b>
<b>What is the impact of this change?</b> .....	<b>3</b>
Proposer’s assessment against CUSC Non-Charging Objectives .....	3
Proposer’s assessment of the impact of the modification on the stakeholder / consumer benefit categories .....	4
<b>Code Administrator Consultation summary</b> .....	<b>5</b>
<b>Panel Recommendation vote</b> .....	<b>5</b>
Panel conclusion.....	8
<b>When will this change take place?</b> .....	<b>9</b>
Implementation date.....	9
Date decision required by.....	9
Implementation approach .....	9
<b>Interactions</b> .....	<b>9</b>
<b>Acronyms, key terms and reference material</b> .....	<b>9</b>
<b>Annexes</b> .....	<b>9</b>
Reference material.....	9

## What is the issue?

The NSI Act 2021 has introduced new powers for Government to scrutinise new build infrastructure for national security risks, and investigate the acquisition rights of the developing entities. The NSI Act 2021 applies where developers apply for a network connection.

Currently the ESO is bound by confidentiality agreements in the CUSC so cannot share the information that is required by the NSI Act.

## Why change?

The CUSC needs to be updated to ensure this information can be provided to the Government in order to support the objectives of this new legislation.

## What is the Proposer's solution?

- Amend the following CUSC application forms:
  - CUSC Exhibit B - Connection Application,
  - CUSC Exhibit D - BEGA Application; and
  - CUSC Exhibit I - Modification Application
    - To recognise and provide consent to ESO sharing information about the applicant with Government.
    - Enable BEIS to carry out any initial national security checks in line with the NSI Act and identify any issues at an early opportunity.

It is not anticipated that all applications will need to be shared as it is expected that thresholds will be agreed with BEIS.

## Legal text

The legal text for this change can be found in Annex 1.

## What is the impact of this change?

### Proposer's assessment against CUSC Non-Charging Objectives

Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	<b>Positive</b> Enables the ESO to support the objectives of the NSI Act by sharing relevant information.
(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;	<b>Positive</b> Ensures there is appropriate governance ahead of connecting to the system thereby facilitating effective competition.

(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	<b>Neutral</b> No impact to the Electricity Regulation.
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	<b>Positive</b> Ensures that the CUSC enables information to be shared in a transparent manner.
*The Electricity Regulation referred to in objective (c) is Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) as it has effect immediately before IP completion day as read with the modifications set out in the SI 2020/1006.	

### Proposer's assessment of the impact of the modification on the stakeholder / consumer benefit categories

Stakeholder / consumer benefit categories	Identified impact
Improved safety and reliability of the system	<b>Positive</b> This will not impact the safety and reliability of the system itself as it is updating the CUSC to support legislation relating to information sharing at the connection application stage.  However, it will improve the overall safety of the system, by enabling appropriate due diligence ahead of new parties connecting.
Lower bills than would otherwise be the case	<b>Neutral</b> There is no impact to bills as this does not impact the charging elements of the CUSC.
Benefits for society as a whole	<b>Positive</b> This change will ensure that data can be shared so that there is appropriate scrutiny over new connections, to ensure that entities who may present a risk to national security do not have the ability to infiltrate the electricity system.
Reduced environmental damage	<b>Neutral</b> There is not impact to environmental damage.
Improved quality of service	<b>Neutral</b> There is no impact to quality of service.

## Code Administrator Consultation summary

Code Administrator Consultation was opened on 9 May 2022 and closed 5pm on 30 May 2022 with 1 non-confidential response received, which was from the Proposer, and was supportive of the change and implementation date. The full response can be found in Annex 2.

## Panel Recommendation vote

The Panel met on 24 June 2022 to carry out their recommendation vote.

They assessed whether a change should be made to the CUSC by assessing the proposed change and any alternatives against the Applicable Objectives.

**Vote 1:** Does the Original facilitate the objectives better than the Baseline?

Panel Member: **Andrew Enzor**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
<b>Voting Statement</b>					
ACO(a): better facilitated by enabling the ESO to share information required by the NSI Act ACO(b): neutral ACO(c): neutral ACO(d): better facilitated by ensuring there is no conflict between the NSI Act and CUSC					

Panel Member: **Andy Pace**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Neutral	Yes
<b>Voting Statement</b>					
This mod will provide for the disclosure of asset ownership to BEIS in line with the National Security and Investment (NSI) Act 2021. We assess this mod as better meeting applicable objectives (a) and (b).					

Panel Member: **Binoy Dharsi**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
<b>Voting Statement</b>					
This modification simply facilitates a requirement to provide information under the NSI Act 2001. The CUSC currently prohibits this, and a change is wholly appropriate. Therefore, it meets Applicable Objective a) and d). It discharges the obligation imposed on it by the Act.					

Panel Member: **Cem Suleyman**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes
<b>Voting Statement</b>					
I believe that CMP390 better meets the Applicable CUSC Objectives for the same reasons as provided by the Proposer.					

Panel Member: **Garth Graham**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes
<b>Voting Statement</b>					
I concur with the reasoning provided by the Proposer as to why this change better achieves the relevant Applicable Objectives.					

Panel Member: **Grace March**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
<b>Voting Statement</b>					
The modification will allow the ESO to abide by the NSI Act (ACO a), with a clear governance route through the CUSC (ACO d). Whilst inappropriate connections					

may distort competition, there is insufficient evidence to suggest they are likely to or have reason to, and so I consider this modification neutral against ACO b.

Panel Member: **Joe Dunn**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
<b>Voting Statement</b>					
Positive against ACOs (a) and (d) as (a) enables ESO to support the objectives of the NSI Act and by default, information is able to be shared in an efficient manner which is therefore positive to (d).					

Panel Member: **Karen Thompson – Lilley**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Yes	Neutral	Yes	Yes
<b>Voting Statement</b>					
Overall, I believe the original facilitates the objectives better than the current baseline. I believe the original proposal facilitates ACO A because it enables the ESO to share relevant information about applicants with BEIS (Government) to allow initial national security checks to be carried out in line with the National Security and Investment (NSI) Act 2021. I believe the original proposal facilitates ACO B because it ensures there is appropriate governance ahead of parties connecting to the system and therefore facilitates effective competition. I believe the impact on ACO C is neutral as there is no impact on electricity regulation. I believe the original proposal facilitates ACO D because it ensures the CUSC enables relevant information to be shared with BEIS in a transparent way.					

Panel Member: **Paul Jones**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Neutral	Yes
<b>Voting Statement</b>					
On the assumption that NGENSO has an obligation to pass information to BEIS under the National Security and Investment Act 2021 as described, when customers make connection applications, then this better meets the objectives in allowing NGENSO to legally carry out its duties under the Act and Transmission Licence. However, it is difficult to confirm if NGENSO's legal interpretation of this					

is correct, as no detail on how this obligation occurs under the NSI Act has been provided as part of the modification process. The consultation and report simply contain a link to the Act, which itself does not seem to contain a specific reference to this. Indeed, the inclusion of the new wording without further explanation may cause some legal uncertainty for future applicants, who may struggle to understand why they are being asked to agree to the release of their confidential information in these circumstances.

## Vote 2 – Which option is the best?

Panel Member	BEST Option?	Which objectives does this option better facilitate? (If baseline not applicable).
Andrew Enzor	Original	(a) & (d)
Andy Pace	Original	(a) & (b)
Binoy Dharsi	Original	(a) & (d)
Cem Suleyman	Original	(a), (b) & (d)
Garth Graham	Original	(a), (b) & (d)
Grace March	Original	(a) & (d)
Joe Dunn	Original	(a) & (d)
Karen Thompson – Lilley	Original	(a), (b) & (d)
Paul Jones	Original	(a)

## Panel conclusion

The CUSC Panel held their recommendation vote on 24 June 2022. The Panel unanimously recommended that the Original solution should be implemented.



## When will this change take place?

### Implementation date

10 working days after the Authority decision.

### Date decision required by

As soon as possible in July 2022.

### Implementation approach

Network connection application documents to be updated. This change will impact any new application forms submitted after the Implementation Date.

## Interactions

- |  |  |   |                                |
|--|--|---|--------------------------------|
| <input type="checkbox"/> Grid Code                 | <input type="checkbox"/> BSC                                 | <input type="checkbox"/> STC                    | <input type="checkbox"/> SQSS  |
| <input type="checkbox"/> European<br>Network Codes | <input type="checkbox"/> EBR Article 18<br>T&Cs <sup>1</sup> | <input type="checkbox"/> Other<br>modifications | <input type="checkbox"/> Other |

None identified.

## Acronyms, key terms and reference material

Acronym / key term	Meaning
BEIS	Department for Business, Energy and Industrial Strategy
BSC	Balancing and Settlement Code
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
EBR	Electricity Balancing Regulation
ESO	Electricity System Operator
NSI Act	National Security and Investment Act 2021
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions

## Annexes

Annex	Information
Annex 1	Legal Text
Annex 2	Code Administrator Consultation Response

## Reference material

- [National Security and Investment Act 2021](#)

<sup>1</sup> If your modification amends any of the clauses mapped out in Exhibit Y to the CUSC, it will change the Terms & Conditions relating to Balancing Service Providers. The modification will need to follow the process set out in Article 18 of the Electricity Balancing Guideline (EBR – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process.