



National Grid

CONSULTATION DOCUMENT

CAP003

CUSC Panel Indemnities

**The purpose of this document is to
consult on Amendment Proposal CAP003
with CUSC Parties and other interested
Industry members**

Amendment Ref	CAP003
Issue	1.0
Date of Issue	16 November 2001
Prepared by	National Grid

I DOCUMENT CONTROL**a National Grid Document Control**

Version	Date	Author	Change Reference
0.1	15/11/01	National Grid	Initial Draft for internal comment
1.0	16/11/01	National Grid	Formal version for release

b Document Location

National Grid website:

http://www.nationalgridinfo.co.uk/cusc/mn_consultation_index.html

c Distribution

Name	Organisation
CUSC Parties	Various
Panel Members	Various
Interested Parties	Various
National Grid Industry Information Website	-

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1.0 Introduction

This consultation document is issued by National Grid under the procedures specified in the Connection and Use of System Code (CUSC) as designated by the Secretary of State. It addresses issues associated with Indemnity as set out in Section 8 of the CUSC.

Further to the submission of Amendment Proposal CAP003, this document seeks views from Industry members relating to the Amendment Proposal. Such an amendment will result in changes to Sections 8.11.1 and 8.11.3 of the CUSC (as detailed in Annex 1).

This document outlines the nature of the CUSC changes that are proposed. Representations received in response to this consultation document will be included in National Grid's Amendment Report that will be furnished to the Authority for its decision.

This consultation document has been prepared in accordance with the terms of the CUSC. An electronic copy can be found on the National Grid website, at <http://www.nationalgridinfo.co.uk/cusc>

2.0 The Amendment Proposal

2.1 Background

The matter of indemnity arrangements was raised at a pre-CUSC Go-Live meeting where a number of CUSC Panel members were uncomfortable with the existing indemnity arrangements. The matter was raised again during a CUSC Panel Meeting on 21st September 2001 where the Panel noted that BSC Modification Proposal P5 had received an affirmative direction from the Authority. Modification P5 proposed to extend indemnity under Section B2.9 of the BSC, for the Indemnity Beneficiaries under the BSC (who include BSC Panel Members). The CUSC Panel Members agreed that a similar amendment to resolve the perceived inadequacy of indemnity in the CUSC should be considered.

Amendment Proposal CAP003 was raised by National Grid and submitted to the Panel Secretary on 31st October 2001. It was discussed by the Amendments Panel at their meeting on 9th November 2001, where they determined that the Proposal should proceed to wider consultation by National Grid.

2.2 Description of the Amendment Proposal

Under the terms of the CUSC, all CUSC Parties must indemnify certain persons (“Indemnified Persons”) against any loss resulting from the proper exercise of the duties of their office as set out in the CUSC.

“Indemnified Persons” are:

- each Panel Member
- the Panel Secretary
- each Working Group Member
- each Standing Group Member

The current wording of the CUSC provides a clearly defined scope of indemnity which arguably leaves Indemnified Persons open to liability if it is found that they were not acting in the proper exercise and discharge of the powers, duties, functions and discretion’s of their office.

In the light of the current wording and it is possible that Indemnified Persons would wish to seek legal advice in order to clarify the scope of their powers before embarking on their duties and functions of their office.

The issue of the personal liability of Indemnified Persons may also lead to over-caution in the discharge of their powers, which will adversely affect the efficiency of their decision making and that of the Amendment Process.

CAP003 proposes to extend the scope of indemnity in the CUSC through the amendment of the text in Paragraphs 8.11.1 and 8.11.3, such that Indemnified Persons will benefit from the protection of the clause if it is found that they were acting “in good faith” i.e. where they demonstrably and reasonably believed that the actions they took were permitted in the terms of the CUSC. The suggested text to give effect to this proposal is included as Section 4 of this document.

By the terms of it’s transmission licence, National Grid is required to establish and operate procedures for the modification of the CUSC (including modification of the modification procedures themselves), so as to better facilitate achievement of the Applicable CUSC Objectives. The Proposal argues that an extension of indemnity contained in the CUSC would better facilitate the obligation to operate the modification procedures and hence achievement of the Applicable CUSC objectives.

3.0 Views Invited

National Grid is seeking the views of interested parties relating to this Amendment Proposal CAP003.

Please send your responses to this consultation document to National Grid by no later than close of business on **9th January 2002**.

Please address all comments to the following e-mail address:
emma.groves@uk.ngrid.com

Or alternatively, comments may be addressed to:

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4.0 Proposed Text to Modify CUSC

Sections 8.11.1 and 8.11.3 of the CUSC to read:

(Additional text shown in Bold underlined type.)

- 8.11.1 Subject to Paragraph 8.11.2 all CUSC Parties shall jointly and severally indemnify and keep indemnified each Panel Member, the Panel Secretary and each member of a Working Group and Standing Group (“Indemnified Persons”) in respect of all costs (including legal costs), expenses, damages and other liabilities properly incurred or suffered by such Indemnified Persons when acting in or in connection with his office under the CUSC, or in **what he in good faith believes to be** the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the CUSC, and all claims, demands and proceedings in connection therewith other than any such costs, expenses, damages or other liabilities incurred or suffered as a result of the wilful default or bad faith of such Indemnified Person.
- 8.11.3 The CUSC Parties agree that no Indemnified Person shall be liable for anything done when acting properly in or in connection with his office under the CUSC, or anything done in **what he in good faith believes to be** the proper exercise and discharge of the powers, duties, functions and discretions of that office in accordance with the CUSC. Each CUSC Party hereby irrevocably and unconditionally waives any such liability of any Indemnified Person and any rights, remedies and claims against any Indemnified Person in respect thereof.