

CAP077 Report to the Special CUSC Panel - 12th January 2005

- 3 Meetings held of CAP077 WG.
- Inevitably paralleled the BSC's P180 WG, arguments were naturally very similar.
- WG unanimously recognised there was a CUSC defect and that an Amendment was needed.
- A WG Amendment and an Alternative Amendment were found, both bettering the CUSC Objectives.
- WG believe TOR have been met fully, and
- WG recommend that report now goes out to consultation.

Key Terms of Reference for CAP077 WG

- Clarify defect
- Identify initial action to be taken by NGC
- Identify possible guidelines for NGC to use
- Identify process that allows NGC to revise further the provisional implementation date
- Identify appropriate legal drafting Amendment and any Alternatives.

The Defect

- The Transmission Licence requires NGC to propose a viable Implementation Date within an Amendment Report.
- Circumstances can arise which require date to be changed.
- Pertinent to CAP077, a legal challenge to an Authority decision can require changes to the proposed Implementation Date within rejected Amendments and those reverting to ‘pending’ status.
- Whilst the CUSC has provisions to change the Implementation Date for Approved Amendments, there are no such provisions for rejected or pending Amendments.
- Therefore the WG agreed that **the CUSC provisions in relation to changing Implementation Dates are not sufficiently complete, should an Authority decision be legally challenged.**

Circumstances when IDs may need to be Changed

Authority Decision on AP	Injunction to Stop Clock	Orig ID remains in AR	Apply mechanism if there is a Legal Challenge	New date maybe needed if Decision is to be		
				Upheld	Overtured	Rerun
Approved	Yes	No	Yes	Yes	No	Yes
	No	Yes	No	N/a	N/a*	No*
Rejected	N/a	Yes	Yes	No	Yes	Yes
	N/a	Yes	Yes	No	Yes	Yes

*Any changes may need to be removed by a subsequent CAP if ID already passed.

The Current Risk

- The current risk therefore is that:

If there is a legal challenge to an Authority decision on a CUSC Amendment and the outcome is to overturn the Authority decision or it is to order a rerun of the Authority decision making process, there is then insufficient time remaining for due process or implementation before the given Implementation Date within the Amendment Report.

- Legal challenge could be by JR or (in future) an Appeal.

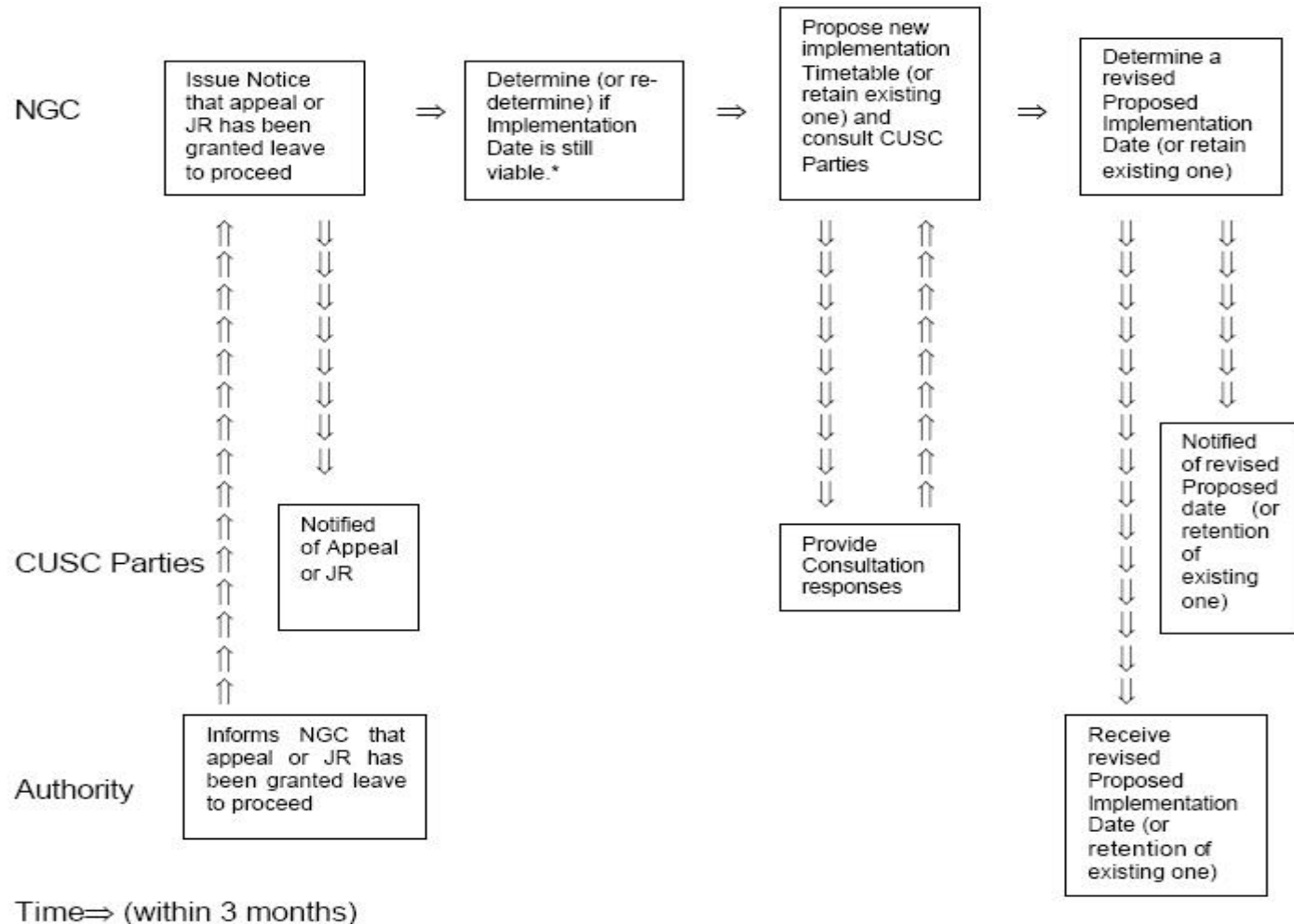
Arguments For and Against an Amendment

- For:-
 - Current process would be inefficient as only recourse would be to resubmit Amendment at a later date if it couldn't be implemented in time.
- Against:-
 - Could perhaps insert alternative dates in the AR
 - Maybe better to have an Amendment resubmission which would include any additional arguments made during the legal challenge.

Identified Solution by WG

- WG agreed to restrict scope of Amendment to situations of legal challenge, whilst maintaining existing Governance.
- To amend CUSC 8.2.3.3 to be more general than just ‘Approved Amendments’, and then insert additional paragraphs (8.2.3.4, 8.2.3.5 and 8.2.3.6) that
 - Maintains existing provision for Approved Amendments,
 - In the event of a legal challenge, allows the Proposed Implementation Dates to be revised such that there would always be an achievable date, and
 - Allows appropriate consultation with CUSC Parties.
- Legal text allows NGC to propose one or more changes to the Implementation Date within the AR prior to any decision from the legal challenge.

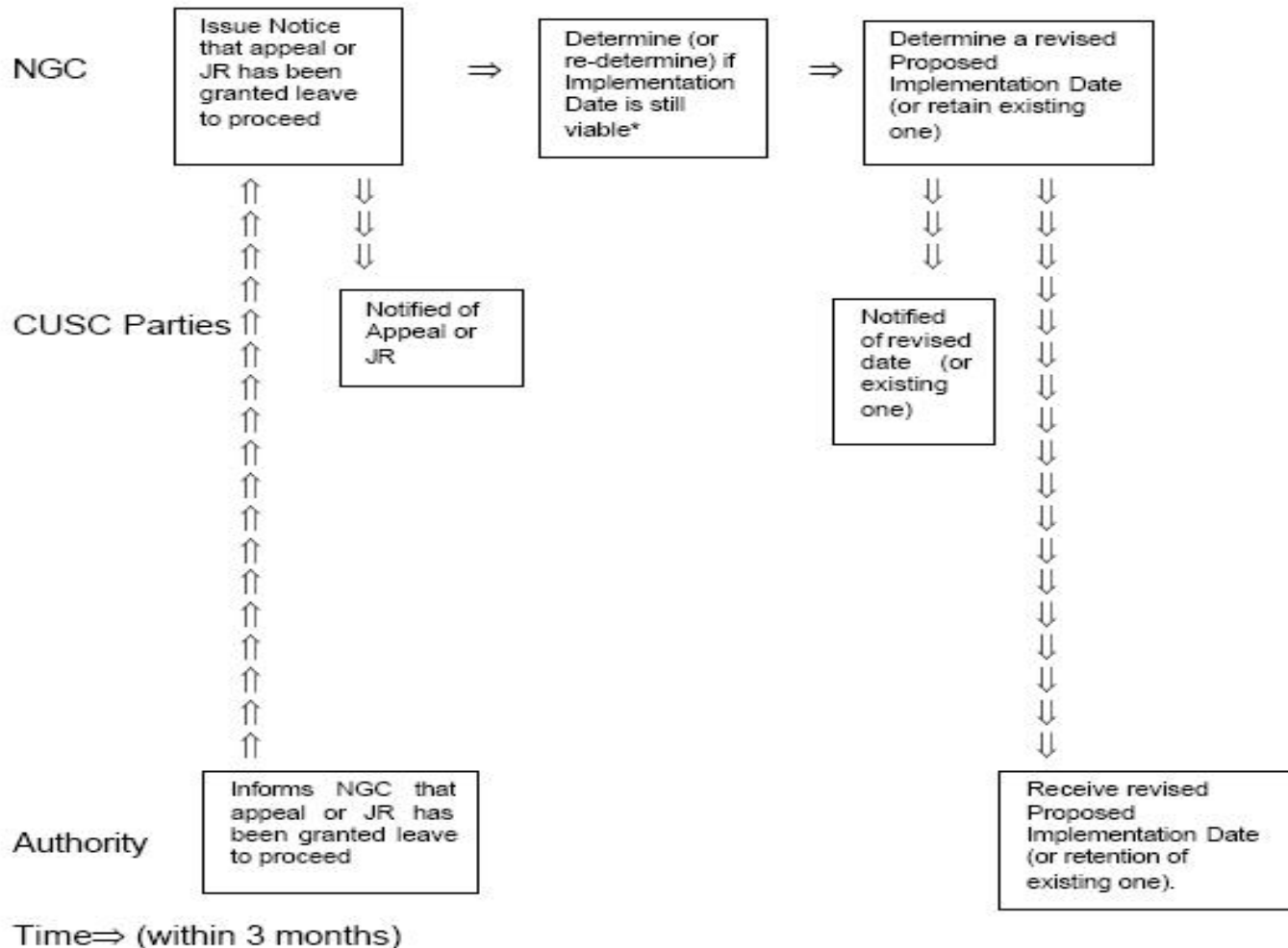
This would lead to a Work Process as envisaged below and that would also maintain existing Governance principles:-



WG Alternative Amendment

- This is the same as the WG Amendment, other than it excludes the consultation loop.
- The legal text therefore excludes 8.2.3.6
- The WGAA was preferred by NGC as it more closely followed existing arrangements and was considered an unnecessary addition to the process.
- The rest of the WG preferred for the impact of the proposed new date to be fully considered by CUSC Parties prior to submission to the Authority

The WGAA Work Process would therefore be simplified to:-



Work Process

- Either process
 - identifies the actions that NGC will initially take on becoming aware of a legal challenge, and
 - Recognises the ability for NGC to review and if required to determine (and re-determine) new proposed implementation dates
- The WG also identified possible guidelines for NGC to follow in order to determine a new date but agreed that it was not possible to be too prescriptive. These would however be kept under review.

Assessment Against CUSC Objectives

- Both the WG Amendment and the Alternative Amendment were considered unanimously by the WG to better achieve the CUSC Objectives when considered against the current CUSC.
- Both were considered to be more efficient and to better facilitate competition.
- However, whilst the majority of the WG favoured the main Amendment, NGC favoured the Alternative Amendment.

WG Recommendations

- The WG recommend to the CUSC Panel Members that they:
 - Agree that the CAP077 ToR have been met;
 - Agree that CAP077 should proceed to industry consultation;
 - Agree that the Consultation Report should be prepared and sent out asap and by 14th January;
 - Agree that the CAP077 Assessment Timeline (Annex 6 of report) continues to be adhered to.