

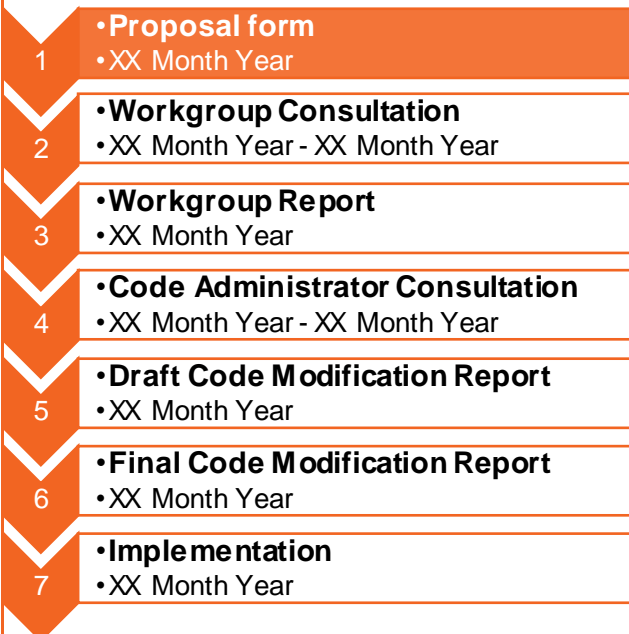
CUSC Modification Proposal Form

CMP309

CUSC changes in the event the UK leaves the EU without an agreement

Overview: 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.

Modification process &



Status summary: subject to self-governance.

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.

This modification is expected to have a: no impact

Proposer's recommendation of governance route

This modification will proceed straight to Code Administrator Consultation and the Panel/Ofgem will make the decision on whether it should be implemented.

Who can I talk to about the change?

Proposer: [Katharina Birkner (National Grid ESO)]

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Code Administrator Chair: Name

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What is the issue?

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.

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 change?

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~~) IP completion day (currently legislated for 23:00 on 31st December 2020). From ~~Exit Day~~ IP completion 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 (as amended by the European Union (Withdrawal Agreement) Act 2020) 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 **and amending them**, 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.

What is the proposer's solution?

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

Draft legal text

The legal text changes shown in red are the base line legal text changes. The legal text changes in blue are the additional legal text changes that have been added since the last Code Administrator Consultation

CUSC - SECTION 4 – BALANCING SERVICES

4.2B.5 ~~EBGL~~ EBR Article 18

Where and to the extent that:-

- (a) contractual arrangements for the provision of and payment for **Balancing Services** which are not set out in **CUSC** contain ~~EBGL Article 18 Terms and Conditions~~ **EBR Article 18 Terms and Conditions**; and
- (b) an ~~EBGL Amendment~~ **EBR Amendment** to such contractual arrangements is proposed which under the ~~Electricity Balancing Guideline~~ **Electricity Balancing Regulation** is subject to consultation and prior approval by the **Authority**, then, to the extent and from such date as is required by the ~~Electricity Balancing Guideline~~ **Electricity Balancing Regulation**, such ~~EBGL Amendment~~ **EBR Amendment** shall be effective only after appropriate consultation and prior approval by the **Authority**. Accordingly, **The Company** shall ensure that the amendment processes contained within such contractual arrangements provide for appropriate consultation and prior approval by the **Authority** before any ~~EBGL Amendment~~ **EBR Amendment** becomes effective.

Exhibit Y

18.5. f	the requirements on data and information to be delivered to the connecting TSO and, where relevant, to the reserve connecting DSO to evaluate the provisions of balancing services pursuant to Article 154(1), Article 154(8), Article 158(1)(e), Article 158(4)(b), Article 161(1)(f) and Article 161(4)(b) of the Electricity Transmission System Operation Regulation
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CUSC - SECTION 8 - CUSC MODIFICATION

- | | |
|--------|---|
| 8.1.3d | an EBGL Amendment EBR Amendment will always be a Standard CUSC Modification Proposal unless an Urgent CUSC Modification Proposal or where it meets the Fast Track Criteria . |
| 8.1.7 | Where a CUSC Modification Proposal constitutes an EBGL Amendment EBR Amendment , The Company , when undertaking its role in the CUSC Panel or Working Groups during the CUSC Modification Process , shall provide justification for including or not including the views of stakeholders resulting from the Code Administrator consultation. |

8.16.1c	a proposal which constitutes an EBGL Amendment EBR Amendment may be made under (a) or (b) above even where not made by The Company and the Authority may make a proposal under (a) and (b) above to the extent that it constitutes an EBGL Amendment EBR Amendment .
8.16.4	A CUSC Modification Proposal shall be submitted in writing to the Panel Secretary and, subject to the provisions of Paragraph 8.16.4A below, shall contain the following information in relation to such proposal: l) whether or not (and to the extent) that in the Proposer's view the CUSC Modification Proposal constitutes an EBGL Amendment EBR Amendment
8.16.7	Promptly upon receipt of a CUSC Modification Proposal , the Panel Secretary shall: c) note whether in the Proposer's view the CUSC Modification Proposal constitutes an EBGL Amendment EBR Amendment .
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.
8.18.8A	The CUSC Modification Panel shall evaluate each CUSC Modification Proposal and determine whether the CUSC Modification Proposal constitutes an EBGL Amendment EBR Amendment and its expected impact on the objectives of the Electricity Balancing Guideline Electricity Balancing Regulation (and in the event of disagreement The Company's view shall prevail).

8.19.1f)	where the CUSC Modification Proposal constitutes an EBGL Amendment EBR Amendment the timetable shall be such that the Code Administrator's consultation is not less than one month.
8.20.8	<p>The terms of reference of a Workgroup must include provision in respect of the following matters:</p> <p>e) whether, and the extent to which, the CUSC Modification Proposal may constitute an amendment to the EBGL Article 18 terms and conditions EBR Article 18 terms and conditions; and</p> <p>f) where the Workgroup considers that a CUSC Modification Proposal may constitute an amendment to the EBGL Article 18 terms and conditions EBR Article 18 terms and conditions, the impact of those amendments on the objectives of the Electricity Balancing Guideline Electricity Balancing Regulation.</p>
8.22.2	<p>After consideration of any Workgroup report on the CUSC Modification Proposal and if applicable any Workgroup Alternative CUSC Modification(s) by the CUSC Modifications Panel and a determination by the CUSC Modifications Panel to proceed to wider consultation, the Code Administrator shall bring to the attention of and consult on the CUSC Modification Proposal and if applicable any Workgroup Alternative CUSC Modification(s) with:</p> <p>(i) where the CUSC Modification Proposal, and if applicable, any Workgroup Alternative CUSC Modification(s) constitutes an EBGL Amendment EBR Amendment with the Authority and other relevant stakeholders.</p> <p>(ii) Where the CUSC Modification Proposal, and if applicable, any Workgroup Alternative CUSC Modification(s) constitutes an EBGL Amendment EBR Amendment the Code Administrator's consultation will be not less than one month.</p>
8.22.5	<p>Where the CUSC Modifications Panel is of the view that the proposed text to amend the CUSC for a CUSC Modification Proposal or Workgroup Alternative CUSC Modification(s) is not needed in the CUSC Modification Report (and provided the CUSC Modification Proposal and/or Workgroup Alternative CUSC Modification(s) does not constitute an EBGL Amendment EBR Amendment), the CUSC Modifications Panel shall consult (giving its reasons as to why it is of this view) with the Authority as to whether the Authority would like the CUSC Modification Report to include the proposed text to amend the CUSC. If it does not, no text needs to be included. If it does, and no detailed text has yet been prepared, the Code Administrator shall prepare such text to modify the CUSC in order to give effect to such CUSC Modification Proposal or Workgroup Alternative CUSC Modification(s) and shall seek the conclusions of the relevant Workgroup before consulting those identified in Paragraph 8.22.2.</p>

8.22.8	<p>After determination by the CUSC Modifications Panel to proceed to wider consultation, such consultation shall be conducted by the Code Administrator on the CUSC Modification Proposal with:</p> <ul style="list-style-type: none"> (i) where the CUSC Modification Proposal and if applicable, any Workgroup Alternative CUSC Modification(s) constitutes an EBGL Amendment EBR Amendment with the Authority and other relevant stakeholders. (ii) Where the CUSC Modification Proposal and if applicable, any Workgroup Alternative CUSC Modification(s) constitutes an EBGL Amendment EBR Amendment the Code Administrator's consultation will be not less than one month.
8.22.10	<p>The Consultation Paper will contain:</p> <p style="padding-left: 40px;">c) <u>where a CUSC Modification Proposal or any Workgroup Alternative CUSC Modification(s) constitutes an EBGL Amendment, the expected impact on the objectives of the Electricity Balancing Guideline Electricity Balancing Regulation</u></p>
8.22.11	<p>Where the CUSC Modifications Panel is of the view that the proposed text to amend the CUSC for a CUSC Modification Proposal is not needed (and provided the CUSC Modification Proposal, and if applicable, any Workgroup Alternative CUSC Modification(s), does not constitute an EBGL Amendment EBR Amendment), the CUSC Modifications Panel shall consult (giving its reasons to why it is of this view) with the Authority as to whether the Authority would like the CUSC Modification Report to include the proposed text to amend the CUSC. If it does not, no text needs to be included. If it does, and no detailed text has yet been prepared, the Code Administrator shall prepare such text to modify the CUSC in order to give effect to such CUSC Modification Proposal and consult those identified in Paragraph 8.22.2.</p>
8.23.1A	<p>Where a CUSC Modification Proposal or any Workgroup Alternative CUSC Modification constitutes an EBGL Amendment EBR Amendment, the Panel will consider any consultation responses received and any further work required to assess these as required under CUSC Paragraph 8.18.8A</p>
8.23.2	<p>The matters to be included in a CUSC Modification Report shall be the following (in respect of the CUSC Modification Proposal):</p> <ul style="list-style-type: none"> l) whether the CUSC Modification Proposal and if applicable, any Workgroup Alternative CUSC Modification(s) constitutes an EBGL Amendment EBR Amendment and if so, and in addition to (i) above, a The Company's justification for including or not including the views resulting from the relevant consultation in the

	<p>CUSC Modification Proposal and if applicable, any Workgroup Alternative CUSC Modification (s).</p> <p>m) where a CUSC Modification Proposal or any Workgroup Alternative CUSC Modification(s) constitutes an EBGL Amendment, the expected impact on the objectives of the Electricity Balancing Guideline Electricity Balancing Regulation</p>
8.23.12	<p>If the Authority determines that the CUSC Modification Report is such that the Authority cannot properly form an opinion on the CUSC Modification Proposal and any Workgroup Alternative CUSC Modification(s), or where the CUSC Modification Proposal and/or any Workgroup Alternative CUSC Modification(s) constitutes an EBGL Amendment EBR Amendment where the Authority requires an amendment to CUSC Modification Proposal and/or any Workgroup Alternative CUSC Modification(s) in order to approve it, it may issue a direction to the CUSC Modifications Panel:</p>
8.23.13	<p>If a CUSC Modification Report is to be revised and re-submitted in accordance with a direction issued pursuant to Paragraph 8.23.12, it shall be re-submitted as soon after the Authority's direction as is appropriate, (and in the case of an EBGL Amendment EBR Amendment within 2 months), taking into account the complexity, importance and urgency of the CUSC Modification Proposal and any Workgroup Alternative CUSC Modification(s). The CUSC Modifications Panel shall decide on the level of analysis and consultation required in order to comply with the Authority's direction and shall agree an appropriate timetable for meeting its obligations. Once the CUSC Modification Report is revised, the CUSC Modifications Panel shall carry out its CUSC Modifications Panel Recommendation Vote again in respect of the revised CUSC Modification Report and re-submit it to the Authority in compliance with Paragraphs 8.23.4 to 8.23.6.</p>
8.23.14	<p>where Paragraph 8.23.9 and/or Paragraph 8.23.10 is applied to a CUSC Modification Proposal which constitutes an EBGL Amendment EBR Amendment the process and timetable adopted shall meet the minimum consultation requirements of the Electricity Balancing Guideline Electricity Balancing Regulation.</p>
8.24.3	<p>The matters referred to in Paragraph 8.24.1 are:</p> <p>(b) the procedure and timetable to be followed in respect of such Urgent CUSC Modification Proposal which in the case of a CUSC Modification Proposal and, if applicable, any Workgroup Alternative CUSC Modification(s) which constitutes an EBGL Amendment EBR Amendment shall meet the minimum consultation requirements of the Electricity Balancing Guideline Electricity Balancing Regulation</p>
8.24.7	<p>For the purposes of this Paragraph 8.24.7, the procedure and timetable in respect of an Urgent CUSC Modification Proposal may (with the</p>

approval of the **Authority** pursuant to Paragraph 8.24.4 or Paragraph 8.24.5) deviate from all or part of the **CUSC Modification Procedures** or follow any other procedure or timetable approved by the **Authority**, excepting in the case of a **CUSC Modification Proposal** or any **Workgroup Alternative CUSC Modification(s)** which constitute an ~~EBGL Amendment~~ **EBR Amendment**, which shall meet the minimum consultation requirements of the ~~Electricity Balancing Guideline~~ **Electricity Balancing Regulation**.

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) [...];

~~"Electricity Balancing Guideline" means Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing;~~

"**Electricity Balancing Regulation**" means the English version of Commission Regulation (EU) 2017/2195 as converted into **Retained EU Law**;

~~"EBGL Amendment" means (a) any amendment to contractual arrangements for the provision of and payment for Balancing Services referred to in Section 4.2B5 or (b) any amendment to CUSC which amends the EBGL Article 18 Terms or Conditions in, as the case may be, such contractual arrangements or CUSC including to introduce a new provision for the purposes of Article 18 into, as the case may be, such contractual arrangements or CUSC;~~

"**EBR Amendment**" means (a) any amendment to contractual arrangements for the provision of and payment for Balancing Services referred to in Section 4.2B5 or (b) any amendment to **CUSC** which amends the ~~EBGL~~ **EBR Article 18 Terms or Conditions** in, as the case may be, such contractual arrangements or **CUSC** including to introduce

a new provision for the purposes of Article 18 into, as the case may be, such contractual arrangements or CUSC ;
“EBGL Article 18 Terms and Conditions” means terms and conditions which have been approved by the Authority pursuant to and for the purposes of Article 18 of the Electricity Balancing Guidelines. In the context of CUSC these terms and conditions are identified for convenience in CUSC Exhibit Y as such Exhibit Y is amended from time to time
“ EBR Article 18 Terms and Conditions ” means terms and conditions which have been approved by the Authority pursuant to and for the purposes of Article 18 of the Electricity Balancing Guidelines Electricity Balancing Regulation . In the context of CUSC these terms and conditions are identified for convenience in CUSC Exhibit Y as such Exhibit Y is amended from time to time
“ Electricity Transmission System Operation Regulation ” means the English version of Commission Regulation (EU) 2017/1485 as converted into Retained EU Law ;
“ Retained EU Law ” has the meaning given to it by the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020;
“ Electricity Regulation ” means the English version of Commission Regulation (EU) 2019/943 (being the recast of (EU) 714/2009) as converted into Retained EU Law

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;	Positive, as it ensures the CUSC is accurate to avoid confusion
(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.	Positive, as it ensures the CUSC is accurate to avoid confusion

*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).

Impact of the modification on the stakeholder / consumer benefit categories

Proposer's assessment:

Stakeholder / consumer benefit categories	Identified impact
Improved safety and reliability of the system	None
Lower bills than would otherwise be the case	None
Benefits for society as a whole	None
Reduced environmental damage	None
Improved quality of service	None

When will this change take place?

Implementation date:

No implementation timescales are proposed, although implementation of this Modification would be sought as soon as practicable following the end of the transition period. 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.

Date decision required by:

Dec 2020 CUSC panel

Implementation approach:

No implementation costs are associated with this Modification.

Interactions

Acronyms, key terms and reference material

Acronym / key term	Meaning
Brexit	UK leaving the European Union following result of 2016 EU exit referendum
<u>IP completion day</u>	<u>Implementation Period completion day, which is</u> expected to be the <u>31 December 2020.</u>
European Union Withdrawal Act 2018	European Union Withdrawal Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020

Reference material:

[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](#)

Guidance on governance routes

[Section to be removed by Code Admin following submission]

Self-Governance

The modification is unlikely to discriminate between different 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 Panel's governance procedures or the CUSC Panel's modification procedures

Fast Track Self-Governance

The modification is a housekeeping modification required as a result of an error or factual change, such as:

- i. Updating names or addresses listed in the CUSC;
- ii. Correcting minor typographical errors;
- iii. Correcting formatting and consistency errors, such as paragraph numbering, or;
- iv. Updating out of date references to other documents or paragraphs.

Urgency

Ofgem's current guidance states that an urgent modification should be linked to an imminent issue or a current issue that if not urgently addressed may cause:

- i. A significant commercial impact on parties, consumers or other stakeholder(s); or
- ii. A significant impact on the safety and security of the electricity and/or gas systems; or
- iii. A party to be in breach of any relevant legal requirements.