

CUSC Modification Proposal Form	CMP195
Title of the CUSC Modification Proposal: <i>(mandatory by Proposer)</i> Code Governance Review post implementation clarifications	
Submission Date <i>(mandatory by Proposer)</i> 17 March 2011	
Description of the CUSC Modification Proposal <i>(mandatory by Proposer)</i> CMP195 proposes a number of changes to Sections 8 and 11 of the CUSC to better clarify the provisions for the following procedures implemented as part of Ofgem's Code Governance Review in 2010. The proposed changes are considered to be non material: <ul style="list-style-type: none"> • Significant Code Review • Self-governance • Governance of Charging Methodologies • Send back • Environmental Assessment • Code Administrator Assistance Additionally, there are a number of housekeeping changes which have been proposed throughout Sections 8 and 11, which seek to correct typographical errors and apply consistent formatting to the text.	
Description of Issue or Defect that CUSC Modification Proposal seeks to Address: <i>(mandatory by Proposer)</i> On 5 th July 2010, Ofgem published the Code Governance Review final licence modifications which placed an obligation on National Grid to implement the code modification procedures as set out in their Final Proposals which were published on 31 st March 2010. CAPs 186 and 187 were implemented on 2 nd November 2010 and CAPs 183, 184, 185 and 188 were implemented on 30 th December 2010. On the 12 th October 2010, Ofgem raised an extensive list of comments to the legal drafting for CAPs 183 – 188 which included comments on CAPs 186 and 187 which were already with the Authority for a decision. Whilst CAP183, 184, 185 and 188 were at the stage of Company Consultation (now referred to as the Code Administrator Consultation) these comments could not be immediately addressed as there is an established practice of not accepting changes to the legal text at the Company Consultation phase. In order to address these concerns National Grid published an open letter to Ofgem on 9 th November 2010 which stated that their comments would be reviewed by the CUSC Governance Standing Group (GSG) post implementation of the Amendment Proposals via a separate modification. In addition to the comments submitted by Ofgem, the GSG also highlighted various housekeeping changes which have been included in this proposal as these changes are also non-material in nature. Since the implementation of the Code Governance Review, the GSG and Ofgem have separately reviewed the proposed legal text for Sections 8 and 11, with Ofgem providing further clarification to their comments of 12 th October. For reference, a consolidated version of Ofgem's comments is attached as an Appendix to this proposal.	

<p>Impact on the CUSC <i>(this should be given where possible)</i></p> <p>Sections 8 and 11 of the CUSC will require amending</p>
<p>Do you believe the CUSC Modification Proposal will have a material impact on Greenhouse Gas Emissions? Yes/No <i>(assessed in accordance with Authority Guidance – see guidance notes for website link)</i></p> <p>No</p>
<p>Impact on Core Industry Documentation. Please tick the relevant boxes and provide any supporting information <i>(this should be given where possible)</i></p> <p>BSC <input type="checkbox"/></p> <p>Grid Code <input type="checkbox"/></p> <p>STC <input type="checkbox"/></p> <p>Other <input type="checkbox"/> <i>(please specify)</i></p>
<p>Urgency Recommended: Yes / No <i>(optional by Proposer)</i></p> <p>No</p>
<p>Justification for Urgency Recommendation <i>(mandatory by Proposer if recommending progression as an Urgent Modification Proposal)</i></p> <p>N/A</p>
<p>Self-Governance Recommended: Yes / No <i>(mandatory by Proposer)</i></p> <p>Yes</p>
<p>Justification for Self-Governance Recommendation <i>(Mandatory by Proposer if recommending progression as Self-governance Modification Proposal)</i></p> <p>As the proposal provides further clarification to existing procedures and definitions within Section 8 and does not introduce any material changes, this should be considered for the Self-governance route.</p>
<p>Should this CUSC Modification Proposal be considered exempt from any ongoing Significant Code Reviews? <i>(Mandatory by Proposer in order to assist the Panel in deciding whether a Modification Proposal should undergo a SCR Suitability Assessment)</i></p> <p>There are no SCRs which are currently ongoing which affect the CUSC.</p>
<p>Impact on Computer Systems and Processes used by CUSC Parties: <i>(this should be given where possible)</i></p> <p>None</p>

Details of any Related Modification to Other Industry Codes (where known):

None

Justification for CUSC Modification Proposal with Reference to Applicable CUSC Objectives:
(mandatory by proposer)

Please tick the relevant boxes and provide justification:

(a) the efficient discharge by The Company of the obligations imposed upon it by the Act and the Transmission Licence

This proposal will provide more clarity to Sections 8 and 11 of the CUSC which will allow a more efficient operation of modification procedures as stated by Paragraph 6 of licence Condition C10.

(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.

This proposal can also help smaller industry participants to better understand the governance and modification procedures which would enhance their opportunities in raising changes to the CUSC and so facilitate effective competition within the industry.

These are defined within the National Grid Electricity Transmission plc Licence under Standard Condition C10, paragraph 1

Details of Proposer: (Organisation Name)	National Grid Electricity Transmission plc
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:	Steven Lam National Grid Electricity Transmission plc 01926 653534 Steven.lam@uk.ngrid.com
Details of Representative's Alternate: Name: Organisation: Telephone Number: Email Address:	Alex Thomason National Grid Electricity Transmission plc 01926 656379 Alex.thomason@uk.ngrid.com
Attachments (Yes/No): If Yes, Title and No. of pages of each Attachment:	
	Appendix 1: Ofgem review of Consolidated CUSC legal text of 27 September 2010 Response of 2 March 2011 (15 Pages)

Appendix 1

Ofgem Review of Consolidated CUSC Legal Text of 27 September 2010
Response of 2 March 2011

SCRs

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
8.17.1	<p>We consider that it is misleading/inaccurate to say "for inclusion within the Significant Code Review" as such proposals in practice are not included within the Significant Code Review. The current drafting implies that they are, or may be. Furthermore, SLC C10 refers to proposals falling <u>within scope of</u> a Significant Code Review.</p> <p>Agree</p> <p><u>Suggestion:</u> We consider that all such references throughout the legal texts for section 8 and 11 should be replaced with references to falling/fall within scope of a Significant Code Review as appropriate, including definition of "Standard CUSC Modification Proposal".</p> <p>Agree</p> <p>In similar vein, paragraph 8.1.6 contains reference to "subsumed into a Significant Code Review" which may also be misleading/inaccurate. We consider a reference to "restricted during a Significant Code Review" is more appropriate.</p> <p>Agree</p>	Thank you.
8.17.1	<p>(1) We consider that in the Panel's assessment of whether a CUSC Modification Proposal falls within scope of an SCR must also include an assessment of the applicability of the exceptions set out in SLC C10(6A)(a) and (b) - as required by SLC C10(6B)(b)(ii).</p> <p>Agree</p> <p>(2) Linked to the above point, where a modification proposal falls within a current SCR but is a proposal that is raised pursuant to an SCR direction, that modification, under SLC C10(6A)(b), may be made. However the drafting currently effectively provides that where SCR proposal is made during another SCR phase the panel must proceed with it (as it is a CUSC modification proposal) but also must send suitability assessment which they are not required to do under the licence as that modification may be made under SLC C10(6A)(b).</p> <p>Agree</p> <p>Further, the meaning of "Standard CUSC Modification Proposal" may cause some</p>	<p>(1) Thank you.</p> <p>(2) We consider that the words "or unless sub-paragraph 8.17.4(b) applies" should be inserted after the words "unless exempted by the Authority" so that an SCR directed proposal will always proceed through the standard procedures without suitability assessment. In the definition of "Standard CUSC Modification Proposal", we consider the reference to paragraph 18.7.5 should be 18.7.3.</p>

	<p>ambiguity. It means CUSC proposals except those suitable for inclusion within SCRs or Self Governance. For the avoidance of doubt, we consider it is best to make clear that except those suitable for inclusion within SCRs "as directed by the Authority under Paragraph 18.7.5".</p> <p>Agree</p>	
8.17.3	<p>We query how you consider SLC C10(6A) has been implemented – where the Authority may determine that a CUSC Modification Proposal falling within scope of an SCR may be made if it falls within the exceptions listed i.e. urgency.</p> <p>Agree</p>	Thank you.
8.17.3	<p>We consider that the first sentence of this paragraph should be amended which states that if at any time the Authority directs that a proposal submitted during an SCR falls within scope of an SCR, the Panel then cannot proceed with that proposal. However, the Authority may direct that it does fall within the SCR but that the proposal may be made due to, amongst other things, urgency (see SLC C10(6A)). Therefore, we suggest the provision is tweaked to ensure there is no ambiguity surrounding whether the Panel is bound not to proceed with that proposal under this paragraph as currently drafted.</p> <p><u>Suggestion:</u></p> <p>"If the Authority at any time directs that the CUSC Modification Proposal submitted during a Significant Code Review Phase is suitable for inclusion falls within scope of the Significant Code Review and must not be made during the Significant Code Review Phase, the CUSC Modifications Panel will not proceed with that CUSC Modification Proposal, and the Proposer shall decide whether the CUSC Modification Proposal shall be withdrawn or suspended until the end of the Significant Code Review Phase."</p> <p>Agree</p>	Thank you.
8.17.5 Now become 8.17.6	<p>We consider that this paragraph should make clear that "where The Company makes a CUSC Modification Proposal in accordance with Authority directions, that proposal proceeds through the process for Standard CUSC Modification Proposals set out in Paragraphs 8.18 to 8.23" as this is stated for 'Self-Governance' proposals that turn out not to fall within Self-Governance and therefore follow the standard process.</p> <p>Agree</p>	<p>(1) We query why the reference to paragraph 8.18 has been omitted.</p> <p>(2) We consider that the beginning of the provision should be clarified as follows:</p> <p>"If wWithin twenty-eight</p>

		(28) days after the Authority has published its Significant Code Review conclusions, the Authority may issues to The Company directions, including directions to The Company to make CUSC Modification Proposal(s) ,...”
8.19.3	We query the impact of amalgamation on an SCR CUSC Modification Proposal since once an SCR modification proposal is raised it follows the Standard CUSC Modification Proposal process. We consider SCR proposals should not fall within scope of amalgamation – this mirrors that currently proposed in the BSC legal text – and we consider a provision to this effect should be inserted here. Will not be included as this was not in the original proposal or in the licence and so it will have to be raised as a new CUSC modification	We consider that it should be included in this proposal or a new proposal raised in respect of it.
8.20.22	We consider that the last sentence; “the CUSC Modification Proposal and any Workgroup Alternative CUSC Modification shall be suspended during the Significant Code Review Phase, unless withdrawn”, should refer back to the provisions on suspension and withdrawal and the proposer’s right to specify within 28 days whether that proposal is withdrawn or suspended. Therefore, we consider it would better read as follows: “the CUSC Modification Proposal and any Workgroup Alternative CUSC Modification shall be suspended or withdrawn during the Significant Code Review Phase, unless withdrawn in accordance with Paragraph 8.17.3. ” Agree	Thank you.
8.1.4	We consider that the words “high level” should be deleted as appears inaccurate. Agree	Thank you.

Self Governance

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
8.18.4	We consider that the last part of this paragraph may be interpreted wrongly; “The CUSC Modifications Panel shall follow the procedure set out in Paragraph 8.25 in respect of any CUSC Modification Proposal deemed by the CUSC Modifications Panel to fall within the Self-	We consider that paragraph 8.18.5 requires additional wording at the end “..unless the Authority directs its approval is

	<p>Governance Criteria". It may be interpreted that where a proposal is not deemed by the Panel to fall within self-governance then paragraph 8.25 does not apply - whereas it should apply. Therefore we suggest the following may work better.</p> <p><u>Suggestion:</u></p> <p>"The CUSC Modifications Panel shall evaluate each CUSC Modification Proposal against the Self-Governance Criteria. The CUSC Modifications Panel and shall follow the procedure set out in Paragraph 8.25 in respect of any CUSC Modification Proposal deemed by the CUSC Modifications Panel to fall within the Self-Governance Criteria."</p> <p>The paragraph has been split to include some of the suggested wording and to deal with modifications that are deemed not to be Self-governance. However, the Panel would not always follow the procedure set put in paragraph 8.25 as this deals with modifications that progress as Self-governance.</p>	<p>required in accordance with paragraph 8.25.2 and in such a case that CUSC Modification Proposal shall be a Standard CUSC Modification Proposal and shall follow the procedure set out in paragraphs 8.19, 8.20. 8.22 and 8.23."</p>
<p>8.18.5</p>	<p>We consider that this paragraph is not required as covered in 8.25. It slightly confuses matters/duplicates in that paragraph 8.25 applies and sets out essentially the same thing as this paragraph does.</p> <p>This is still required as this gives the provisions for the Authority to direct a modification to be progressed as Self-governance. The legal text has included the words "[unless the Authority determines otherwise in accordance with paragraph 8.25.4"...]</p>	<p>Thank you.</p>
<p>8.25.2</p>	<p>We query why the reference to the process for Standard CUSC Modification Proposals set out in various paragraphs excludes paragraph 8.21 – could this be relevant in relation to proposals to amend the charging methodologies?</p> <p>8.21 deals with Standing Groups which are separate to the modifications process, which is why this reference was omitted. No change required</p>	<p>Thank you.</p>
<p>8.25.4</p>	<p>This refers to the Authority giving a direction at the first CUSC Modifications Panel meeting at which a CUSC Modification Proposal is discussed at the earliest. We query why we are limited to giving a direction no earlier than in that meeting and we consider this should be deleted.</p> <p>Agree – paragraph edited to state that the Authority may issue a direction and</p>	<p>Thank you.</p>

	removed reference to the first Panel meeting.	
8.25.9	We consider a reference to "in accordance with paragraph 8.25.4" is required after the words "or if the Authority determines that the Self-Governance Criteria are satisfied". Agree	Thank you.
8.25.11	(1) We consider the reference to 'Self-Governance Report' should be a reference to the defined term 'CUSC Modification Self-Governance Report'. Agree (2) We consider the words "and a direction has not been issued under Paragraph 8.25.4" should be inserted after the words "If a Self-Governance Statement is retracted," for clarification. Agree (3) We consider that the words: ", and the Authority shall make a determination in respect of the CUSC Modification Proposal in accordance with Paragraph 8.23.7." should be deleted because other relevant provisions appear to be excluded, for example, the Authority may send back the modification report, due to the words "the Authority shall". Agree <u>Suggestion:</u> Therefore, we suggest that the paragraph is clarified as follows- "If a Self-Governance Statement is retracted and a direction has not been issued under Paragraph 8.25.4 , or if the Authority notifies the CUSC Modifications Panel that it has determined that a CUSC Modification Proposal does not meet the Self-Governance Criteria the CUSC Modifications Panel shall treat the CUSC Modification Proposal as a Standard CUSC Modification Proposal and shall comply with Paragraph 8.23, using the CUSC Modification Self-Governance Report as a basis for its CUSC Modification Report. -, and the Authority shall make a determination in respect of the CUSC Modification Proposal in accordance with Paragraph 8.23.7." Agree	Thank you.
8.25.12	We do not understand why the Panel would, after the Authority either does not give notice that its decision is required or determines that a proposal fulfils the Self-Governance Criteria (paragraph 8.25.9), withdraw that proposal from the Self Governance process and direct it to the standard process for Authority decision.	We note the references to paragraph 8.25.9 and 8.25.4. We consider that the references should be to paragraph 8.25.4 and paragraph 8.25.2.

	<p>Furthermore, how does this work if (1) the Authority has already determined that the Self Governance Criteria are met and the proposal should follow Self Governance under 8.25.4, and (2) if the Authority could just issue a direction that the proposal should follow Self Governance under 8.25.4 in any case? Due to these implications, we consider this provision should be deleted.</p> <p>We agreed that this provision does not apply where the Authority determines that a proposal fulfils the Self-Governance Criteria under paragraph 8.25.9 and therefore should be amended to state this.</p> <p>Agree</p>	<p>Further, we consider that this paragraph should be clarified to reflect that the panel may direct the proposal to the standard process if it considers it falls outside the Self Governance criteria.</p>
8.25.10	<p>Note that currently the reference to 8.25.19 should be 8.25.18. If you agree with our comment above on Self Governance Appeals where we suggest a new paragraph 8.25.19 then this reference does not require amendment. Agree</p>	<p>Thank you.</p>

Self Governance Appeals

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
8.25.14	<p>(1) We consider that the appeal should be made up to and including 15 business days following Panel determination in accordance with paragraph 8.25.9 and not from publication of the decision to approve or reject. Please see SLC C10 (13B) which sets out that an appeal may be made 15 working days after the approval or rejection and so not from publication of the decision to approve or reject.</p> <p>Agree</p> <p>(2) We consider that reference to "...the approval or rejection by the CUSC Modifications Panel of a CUSC Modification Proposal and any Workgroup Alternative CUSC Modification that met the Self-Governance Criteria..." should be reference to "...the approval or rejection by the CUSC Modifications Panel of a CUSC Modification Proposal and any Workgroup Alternative CUSC Modification that met the Self-Governance Criteria in accordance with Paragraph 8.25.9...". This is because the reference just to "that met the Self-Governance Criteria" does not appear to be enough as there is a full process set out in paragraph 8.25 which culminates in the Panel decision under paragraph 8.25.9</p>	<p>Thank you. We note that the provision states that a party may appeal if the criteria are satisfied and provided that the panel secretary is notified of any appeal. We consider this latter requirement to notify the panel secretary should be separated out because SLC C10 provides that the appeal only has to be lodged with the Authority within 15 days and satisfies the criteria. So if notification is not given to the panel secretary the appeal can still go ahead but on the current drafting it appears that it cannot due to the words "provided that".</p>

	<p>which is then appealable. Agree</p>	
8.25.15	<p>(1) We consider that the words “the merits of the appeal against” should be deleted and the words “whether the appeal satisfies”. This is to make clear this is a ‘permission stage’ type provision avoid any implication or confusion that we are deciding the appeal at that stage. Further, the word “Whether” at the beginning of (a), (b), (c) and (d) should be deleted. Agree</p> <p>(2) We note that the Authority may consider that the appeal criteria are not fulfilled so dismiss the appeal. We consider that a provision is required to cover this eventuality at the end of this paragraph. Agree</p>	Thank you.
8.25.17	<p>(1) We consider that reference to “...Panel’s determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification that met the Self-Governance Criteria” should be reference to “...Panel’s determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification that met the Self-Governance Criteria in accordance with Paragraph 8.25.9...”. This is because the reference just to “that met the Self-Governance Criteria” does not appear to be enough as there is a full process set out in paragraph 8.25 which culminates in the Panel decision under paragraph 8.25.9 which is then appealable. Agree</p> <p>(2) We consider that for the avoidance of doubt an express reference to paragraph 8.23.9 (send back) should be included: e.g.</p> <p>“.....the CUSC Modification Panel’s determination of that CUSC Modification Proposal and any alternative shall be treated as a CUSC Modification Report submitted to the Authority pursuant to Paragraph 8.23.6 (for the avoidance of doubt, subject to Paragraph 8.29.3) and the CUSC Modification Panel’s determination shall be treated as its recommendation pursuant to Paragraph 8.23.4.” Agree but the reference should be to 8.23.9.</p>	<p>(1) Thank you.</p> <p>(2) We consider that the reference should be to “paragraphs 8.23.9 to 8.23.13” as send back is covered under 8.23.12 and the new fixed implementation dates provisions have been inserted in paragraph 8.23.9.</p>
8.25.18	<p>(1) We consider the words “If the Authority quashes the CUSC Modifications Panel’s</p>	Thank you. However we consider

	<p>determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification made in accordance with Paragraph 8.25.9," should be inserted at the beginning of this paragraph for relevant context. Agree</p> <p>(2) We consider the reference to "further consideration" should be "re-consideration". Agree</p> <p>(3) We also consider that the sentence "and it is also open to the Authority to direct the CUSC Modifications Panel to refer its recommendation to the Authority for final determination pursuant to Paragraph 8.23.7." should be deleted. If the Authority quashes the Panel's determination and remits it back for reconsideration, the panel would then be taking the decision again and not the Authority, further paragraph 8.25.17 covers situations where the Authority may quash the panel's decision and take the decision itself in any case.</p> <p><u>Suggestion:</u> We suggest that the paragraph is clarified as follows-</p> <p>"If the Authority quashes the CUSC Modifications Panel's determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification made in accordance with Paragraph 8.25.9, ¶the Authority may, following an appeal to the Authority, refer the CUSC Modification Proposal back to the CUSC Modifications Panel for further re- consideration and a further CUSC Modifications Panel Self-Governance Vote and it is also open to the Authority to direct the CUSC Modifications Panel to refer its recommendation to the Authority for final determination pursuant to Paragraph 8.23.7."</p> <p>Agree with the suggested text but the draft also includes the two send back routes:</p> <ol style="list-style-type: none"> 1. Panel votes and makes determination 2. Panel votes and makes recommendation to the Authority 	<p>8.25.18(b) is not required as this is a step covered by 8.25.17.</p>
<p>New 8.25.19</p>	<p>We note that the Authority may confirm the CUSC Modifications Panel's determination. We consider a new paragraph should be inserted to this effect to cover off this aspect.</p>	<p>Thank you.</p>

	<p><u>Suggestion:</u> We suggest the following provision could be inserted-</p> <p>“The Authority may confirm the CUSC Modifications Panel’s determination in respect of a CUSC Modification Proposal or Workgroup Alternative CUSC Modification made in accordance with Paragraph 8.25.9, following an appeal to the Authority.”</p> <p>Agree</p>	
<p>8.28.1</p>	<p>We consider that reference to appeals and paragraph reference to Panel decision on self-governance proposals is required in this paragraph.</p> <p><u>Suggestion:</u> For example, we consider that the provision could be clarified as follows-</p> <p>“The CUSC shall be modified either in accordance with the terms of the direction by the Authority relating to, or other approval by the Authority of, the CUSC Modification Proposal or any Workgroup Alternative CUSC Modification contained in the relevant CUSC Modification Report, or in respect of CUSC Modification Proposals or any Workgroup Alternative CUSC Modification that are subject to Panel determination under Paragraph 8.25.9, in accordance with the relevant CUSC Modification Self-Governance Report subject to the appeal procedures set out in paragraphs 8.25.14 to 8.25.[19].”</p> <p>Agree</p>	<p>Thank you.</p>
<p>8.23.3 Incorrect ref 8.28.3</p>	<p>(1) We consider that (a) part of this provision, about the self governance modification taking effect, should be subject to appeals process</p> <p>Agree</p> <p>and (b) reference to the Paragraph 8.28.2 (Panel decision on self-governance proposals) are required for clarification in this paragraph.</p> <p>Disagree with reference which is about notification to parties. Suggested change: replace [...that meets the Self-governance criteria..] with “pursuant to paragraph 8.25.10.” This references those modifications which have been voted on via self-governance. This comment is captured in the suggested text below</p> <p>(2) We are concerned about the last part of the provision “which shall, taking into account the fifteen (15) Business Day period set out in Paragraph 8.25.14 to</p>	<p>Thank you.</p>

	<p>allow for appeals, shall be no less than sixteen (16) Business Days after the date on which the notice is published pursuant to Paragraph 8.28.2". It appears that the date in the notice cannot be any earlier than 16 business days which means there is scope for the implementation date to be as short as immediately after the next 16 days. However, we consider that an appeal and decision may not be complete within 16 days i.e. an appeal could come to us on the 15th day. Further this notice requirement seems to conflict with paragraph 8.25.14 which states implementation is suspended pending the appeal outcome. Therefore, where an appeal is raised and therefore implementation suspended, why is the notice required to be no earlier than 16 business days to allow for appeals? Alternatively should there be a requirement on the Code Administrator, in respect of self governance proposals, to only give its notice under paragraph 8.28.2 after the 15 day timeframe for an appeal is complete, and where an appeal is raised within that timeframe, upon the Authority's decision?</p> <p><u>Suggestion:</u> For example, we consider that the provision could be clarified as follows-</p> <p>"A modification of the CUSC shall take effect from the time and date specified in the direction, or other approval, from the Authority referred to in Paragraph 8.28.1 or, in the absence of any such time and date in the direction or approval, from 00:00 hours on the day falling ten (10) Business Days after the date of such direction, or other approval, from the Authority except in relation to a modification of the CUSC in respect of the Charging Methodologies, which may only take effect from 1 April of any given year.</p> <p>A modification of the CUSC that meets the Self-Governance Criteria, which does not require approval from the Authority, pursuant to 8.25.10 shall take effect, subject to the appeal procedures set out in Paragraphs 8.25.14 to 8.25.[19], from the time and date specified by the Code Administrator in its notice given pursuant to Paragraph 8.28.2, which shall be given after the expiry of the fifteen (15) Business Day period set out in Paragraph 8.25.14 to</p>	
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	<p>allow for appeals, or where an appeal is raised in accordance with Paragraph 8.25.14, on conclusion of the appeal in accordance with Paragraphs 8.25.15 or 8.25.[19] but where conclusion of the appeal is earlier than the fifteen (15) Business Day period set out in Paragraph 8.25.14, notice shall be given after the expiry of this period taking into account the fifteen (15) Business Day period set out in Paragraph 8.25.14 to allow for appeals, shall be no less than sixteen (16) Business Days after the date on which the notice is published pursuant to Paragraph 8.28.2."</p> <p>Agree</p> <p>You will note the references to paragraph 8.25.15 and 8.25.19. These refer to where the where appeal is not permitted by the Authority (8.25.14) or where the appeal is permitted but the panel decision is upheld (8.25.19) (both paragraphs as suggested to be amended in line with our other comments in this note).</p> <p>Further, we note that in paragraph 8.22.4(b), the Code Administrator may propose implementation date. This may have some interrelation with our comments here. It may be that the relevant part of paragraph 8.22.4(b) is made subject to Paragraph 8.23.3. Reference should be to 8.28.3. However, disagree with this comment as 8.28.3 deals with the notification of an implementation date whereas 8.22.4 deals with proposed (indicative) implementation dates within the consultation paper which would not be binding.</p>	
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Send-back

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
8.23.10	<p>After a modification report is resubmitted to the Authority following send back, the last sentence of this provision requires that the Authority will then approve or reject the proposal or send back again. We consider that this last sentence is not required and should be deleted. The references to Paragraph 8.23.4 to Paragraph 8.23.6 make clear that the report is sent to the Authority for decision and send back applies.</p> <p>Agree</p>	Thank you.

8.23.7	We consider this paragraph should start with the words "Subject to Paragraph 8.23.9," so that Authority decision is subject to send back provisions. Agree	We consider that the reference should be to "paragraphs 8.23.9 to 8.23.13" as send back is covered under 8.23.12 and the new fixed implementation dates provisions have been inserted in paragraph 8.23.9.
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In addition, Abid Sheik made the following comments in September which we agreed with but were unable to act on due to the delay in the response:

8.23.9 – the Authority cannot properly form an opinion on the proposed amendment or any alternatives when directing send back (the content of the Amendment Report will relate to not just the proposed but also any alternative amendments). The CAP186 text only refers to the proposed amendment. This should be changed to "cannot properly form an opinion on the Proposed Amendment **and any alternative amendment**"? The same point would need to be reflected throughout the drafting of 8.23.9 and 8.23.10 where there's reference to Proposed Amendment. Agree. Thank you.

8.23.9 (a) – the licence (C10 7aa) talks of "specifying additional steps (including drafting or amending existing drafting...)". This isn't properly reflected here because of the addition of 'legal' before 'drafting' in the first line. The licence suggests 'drafting' is used as a verb rather than as a noun in the CAP186 text. Agree. Thank you.

Environmental Assessment

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
8.16.4(h)	We query whether the wording of this provision, for the proposer's assessment, should match SLC C10(6)(b)(ivb) and that provided in 8.23.2(d) for Panel assessment. Agree (minor - swap round wording)	Thank you.
8.23.2(d)	We consider a reference to "Workgroup Alternative CUSC Modification(s)" is required after the references to the 'CUSC Modification Proposal'. Agree – references will be made to "Modification(s)" throughout Section 8 where applicable	Thank you.

Code Administrator Assistance

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
8.16.11(d)	We consider that the last sentence "subject to any charge made by The Company to cover its reasonable costs of providing such information" should be narrowed down to cover only Charging Statements consistent with the licence. Agree – comment updated by Ofgem from previous version following comments from NG	This provision seems to combine SLC C10(6)(ac)(iv) and C10(6)(ad)(iii). The former provision does not only apply to modifications proposals that have been implemented

		<p>and the latter is an obligation on the Licensee and we consider that it would be clearer to amend as follows.</p> <p>(d) Accessing information relating to the Charging Statements <u>(subject to any charge made by The Company to cover its reasonable costs of providing the Charging Statements)</u>, and any amendment, revision or notice of proposed amendment to the Charging Statements, CUSC Modification Proposals and/or CUSC Modifications Proposals that have been implemented</p> <p><u>Suggested new paragraph:</u></p> <p>8.16.12</p> <p>The Company may provide information in accordance with paragraphs 9 and 10 of standard condition C4 (Charges for use of system) and paragraphs 13 and 14 of standard condition C6 (Connection charging methodology); and</p> <p>insofar as reasonably practicable, the provision by The Company of such other information or assistance as a materially affected party may reasonably request for the purposes of preparing a proposal to modify a charging methodology.</p> <p>You may consider this new paragraph would more</p>
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		appropriately go into paragraph 8.26.
8.16.11	We consider that "Materially Affected Parties" should be inserted where reference is made to "(including, in particular, Small Participants and consumer representatives)" to comply with SLC C10(6)(ad)(iii), albeit limited to for the purposes of preparing a proposal to modify a charging methodology if desired. Agree (minor change)	Thank you.

Charging Methodologies

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
SLC C10(6)(b)(iva)	Grateful if you could clarify how SLC C10(6)(b)(iva) has been implemented in the legal text. Incorporated under paragraph 8.16.2	Thank you.

Definitions

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
Definition of "CUSC Modifications Panel Self-Governance Vote"	We consider this definition could be clarified more accurately as follows, reflecting how the Panel assess a self governance modification proposal (as set out in SLC C10 13A(d)). This provides certainty of how a self governance proposal will be assessed. <u>Suggestion:</u> For example- "The vote of Panel Members undertaken by the Panel Chairman in accordance with Paragraph.8.25.9 as to whether they believe each CUSC Modification Proposal, or Workgroup Alternative CUSC Modification would as compared with the then existing provisions of the CUSC and any Workgroup Alternative CUSC Modification set out in the CUSC Modification Self-Governance Report, better facilitate achievement of the Applicable CUSC Objective(s)" Agree	Thank you.

Charging Methodologies - Transitional Arrangements

Reference to CUSC Legal Text	Concern	Ofgem comment (02/03/2011)
8.23.11	We consider that the transitional arrangements provision requires tweaking so that it fully permits the Company to make a transitional modification to the Charging Methodologies contained within	Thank you.

	<p>the CUSC. We consider it currently just prevents the Company from making a transitional charging modification if Authority veto's that proposed modification but in fact does not actually permit the Company to make the transitional modification if the Authority does not veto it.</p> <p><u>Suggestion:</u></p> <p>1. Amend 8.23.11 as follows:</p> <p>"Unless the Authority directs otherwise, the Company may make any modification to the Charging Methodologies if a report has been furnished to the Authority in respect of that modification, in accordance with standard condition C5 or standard condition C6 of the Transmission Licence in force as at 30 December 2010, before 31 December 2010 and within twenty eight (28) days of that report being furnished to the Authority, the Authority has either not:</p> <p>(a) directed The Company that the modification shall not be made; or</p> <p>(b) notified The Company that it intends to undertake an impact assessment and, if it has notified The Company that it intends to undertake an impact assessment, within three months of giving that notification, it has not directed The Company not to make the modification."</p> <p>and</p> <p>2. Amend 8.28.1 to include the words "or in accordance with paragraph 8.23.11" so that the CUSC can be modified to reflect any transitional charging modifications.</p> <p>Deleted paragraph as it is post transition now.</p>	
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Additional discrepancies/errors – 02/03/2011

- 8.1.4.(c) – refers to paragraph 8.1.7 which does not exist.
- 8.17.7 – we consider that the reference to paragraph 8.17.5 be a reference to 8.17.6.
- 8.23.13 – we consider that reference to paragraph 8.23.9 should be reference to 8.23.12 (send back)? Or possibly both if consider the fixed implementation dates provisions (8.23.9) are also relevant.
- You may want to consider definition of 'National Consumer Council' to include reference to "any other successor body".