

Ofgem Review of Consolidated CUSC Legal Text of 27 September 2010**SCRs**

Reference to CUSC Legal Text	Concern
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><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>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>
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>(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). Further, the meaning of “Standard CUSC Modification Proposal” may cause some 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>
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>
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>
8.17.5	<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>
8.19.3	<p>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.</p>
8.20.22	<p>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."</p>
8.1.4	<p>We consider that the words "high level" should be deleted as appears inaccurate.</p>

Self Governance

Reference to CUSC Legal Text	Concern
8.18.4	<p>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-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</p>

	Paragraph 8.25 in respect of any CUSC Modification Proposal deemed by the CUSC Modifications Panel to fall within the Self-Governance Criteria."
8.18.5	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.
8.25.2	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?
8.25.4	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.
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".
8.25.11	<p>(1) We consider the reference to 'Self-Governance Report' should be a reference to the defined term 'CUSC Modification Self-Governance Report'.</p> <p>(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.</p> <p>(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".</p> <p><u>Suggestion:</u> Therefore, we suggest that the paragraph is clarified as follows-</p> <p>"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."</p>
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. 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

	<p>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>
8.25.10	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.

Self Governance Appeals

Reference to CUSC Legal Text	Concern
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>(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 which is then appealable.</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.</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.</p>
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</p>

	<p>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.</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."</p>
8.25.18	<p>(1) We consider the words "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," should be inserted at the beginning of this paragraph for relevant context.</p> <p>(2) We consider the reference to "further consideration" should be "re-consideration".</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>
New 8.25.19	<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><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>

8.28.1	<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>
8.23.3	<p>(1) We consider that (a) part of this provision, about the self governance modification taking effect, should be subject to appeals process and (b) reference to the Paragraph 8.28.2 (Panel decision on self-governance proposals) are required for clarification in this paragraph.</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 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 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>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.</p>
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Send-back

Reference to CUSC Legal Text	Concern
8.23.10	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.
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.

Environmental Assessment

Reference to CUSC Legal Text	Concern
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.

8.23.2(d)	We consider a reference to "Workgroup Alternative CUSC Modification(s)" is required after the references to the 'CUSC Modification Proposal'.
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Code Administrator Assistance

Reference to CUSC Legal Text	Concern
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.
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.

Charging Methodologies

Reference to CUSC Legal Text	Concern
SLC C10(6)(b)(iva)	Grateful if you could clarify how SLC C10(6)(b)(iva) has been implemented in the legal text.

Definitions

Reference to CUSC Legal Text	Concern
Definition of "CUSC Modifications Panel Self-Governance Vote"	<p>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.</p> <p><u>Suggestion:</u> For example-</p> <p>"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)"</p>

Charging Methodologies - Transitional Arrangements

Reference to CUSC Legal Text	Concern
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

	<p>within 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>
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