



DCUSA Change Report

DCP 170 – CODE GOVERNANCE REVIEW PHASE 2 CHANGES

1 PURPOSE

- 1.1 This document is issued in accordance with Clause 11.20 of the DCUSA and details DCP 170 – Code Governance Review Phase 2 Changes (Attachment 3).
- 1.2 The voting process for the proposed variation and the timetable of the progression of the Change Proposal (CP) through the DCUSA Change Control Process is set out in this document.
- 1.3 Parties are invited to consider the proposed amendments (Attachment 2) and submit their votes using the form provided as Attachment 1 to dcusa@electralink.co.uk no later than 25 November 2013.

2 EXECUTIVE SUMMARY

- 2.1 DCP 170 was raised by Eastern Power Networks on the 02 April 2013 to implement the changes required by Ofgem's Code Governance Review Phase 2 Final Proposals. The DCP 170 Working Group met on three occasions and issued a consultation in order to progress the change and seek industry parties' views. The Working Group interpreted Ofgem's final proposals in order to refine the DCUSA change process, add an Ofgem appeals provision and comply with the 18 principles of the Code Administrator Code of Practice (CACOP).

3 INTENT OF DCP 170 – CODE GOVERNANCE REVIEW PHASE 2 CHANGES

- 3.1 DCP 170 has been raised by UK Power Networks in order to implement the Distribution Licence changes arising from Ofgem's Code Governance Review Phase 2 (CGR2) Final Proposals.
- 3.2 The aim of the CGR2 is to align code administration practices and processes across the different energy codes to better support code parties, in particular smaller participants. Phase 1 of the CGR applied to the Balancing and Settlement Code (BSC), the Connection and Use of System Code (CUSC) and the Uniform Network Code (UNC). Phase 2 applies to the remaining energy codes.
- 3.3 The Final Proposals were issued for consultation under a notice pursuant to section 11A (2) of the Electricity Act by Ofgem on 27 March 2013. The decision to modify gas and electricity licences to implement the CGR2 Final Proposals¹ was published by Ofgem on 07 June 2013.

¹ For further information please see Attachment 5 to this consultation.

- 3.4 Ofgem advised that it expected code governance bodies to use best endeavours to update the relevant documentation to meet the new requirements by the end of 2013.

4 DCP 170 – WORKING GROUP CONSIDERATIONS

- 4.1 The DCUSA Panel invited all DCUSA Parties to join the DCP 170 Working Group; the group consists of Distributor, Supplier and Independent Distribution Network Operators (IDNO) Parties, as well as Ofgem representation.
- 4.2 The Working Group reviewed the modifications proposed to Standard Licence Condition (SLC) 22 of the Distribution Licence, with the DCUSA legal advisor. The impacts are primarily around the DCUSA Change Process, in the categories of Self-Governance of modifications, Significant Code Reviews (SCR), achievement of DCUSA Objectives, Ofgem's send back powers (for DCP Change Reports) and the Code Administration Code of Practice (CACoP)².
- 4.3 The table below cross references by category, the amendments to the SLCs with how these modifications might be reflected in the DCUSA (as set out in the proposed legal text in Attachment 2).

² The latest version of the CACoP at the time of writing can be found here:
<http://www.ofgem.gov.uk/Licensing/IndCodes/CGR/Documents1/FinalCoP.pdf>

Modifications Cross Reference Table

Category of proposed modification to SLC 22 of Distribution Licences	CGR2 new / amended SLC reference ³	Current DCUSA Process	Working Group Assessment & Proposed amended DCUSA Process
Self-Governance	<p>22.5(d) Part B: Principles for making an amendment a modification to the DCUSA</p> <p>22.5 Those principles are that:</p> <p>(d) modifications to the DCUSA require Authority approval, which must be sought in accordance with the appropriate procedures set out in the DCUSA, except for modifications made pursuant to paragraph 22.9F ("the self-governance route");</p>	<p>Whether a CP is treated as a Part 1 or Part 2 Matter is designated by the clause(s) of the DCUSA it affects, defined under clauses 9.3 to 9.6 of the DCUSA.</p>	<p>Ofgem's recommendations indicated that it preferred to have criteria, against which a change is categorised as material or immaterial (and therefore approved by Authority consent or self-governance respectively) by the CP's Proposer. As a result the Working Group proposes to retain the Part 1 or Part 2 Matter approach, but to make some minor amendments to better align with the licence requirements.</p> <p>Clause 9.4 "Part 1 Matters" (requiring Authority approval) and clause 9.6 "Part 2 Matters" (not requiring Authority approval) retained. Consequential changes to:</p> <ul style="list-style-type: none"> - clause 5.3.7 – remove the role of the Panel in reviewing the categorisation of Part 1/2 Matters - clause 10.4.7 – require the Proposer to determine whether their CP is a Part 1 or Part 2 Matter, for <u>all</u> CPs, not just those proposing <u>new</u> DCUSA provisions.

³ See Attachment 5 for the full wording of the Licence Condition

Self-Governance	<p>22.9B</p> <p>“The procedures must provide for the proper evaluation of the suitability of the self-governance route for any particular modification proposal in accordance with the criteria Specified pursuant to paragraph A3(f) of the Schedule”.</p> <p>22(A3(F))</p> <p>Such criteria as are specified for the modification of the DCUSA without the Authority’s approval in accordance with Parts B to D of this condition.</p>	<p>Clause 9.4 sets out the criteria for Part 1 Matters;</p> <p>Clause 9.5 lists those provisions deemed to be Part 1 Matters (i.e. those clauses to which modifications are assumed to always be material due to the nature of the clause);</p> <p>Clause 9.6 defines Part 2 Matters as being matters which are not defined as Part 1 Matters.</p>	<p>The Working Group considered that the new licence requirement would be better met by the removal of clause 9.5⁴. The licence requires every CP to be assessed as to whether it is suitable for self-governance, i.e. has a material impact, and therefore the strictly defined list in 9.5 does not allow for a proper evaluation against the self-governance criteria.</p> <p>Clause 9.5 which lists the Part 1 Matter clauses will be deleted and replaced with “not used”.</p>
	<p>22.9F(a)(i)</p> <p>22.9(f) contains the detail around self-governance and sets out where a modification is to be accepted.</p>	<p>This is met by clauses 11.8 and 11.9 of the DCUSA.</p>	<p>The DCUSA currently provides for the Panel’s decision on whether the CP is a Part 1 Matter or a Part 2 Matter, at the same time it decides whether a CP should be subject to the Definition phase, in clauses 11.8 and 11.9.</p> <p>Clause 11.8 references the Proposer’s opinion at clause 10.4.7.</p>

⁴ Clause 9.5 sets out the provisions of the DCUSA deemed to satisfy one or more of the criteria of the status of a Part 1 Matter.

Self-Governance	<p>The procedures must provide that modifications to the DCUSA may be made pursuant to this paragraph 22.9F (the “self-governance route”) where:</p> <p>22.9F(a)(ii)</p> <p>“the Authority has determined that the criteria Specified pursuant to paragraph A3(f) of the Schedule are satisfied and the modification proposal is suitable for the self-governance route;”</p>	<p>Under clause 11.21 Ofgem can stipulate whether it considers a CP should be treated as a Part 1 or Part 2 Matter and overturn the decision made by the DCUSA Panel under clause 11.18.</p>	<p>The Working Group decided that clause 11.21 should be modified to reflect 22.9 (a) and (c) of the licence. This is to provide that the Authority can direct a change to the status of a CP as a Part 1 or Part 2 Matter, up to the point where the Panel approves the Change Report to go out for voting.</p>
	<p>The procedures must provide that modifications to the DCUSA may be made pursuant to this paragraph 22.9F (the “self-governance route”) where:</p> <p>22.9F(b)</p> <p>“unless otherwise exempted by the Authority, the panel has sent copies of any consultation responses to the Authority at least seven (7) days before the modification report is approved by the panel;”</p> <p>22.9 F(c)</p> <p>“the Authority has not directed that the Authority’s approval is required prior to the modification report being approved by the panel;”</p>	<p>Clause 11.22 provides for the Panel’s submission of the Change Report to industry parties for voting in accordance with the voting procedure in clause 12.</p> <p>This clause also acts in accordance with clause 11.24 which allows for the DCUSA Panel to modify the voting procedure where there is more than one proposed solution under a CP.</p>	<p>The Licence drafting requires the consultation responses (for the DCUSA these are contained in the Change Report) to be issued to Ofgem and the DCUSA Panel seven days before the DCUSA Panel approves the Change Report for Party voting.</p> <p>This allows sufficient time for Ofgem to read the industry responses to the consultation(s) prior to the Change Proposal being approved by the Panel (and entering the Party vote phase).</p> <p>Clause 11.22 has been amended to reflect the new licence condition, for the Authority to receive the Change Report seven days before the CP is submitted to the Voting Procedure, with an allowance for a shorter timescale if the Authority so exempts.</p>

Category	CGR2 new / amended SLC reference	Current DCUSA Process	Working Group Assessment & proposed amended DCUSA Process
<p>Self-Governance Appeals</p>	<p>22.9F(e)</p> <p>(i) no appeal has been raised up to and including 10 working days after the publication of the parties' determination pursuant to paragraphs 22.12A and 22.13 in respect of such a modification proposal in accordance with paragraph 22.9G; or</p> <p>(ii) an appeal has been raised in respect of such a modification proposal in accordance with paragraph 22.9G and the Authority has not quashed the DCUSA parties' determination made pursuant to paragraphs 22.12A(a) and 22.13 (and either remitted the relevant modification proposal back to the parties' for reconsideration or taken the decision on the relevant modification proposal itself following the appeal).</p>	<p>The DCUSA allows Parties to appeal the status of a CP, but only to the extent of asking the Authority to determine it should be a Part 1 Matter instead of a Part 2 Matter.</p> <p>Clauses 13.20 and 13.21 set out that the outcome of any such appeal shall result in the CP being treated accordingly. That is, continuing as a Part 2 Matter if the appeal is not upheld, or treated as a Part 1 Matter if the appeal is upheld.</p>	<p>The Working Group agreed to modify clause 13.20 to introduce the DCUSA objectives as the reason for parties to appeal (see below for SCL 22.9G).</p> <p>The group agreed to replace clause 13.21 in the DCUSA which describes a period of 15 Working Days for Ofgem to make a determination on an appeal, as the licence drafting does not provide a binding requirement for Ofgem to respond in that timescale.</p> <p>The new text at clause 13.21 allows the Authority to provide an interim direction whilst the decision of the appeal is being made. The text also stipulates the clauses which apply if the appeal is accepted or rejected.</p> <p>The new text at clause 13.21.2 allows Ofgem to uphold /quash an appeal and send the proposal back to the Panel and the Working Group for further work.</p> <p>A new clause 13.22 allows for the reassessment of the vote and stipulates the clauses which apply in this instance.</p> <p>Part 1 Matters require a 50% majority vote from industry parties to be recommended as accepted to the Authority. Part 2 Matters require a 65% majority vote from industry parties in order to be recommended as accepted to the Authority. If an appeal is accepted and the Authority takes the decision on the proposed variation, it will be</p>

			considered a Part 1 Matter and therefore the recommendation in the change declaration to the Authority will be reissued.
Self-Governance Appeals	<p>22.9G</p> <p>...persons mentioned in or pursuant to paragraph 22.5(a) may appeal to the Authority the approval or rejection of a modification proposal ...:</p> <p>(a)</p> <p>(i) the appealing party is likely to be unfairly prejudiced by the implementation or non-implementation of that modification proposal; or</p> <p>(ii) the appeal is on the grounds that:</p> <p>2) (1) in the case of implementation, the modification may not better facilitate the achievement of at least one of the Applicable DCUSA Objectives; or</p> <p>3) in the case of non-implementation, the modification proposal may better facilitate the achievement of at least one of the Applicable DCUSA Objectives; and</p> <p>(b) the appeal is not brought for reasons that are trivial or vexatious, nor does the appeal have no reasonable prospect of success.</p>	<p>Clause 13.17 covers where Parties aggrieved by the acceptance or rejection of a proposal under appeal it to the Authority.</p> <p>Clause 13.19 advises that an appeal of a Part 2 Matter must be made in writing and the Party should state why the change should be considered a Part 1 Matter.</p> <p>Clause 13.20 sets out how a CP should be treated, if on appeal, the Authority determines it should be a Part 1 Matter, rather than a Part 2 Matter.</p>	<p>The Working Group agreed to extend clause 13.17 to permit the National Consumer Council (Consumer Futures) and the National Grid Electricity Transmission UK (NCC, NGET) and other persons designated by Ofgem (in addition to DCUSA Parties), to appeal – to align with those parties that could raise a CP under 10.2.</p> <p>It was agreed that a person designated by Ofgem to raise a CP(s), could only raise an appeal the acceptance / rejection of the CP(s) they had been designated to submit to the DCUSA change process. The group added clause 13.17.4 to reflect this decision.</p> <p>Clause 13.19 determines that when a valid appeal has been requested under clause 13.17 and 13.18 then the acceptance of a CP in to the DCUSA is suspended until the Authorities decision is determined under clause 13.20 or where applicable 13.21.</p> <p>Furthermore, clause 13.20 has been modified to introduce the criteria for these parties to appeal on the basis of being unfairly prejudiced, the approval of a CP not better facilitating the DCUSA objectives or the rejection of a CP preventing better facilitation of one or more of the DCUSA objectives.</p>

Self-Governance Appeals	<p>22.9H(a)</p> <p>where an appeal has been raised in respect of a modification proposal in accordance with paragraph 22.9G, that modification proposal shall be treated in accordance with any decision and/or direction of the Authority following that appeal</p>	<p>Clauses 13.20 and 13.21 set out that the outcome of any such appeal shall result in the CP being treated accordingly. That is, continuing as a Part 2 Matter if the appeal is not upheld, or treated as a Part 1 Matter if the appeal is upheld.</p>	<p>The additional text drafted as clause 13.19 advises that if a CP accepted in the Party vote is appealed, then the acceptance of the CP is suspended pending the Authority's decision.</p> <p>The additional text in clause 13.20 confirms that if the Authority does not uphold an appeal against CP approval, a CP accepted in the Party vote should proceed to implementation.</p>
	<p>22.9H(b)</p> <p>if the Authority quashes the parties' determination pursuant to paragraphs 22.12A(a) and 22.13 and takes the decision on the relevant modification proposal itself following an appeal in accordance with paragraph 22.9G, the parties' determination of that modification proposal pursuant to paragraphs 22.12A(a) and 22.13 shall be treated as a recommendation pursuant to paragraphs 22.12A(b) and 22.13.</p>	<p>Clause 13.20.1 provides that if the Authority does uphold an appeal that a CP relates to a Part 2 Matter, the Parties' acceptance / rejection of that CP is deemed to have no effect.</p>	<p>The additional text at clause 13.21 allows the Authority to provide an interim direction whilst the decision of the appeal is being made. The text also stipulates the clauses which apply if the appeal is accepted or rejected.</p> <p>The Working Group considered the fact that Part 1 Matters require a 50% majority vote from industry parties to be recommended as accepted to the Authority and Part 2 Matters require a 65% majority vote from industry parties in order to be recommended as accepted to the Authority.</p> <p>If an appeal is accepted, for a Part 2 Matter to be considered a Part 1 Matter then the recommendation in the change declaration to the Authority will need to be reissued. On this basis the Working Group agreed to introduce clause 13.22 to reassess the vote after an appeal.</p>

Category	CGR2 new / amended SLC reference	Current DCUSA Process	Working Group Assessment & proposed amended DCUSA Process
Significant Code Review		There is no provision in the DCUSA currently for a Significant Code Review (SCR).	The Working Group reviewed the SCR licence provisions and how to introduce the concept of an SCR into the DCUSA.
	<p>22.9C</p> <p>The procedures must provide that proposals for the modification of the DCUSA falling within the scope of a Significant Code Review may not be made during the Significant Code Review Phase, except:</p> <p>(a) where the Authority determines ...; or</p> <p>(b) at the direction of the Authority.</p>		New clause 10.22 sets out how the process will be managed; a definition; and the power for the Panel to refuse the referral of a CP during a SCR unless the Authority directs otherwise.
	<p>22.9D</p> <p>The procedures must provide that, where a modification proposal is made during a Significant Code Review Phase, the panel shall:</p> <p>(a) ..., notify the Authority as soon as practicable of:</p> <p>(i) any representations received in relation to the relevance of the Significant Code Review; and</p> <p>(ii) the panel's assessment of whether the proposal falls within the scope of the Significant Code Review and its reasons for that assessment; and</p> <p>(b) if the Authority so directs, not proceed with the modification proposal until the Significant Code Review Phase has ended.</p>		Clause 10.23 sets out the process for CPs referred to the Panel during the period of the SCR, and how the Panel should process a CP during the SCR unless the Authority has directed otherwise.

<i>Significant Code Review</i>	<p>22.9E</p> <p>If, within twenty-eight (28) days after the Authority has published its Significant Code Review conclusions, the Authority issues to the licensee:</p> <p>(a) Directions, the licensee must comply with those Directions;</p> <p>(b) a statement that no Directions under subparagraph (a) will be issued in relation to the DCUSA...</p>	<p>There is no provision in the DCUSA currently for a Significant Code Review (SCR).</p>	<p>This licence requirement is picked up in the definition of “Significant Code Review Phase”. The Working Group considered that the licence requirement that licensees comply with SCR Directions, is outside of the scope of the DCUSA.</p>
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Category	CGR2 new / amended SLC reference	Current DCUSA Process	Working Group Assessment & proposed amended DCUSA Process
<i>Achievement of Objectives</i>	<p>22.9F(d) the DCUSA parties have determined, in accordance with paragraph 22.12A, that the modification proposal or any alternative should be implemented on the basis that it would, as compared with the then existing provisions of the DCUSA, better facilitate the achievement of the Applicable DCUSA objective(s)</p> <p>22.10(c) [modification report must contain]</p> <p>an assessment of the extent to which the proposed modification would better facilitate achieving the Applicable DCUSA Objectives and a detailed explanation of the reasons for that assessment (such assessment to include, where applicable, an assessment of the quantifiable impact of the proposal on greenhouse gas emissions in accordance with paragraph 22.9A)</p>	<p>Clause 11.20 lays out the framework for the Change Report such as addressing the Change Report to the Panel, including a summary of responses to any consultation and the reasons why the Working Group considers the change better facilitates the DCUSA Objectives and a proposed implementation date.</p>	<p>The Working Group considered the majority of the licence requirements are already covered by clauses 11.14.5, 11.14.6 and 12.7.</p> <p>The introduced text at 11.20 5A requires the Proposer (and Working Group where convened) to provide <u>detailed</u> reasons why the DCUSA Objectives would be better facilitated, or not, by the implementation of each CP.</p>

	<p>22.12A</p> <p>The procedures must ensure that parties to the DCUSA, having regard to whether the modification would, as compared with the existing provisions of the DCUSA, better facilitate the achievement of the Applicable DCUSA Objectives, are able to vote for:</p> <p>(a) the implementation or rejection of the proposed modification, in the case of a proposal that is to be determined in accordance with paragraph 22.9F; or</p> <p>a recommendation to the Authority to approve or reject the proposed modification, in the case of a proposal that requires Authority approval.</p>	<p>Clause 11.14.5 refers to the Panels establishment of a Working Group in order to consider whether the proposed change better facilitates the DCUSA objectives.</p> <p>Clause 11.14.6 refers to the Panels establishment of a Working Group in order to consider whether a change has an impact on greenhouse gases and to assess that impact.</p> <p>Clause 12.7 sets out where each DCUSA party votes to accept or reject a change, they do so on the basis of whether the DCUSA objectives are better facilitated. The DCUSA party may provide a statement on why they accept or reject the change in reference to the DCUSA objectives.</p>	
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Category	CGR2 new / amended SLC reference	Current DCUSA Process	Working Group Assessment & proposed amended DCUSA Process
<i>Send back powers</i>	<p>22.13B</p> <p>The procedures must provide for the revision and resubmission of the modification report prepared in accordance with paragraph 22.10 (and submitted to the Authority pursuant to the procedures described in Part C of this condition) upon, and in accordance with, a direction issued to the panel by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal.</p>	There are currently no send back powers for the Authority stipulated in the DCUSA.	<p>The group noted that proposed licence condition 22.13B provides for Ofgem to send back a Change Report where it considers that it has not received enough information to make a decision.</p> <p>New clause 13.11A provides for the Authority to send back a Change Report to the DCUSA Panel and what actions the Panel should take on receipt of such sent back Change Report, ending with the CP being resubmitted to Party Vote.</p>

Category	CGR2 new / amended SLC reference	Current DCUSA Process	Working Group Assessment & proposed amended DCUSA Process
Code Administrator	<p>22.13C</p> <p>The procedures for the modification of the DCUSA must be consistent with the principles set out in the Code of Practice, to the extent that they are relevant.</p> <p>22 A3 (eA)</p> <p>... In addition to any power, duties, or functions set out in the DCUSA, the code administrator shall:</p> <p>(i) together with other code administrators, publish, review, and (where appropriate) amend from time to time the Code of Practice approved by the Authority (any amendments to the Code of Practice are to be approved by the Authority);</p> <p>(ii) facilitate the procedures for making a modification to the DCUSA;</p> <p>(iii) have regard to, and in particular (to the extent relevant) be consistent with the principles contained in, the Code of Practice; and</p>	<p>There is currently no provision in the DCUSA for the secretariat to act in accordance with the Code Administration Code Of Practice (CACoP).</p> <p>Clauses 7.36 – 7.39 set out the functions of the DCUSA Secretariat.</p>	<p>The Working Group noted that there is a requirement for the DCUSA arrangements to be consistent with the Code Administration Code of Practice (CACoP) which is detailed in draft licence condition 22.13C.</p> <p>The Working Group agreed to introduce definitions for the CACoP and “Small Participant” into the DCUSA.</p>

<p>Code Administrator</p>	<p>(iv) provide assistance, insofar as is reasonably practicable and on reasonable request, to parties (including, in particular, Small Participants) and, to the extent relevant, consumer representatives that request the code administrator's assistance in relation to the DCUSA including, but not limited to, assistance with: drafting a modification proposal; understanding the operation of the DCUSA;</p> <p>their involvement in, and representation during, the modification procedure processes (including, but not limited to, panel and/or workgroup meetings); accessing information relating to modification proposals and/or modifications.</p>		<p>The Working Group drafted a new function as clause 7.36A, capturing the licence conditions relating to the CACoP and the CACoP Principles. These include taking part in reviews of the CACoP periodically, reporting to the Panel any areas in the DCUSA that may not be compliant with the CACoP, acting in accordance with the CACoP, and significantly, providing assistance to Parties in relation to the DCUSA provisions.</p> <p>Such assistance is described as drafting CPs, understanding the operation of the agreement, involvement in / representation during the change process and assessing CPs.</p>
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5 DCP 170 CONSULTATIONS

5.1 The Working Group carried out a consultation to give DCUSA Parties and other interested organisations an opportunity to review and comment on DCP 170. There were seven responses received to the consultation from five DNO parties and two Supplier parties. The Working Group discussed each response and its comments are summarised alongside the collated consultation responses in Attachment 4.

5.2 A summary of the responses received, and the Working Group's conclusions are set out below:

Question 1: Do you understand the intent of the CP? Please provide supporting comments.

Respondent Party Type	Yes	No	Undecided
DNOs	5	0	0
Suppliers	2	0	0

5.3 All respondents understood and were satisfied with the intent of the CP.

Question 2: Are you supportive of its principles? Please provide supporting comments.

Respondent Party Type	Yes	No	Undecided
DNOs	5	0	0
Suppliers	2	0	0

5.4 All respondents agreed with the principles of the change. One respondent commented that the CP contained "*appropriate proposals to correspond with the licence changes*".

Question 3: Do you understand the proposed changes as set out in the modifications table in section 3 of this consultation and why those changes are being made?

Respondent Party Type	Yes	No	Undecided
DNOs	5	0	0
Suppliers	2	0	0

- 5.5 All respondents understood the proposed changes as set out in the modifications tables provided in the consultation which acts as attachment 4 and the table is also displayed in section two of this report.

Question 4: Do you recommend any clarifications that could be documented within the Change Report when it is drafted that would facilitate better understanding of DCP 170 for Party voting? Please provide supporting comments.

Respondent Party Type	Yes	No	Undecided
DNOs	0	3	2
Suppliers	0	1	1

- 5.6 Four respondents did not consider any further clarification would be required in the DCP 170 Change Report. The remaining three respondents did not provide a definitive 'yes' or 'no' answer to the question but all three did provide the following suggestions to improve the Change Report:

- "It may be helpful to include the Critical Friend section of the CACoP, including the introductory paragraph regarding 'under-represented parties, small market participants and consumer representatives' along with the 18 points to describe the Critical Friend role, as an appendix to the change report". Please see Attachment 6 to this report.
- "A high level summary section giving context will be helpful to parties when receiving the document for consideration". Please see the executive summary at paragraph 2.1 of this report.
- "It would be of benefit if the 'critical friend' role was the subject to further guidance to clarify what this term means in practice and to set reasonable expectations of what assistance/services may be provided by the Secretariat, whilst maintaining impartiality". Please see Attachment 2 and the response to question eleven.

Question 5: Do you have any comments on the proposed legal drafting of DCP 170?

Respondent Party Type	Yes	No	Undecided
DNOs	1	4	0
Suppliers	0	2	0

- 5.7 Six respondents had no further comments on the proposed drafting.
- 5.8 One respondent noticed that in the new Clause 10.4.7 the proposer is asked to provide their opinion on whether the change is a Part 1 or Part 2 Matter. However, in Clause 11.8 the Panel decides this, with no reference to Clause 10.4.7. The Working Group decided Clause 11.8 should reference the Proposer's Clause 10.4.7 by noting that the Panel agrees with or overrules the recommendation of the Proposer made under Clause 10.4.7.

Amended Clause 11.8

At the same meeting at which the Panel determines whether a Change Proposal is to be subject to the Definition Procedure, it shall also determine whether in its opinion the proposal relates to a Part 1 Matter or a Part 2 Matter (taking into account the Proposer's opinion provided pursuant to Clause 10.4.7).

**Question 6: Which DCUSA General Objectives does the DCP better facilitate?
Please provide supporting comments.**

- 1. The development, maintenance and operation by each of the DNO Parties and IDNO Parties of an efficient, co-ordinated, and economical Distribution System.**
 - 2. The facilitation of effective competition in the generation and supply of electricity and (so far as is consistent with that) the promotion of such competition in the sale, distribution and purchase of electricity.**
 - 3. The efficient discharge by each of the DNO Parties and IDNO Parties of the obligations imposed upon them by their Distribution Licences.**
 - 4. The promotion of efficiency in the implementation and administration of this Agreement and the arrangements under it.**
 - 5. compliance with the Regulation on Cross-Border Exchange in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.**
- 5.9 All respondents considered that Objective three was better facilitated by this change.
- 5.10 One Supplier and one DNO considered that Objective four was also better facilitated by this change. One of the respondents commented that this change would help to "simplify and streamline the code".

5.11 The Working Group considered that Objective three was better facilitated by the CP but did not consider Objective four better facilitated. Please refer to section 8 for the Working Groups analysis on why certain DCUSA objectives are better facilitated by this CP.

Question 7: DCP 170 will bring about requirements for the DCUSA Secretariat to act in accordance with the CACoP (to the extent appropriate to the code). This includes CACoP Principle 1 - being a 'Critical Friend' to Industry participants, with 18 points to describe the Critical Friend role. Please provide your opinions on:

A. How do you envisage this role working within the DCUSA arrangements?

5.12 Respondents considered that the DCUSA Secretariat currently fulfilled the majority of the 18 principles set out in the CACOP on the role of Critical Friend.

5.13 Some respondents suggested that the role of Critical Friend would be an extension to the current role in the following ways:

1. *"Engaging with under-represented parties, small Market participants and consumer representatives".*

The Working Group requested further feedback from the respondent on what was meant by "under-represented". The respondent advised that they were referring to *"small suppliers who do not have the appetite to respond to each and every DCP due to business constraints."*

The Working Group considered that in a number of ways the Code Administrator currently fulfills this role:

- All parties to the DCUSA are invited to vote on a CP.
- The Secretariat provides advice on the change process (including non-technical aspects of drafting a CP).
- The Secretariat will present Parties' opinions to the Working Group for its consideration as long as they are provided to the Secretariat prior to the Working Group meeting.

The Working Group considered how it could further engage smaller Parties. The group recommended to the DCUSA Panel that a separate meeting be held on a monthly basis to provide a summary of the modifications and their current progress through the DCUSA change process. The DCUSA Panel agreed to contact all DCUSA Parties to gauge their interest in a monthly meeting which will provide an overview of the codes modifications under the DCUSA.

2. *"Involvement with other code administrators where the impact is across multiple codes"*

The Working Group considered that this requirement was met by the DCUSA Secretariat attending the Cross Codes Forum and by interaction with the other codes who attend the monthly DCUSA Panel meeting.

3. *"Viewpoints of the under-represented parties, small Market participants and consumer representatives are discussed at working groups and are captured in Change Reports"*

Please see response to point one.

4. *"Support participants (e.g. new entrants) in compiling CPs and giving general guidance on DCUSA matters".*

The Working Group agreed that the Secretariat could provide advice on the change process but did not consider it suitable for the Secretariat to draft CPs as the role is not required to have such technical knowledge of the code.

5. *"DCUSA Secretariat may have to establish a distinct role or service to support/mentor/guide/represent 'small participants' in the change processes, to proactively seek this group's views on issues and requirements, and potentially to raise CPs on their behalf. This would most likely have to be separated to some extent from more established service provision and would probably also require access to specialist advice in some areas of DCUSA scope".*

The Working Group agreed that the majority of the 'Critical Friend' role was met in the round by the DCUSA arrangements whether it was through the role of the Secretariat, the DCUSA Panel, or through the roles of Working Group members and the DCUSA Standing Issues Group (SIG). Therefore it did not consider that a separate a service provision of specialist advice would be required.

5.14 The DCUSA Secretariat's function is to ensure that the work is undertaken to deliver against the CACoP, but the Secretariat does not have to undertake all the work itself. For instance, where a Party requests 'Critical Friend' support, the Secretariat may refer the Party or the question to a relevant expert if outside its remit.

5.15 The Working Group confirmed with Ofgem that this approach was acceptable.

5.16 One respondent to question 7A asked the Working Group to consider whether CACoP Principle 6 'A proposer of a Modification will retain ownership of the detail

of their solution' had implications on the DCUSA as it could be interpreted as the Proposer being the only Working Group member who can make changes to the solution and effectively provide them with a veto over the Working Group's development of the CP.

5.17 Under the current DCUSA change process, the Proposer can submit an alternative solution if they disagree with the solution developed by the Working Group. The Panel must submit the Proposer's solution for Party voting. Therefore, the Working Group considered the DCUSA change process does comply with Principle 6.

B. In what ways to do you think the DCUSA Secretariat already delivers the Critical Friend role?

5.18 The Working Group was interested to know how DCUSA Parties considered the Critical Friend role was currently met. Respondents considered that the secretariat fulfils the role through the functions of setting up meetings to discuss and develop issues raised at the SIG in to CPs, and at Working Group meetings for the development of the CP.

5.19 The responses can be summarised as:

- **Communication** - Meetings are facilitated in person and via teleconference or web-conference. All documentation is available on the website. The secretariat facilitates the issuing of consultations, Request for Information (RFI) and voting documentation to market participants.
- **Guidance** - The Secretariat had provided training sessions which "*assists Parties with the minimum requirements for completing change proposal forms*". The Secretariat provides advice on the change process and ensures that users understand the minimum requirement for modifications to progress.
- **Issues** - The SIG provides a forum to proactively review and comment on draft modifications and ensures that persons with expertise are available to discuss the issues.
- **Assessment** – Change process facilitates discussion of all arguments for and against a modification at Working Group and Panel level. Comments and responses are reflected in modification documents.

C. What type of additional support do you feel would be required for the

**DCUSA Secretariat to further deliver the Critical Friend role?
Please provide examples where possible to illustrate your comments.**

5.20 There were seven respondents to this question. Four (one Supplier and three DNOs) did not consider there to be any further additional support required for the Secretariat to deliver the role of Critical Friend.

5.21 Three respondents (one Supplier and two DNOs) did consider that further support may be required. Comments included:

- The need for extra support would depend on the number of new entrants and upon the volume of CPs received by the Secretariat. In the scenario where both of these elements have increased then extra resources and people may be required under DCUSA.
- The Secretariat would need to be more *"proactive in communicating and engaging with under-represented parties, small Market participants and consumer representatives ensuring their views are made at working groups and captured in the Change Reports"*.
- More specialist knowledge of the DCUSA may be required by the Secretariat under this role *"As the DCUSA governs a very wide range of electricity industry activity and some of the provisions are particularly detailed and specialist (e.g. the schedules on the use of system and connection charging methodologies), additional training and/or use of independent consultants may be required to ensure adequate knowledge levels within the Secretariat"*.

5.22 The Working Group considered the responses and noted that in the round that the DCUSA Secretariat fulfilled the role of Critical Friend as set out in the 18 principles in the CACOP. The Working Group agreed with one respondent's point that the requirements of the CACOP would be *"met by the working arrangements under DCUSA rather than exclusively via the Secretariats responsibilities"*.

5.23 The Working Group referred to its answer to question 7A which suggested the introduction of a monthly meeting on the modifications which are being developed under DCUSA to allow under represented parties to engage with the process. It was noted that the DCUSA secretariat had historically provided views of parties unable to attend a Working Group meeting for the members to consider.

D. What further support would you like to see the DCUSA arrangements (in particular the secretariat) provide to the industry?

5.24 There were seven respondents to this question. Six did not identify further support required under the DCUSA arrangements. One DNO respondent considered it would be appropriate for the DCUSA Secretariat to chair Working Group meetings in line with other code administrators. They considered that it would provide an opportunity for the Secretariat to ensure the views of smaller parties and consumer representatives are presented and discussed at the meeting.

5.25 The Working Group considered that the Secretariat currently presents Parties' views if they are unable to attend a Working Group meeting and did not consider that this would change by the Secretariat acting as Chair of the Working Group.

Question 8: DCP 170 will bring about changes which will affect the DCUSA CP Form and the DCUSA Voting Form (Attachments A and B to this consultation).

- **Please provide comments on the changes that have been made to these forms; and**
- **Please describe any further changes you would suggest to the forms.**

5.26 All respondents were either satisfied or did not object to the proposed changes to the DCUSA CP form.

Question 9: Do you agree with the implementation date of DCP 170? Please provide supporting comments.

5.27 Six of the seven respondents agreed with the implementation date whilst one respondent was unclear as to the date.

5.28 The Working Group noted the responses.

Question 10: Do you foresee any perceived difficulties with the implementation of the proposed changes? If so, please provide your suggested solutions.

5.29 Six respondents did not identify any difficulties with the implementation of the proposed changes.

5.30 One respondent considered that the interpretation of the assistance the secretariat should provide under the role of Critical Friend could vary widely. For instance some parties may expect the Secretariat to provide legal advice and assist in the drafting of CPs. The respondent suggested a guidance note be

published on the DCUSA website to define the assistance that the Secretariat would be providing as Critical Friend.

- 5.31 The Working Group did not consider it to be within the Secretariat's remit to draft CPs for Parties or to provide legal advice on the DCUSA provisions. The Working Group agreed to include in the guidance notes in the CP form:

"Insert proposed legal drafting (change marked against any existing DCUSA drafting) which enacts the intent of the solution. The legal text will be reviewed by the Working Group (if convened) and is likely to be subject to legal review as part of its progress through the DCUSA change process".

Question 11: Are there any alternative solutions or matters that should be considered by the Working Group?

- 5.32 All respondents did not identify any alternative solutions or matters to be considered by the Working Group.

6 DCP 170 – WORKING GROUP CONCLUSIONS

- 6.1 The Working Group reviewed each of the responses received to the consultation and concluded that all respondents understood the intent of DCP 170 and were supportive of the principle of the CP.
- 6.2 The Working Group noted that the majority of respondents felt that specifically DCUSA Objective 3 was better facilitated by this CP. The Working Group agreed that the CP was neutral on Objective 4. The reasoning for this view is explained in section 8 of this Change Report.
- 6.3 The Working Group concluded that the CP will provide the following benefits:
- It will meet the obligations of DNOs and IDNOs imposed upon them in their Distribution Licence.
 - It will provide enhancements and efficiencies to the change process provisions e.g. for Parties to appeal decisions and for Ofgem to send back Change Reports if further analysis is required.
 - Aligning the code with other code administrators' practices will provide a more direct comparison between the operations of the codes. Any lessons learned on innovative and beneficial practices will be easier for parties and or the regulator to identify and action. As a result, these changes could help

to future proof the regulation of the energy codes.

- 6.4 The Working Group agreed that in the round the DCUSA Secretariat facilitated the 18 Principles set out in the CACoP.

7 PROPOSED LEGAL TEXT

- 7.1 The draft legal text has been reviewed by the DCUSA Legal Advisor and acts as Attachment 2. The changes to the DCUSA legal text proposed under DCP 170 address a gap in industry arrangements on the appeals process, introduce the Significant Code Review and the new role of Critical Friend under the CACoP.
- 7.2 The summary of the changes to the legal text is captured in the table in section four of this Change Report.

8 EVALUATION AGAINST THE DCUSA OBJECTIVES

- 8.1 The Working Group unanimously considers that DCUSA Objectives 3 is better facilitated by DCP 170. The reasoning against each objective is detailed below:

Objective 1 – *The development, maintenance and operation by the DNO Parties and IDNO Parties of efficient, co-ordinated, and economical Distribution Networks.*

- **Working Group view:** The Working Group agreed that the impact on Objective 1 is neutral.

Objective 2 – *The facilitation of effective competition in the generation and supply of electricity and (so far as is consistent therewith) the promotion of such competition in the sale, distribution and purchase of electricity.*

- **Working Group view:** The Working Group agreed that the impact on Objective 2 is neutral.

Objective 3 – *The efficient discharge by the DNO Parties and IDNO Parties of obligations imposed upon them in their Distribution Licences.*

- **Working Group view:** The Working Group agreed that objective 3 is better facilitated by DCP 170 as it implements changes to the distribution licence in to DCUSA in accordance with guidance provided by the Authority.

Objective 4 – *The promotion of efficiency in the implementation and administration of this Agreement.*

- **Working Group view:** The Working Group agreed that in the round the DCUSA Secretariat facilitated the 18 Principles set out in the CACOP and for this reason did not consider Objective 4 better facilitated as the administration of the agreement would not be made more efficient by these changes.

Objective 5–*Compliance with the Regulation on Cross-Border Exchange in Electricity and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.*

- **Working Group view:** The Working Group agreed that the impact on Objective 5 is neutral.

9 IMPACT ON GREENHOUSE GAS OMISSIONS

9.1 In accordance with DCUSA clause 11.14.6, the Working Group assessed whether there would be a material impact on greenhouse gas emissions if DCP 170 were implemented. The Working Group did not identify any material impact on greenhouse gas emissions from the implementation of this Change Proposal.

10 IMPLEMENTATION

10.1 Subject to Party approval and Authority consent, DCP 170 will be implemented in to the DCUSA by the 31 December 2013.

11 PANEL RECOMMENDATION

11.1 The DCUSA Panel approved the DCP 170 Change Report on 08 November 2013. The timetable for the progression of the CP is set out below:

Activity	Target Date
Change Report Agreed	08 November 2013
Party Voting Ends	25 November 2013
Change Declaration Issued	27 November 2013
Ofgem Decision Received	As soon as possible
Implementation	31 December 2013

12 ATTACHMENTS:

- Attachment 1 – DCP 170 Voting Form
- Attachment 2 - Proposed Legal Drafting

- Attachment 3 – DCP 170 Change Proposal
- Attachment 4 – DCP 170 Consultation Documents
- Attachment 5 – Ofgem’s Code Governance Review (Phase 2) Final Proposals
- Attachment 6 – Code Administration Code of Practice (CACoP) v11

13 REVISED TEMPLATE FORMS

- Attachment A – Updated CP Form
- Attachment B – Updated Voting Form