

CUSC Modification Proposal Form

CMP372: CUSC changes to reflect the terms of the UK's departure from the EU

Overview: The proposal aims to ensure that retained EU law functions effectively in the context of the CUSC following the UK-EU Trade and Cooperation Agreement and the end of the transition period. It will ensure that the CUSC takes into account the provisions in the relevant Statutory Instruments prepared under the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020.

Modification process & timetable



Status summary: The Proposer has raised a modification and is seeking a decision from the Panel on the governance route to be taken.

This modification is expected to have a: Low impact on all CUSC parties.

Proposer's recommendation of governance route	Self-Governance modification to proceed to Code Administrator Consultation	
Who can I talk to about the change?	Proposer: Katharina Birkner National Grid ESO Katharina.Birkner@nationalgrid.com 07773647025	Code Administrator Contact: Paul Mullen Paul.J.Mullen@nationalgrideso.com 07794537028

Contents

Contents	2
What is the issue?	3
Why change?	3
What is the proposer’s solution?	4
Draft legal text	4
What is the impact of this change?	4
Proposer’s assessment against CUSC Non-Charging Objectives	4
Proposer’s assessment of the impact of the modification on the stakeholder / consumer benefit categories.....	4
When will this change take place?	5
Implementation date.....	5
Date decision required by	5
Implementation approach	5
Proposer’s justification for governance route	5
Interactions	5
Acronyms, key terms and reference material	6
Reference material	6

What is the issue?

On 24 December 2020 the UK reached an agreement with the EU on the terms of the UK's departure from the EU, the UK-EU Trade and Cooperation Agreement (TCA). This was ratified by the UK Parliament on 30 December 2020. At 11pm on 31 December 2020, the Brexit transition period ended. The UK left the EU single market and customs union and EU law ceased to apply to the UK.

Why change?

Therefore, the CUSC needs to be amended to ensure the provisions in the relevant Statutory Instruments prepared under the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020 will function effectively in the context of the CUSC following the end of the transition period.

Background

The CUSC contains a small number of references to EU Regulations and EU entities. These were introduced as a consequence of the integration of the UK into the EU Internal Energy Market (IEM) and more specifically in order to comply with a number of EU Regulations which were directly applicable in UK Law.

Following the outcome of a referendum on UK membership of the EU on 23 June 2016, the UK government notified its intention to leave the EU in March 2017 (as permitted by Article 50 of the Treaty on European Union).

The UK's departure became effective on 31 January 2020, at which point the UK entered a transition period which was in effect until IP (Implementation Period) completion day, 31 December 2020. During the transition period the UK had to comply with all EU rules and laws.

Following the ratification of the TCA and the end of the transition period, EU law that has not been retained ceased to apply to the UK. The agreement does not outline in detail the relevant arrangements that will apply regarding the CUSC. However, in the absence of further information the ESO propose updating the CUSC to correct content that became out of date at 11pm on 31 December 2020. If further modifications are required in the future to outline additional post-Brexit arrangements, the ESO will raise them at the appropriate time.

The approach specified in the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) is to incorporate EU law into UK law (where possible). The UK Government has published Statutory Instruments with the aim of correcting, removing and/or amending provisions of EU Regulations as appropriate, relevant to the electricity industry, such that they reflect that the UK no longer being an EU Member State.

Additional background to this modification: In February 2019, the ESO raised CMP309 ('CUSC changes in the event the UK leaves the EU without an agreement') in anticipation of the possibility of the UK leaving the EU without a deal. Following the announcement of the Brexit deal, this modification was withdrawn by the ESO in January 2021 as it dealt specifically with arrangements in a 'no deal' scenario. However, the legal text for this new modification is the same as that proposed in CMP309, as the contents of the TCA require no further changes to be made to the CUSC arrangements from January 2021.

What is the proposer's solution?

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

Draft legal text

The legal text is attached as a separate document.

What is the impact of this change?

Proposer's assessment against CUSC Non-Charging Objectives

Relevant Objective	Identified impact
(a) The efficient discharge by the Licensee of the obligations imposed on it by the Act and the Transmission Licence;	Positive It ensures the CUSC is accurate to avoid confusion
(b) Facilitating effective competition in the generation and supply of electricity, and (so far as consistent therewith) facilitating such competition in the sale, distribution and purchase of electricity;	Neutral
(c) Compliance with the Electricity Regulation and any relevant legally binding decision of the European Commission and/or the Agency *; and	Neutral
(d) Promoting efficiency in the implementation and administration of the CUSC arrangements.	Positive It ensures the CUSC is accurate to avoid confusion.

*Objective (c) refers specifically to European Regulation 2009/714/EC. Reference to the Agency is to the Agency for the Cooperation of Energy Regulators (ACER).

Proposer's assessment of the impact of the modification on the stakeholder / consumer benefit categories

Stakeholder / consumer benefit categories	Identified impact
Improved safety and reliability of the system	Neutral
Lower bills than would otherwise be the case	Neutral
Benefits for society as a whole	Neutral
Reduced environmental damage	Neutral
Improved quality of service	Neutral

When will this change take place?

Implementation date

No implementation timescales are proposed, although implementation of this modification would be sought as soon as practicable following the end of the transition period. However, implementation is specifically dependent upon the implementation of the relevant Statutory Instruments that have been prepared under the European Union (Withdrawal) Act 2018 as well as relevant consequential licence modifications and so implementation of this proposal should align with the Statutory Instruments and licence modifications.

Date decision required by

No timescale specified, as soon as reasonable through the Self-Governance process.

Implementation approach

No implementation costs are associated with this modification.

Proposer's justification for governance route

Governance route: Self-Governance modification to proceed to Code Administrator Consultation.

CMP309 was approved as Self-Governance, and the legal text for this new modification is the same as that proposed in CMP309, as the contents of the TCA require no further changes to be made to the CUSC arrangements from January 2021.

This modification therefore meets the Self Governance Criteria because it is unlikely to discriminate between different CUSC Parties and is unlikely to have a material effect on:

- Existing or future electricity customers;
- Competition in the generation, distribution, or supply of electricity or any commercial activities connected with the generation, distribution or supply of electricity,
- The operation of the National Electricity Transmission System
- Matters relating to sustainable development, safety or security of supply, or the management of market or network emergencies
- The CUSC Panel's governance procedures or the CUSC Panel's modification procedures

Interactions

<input type="checkbox"/> Grid Code	<input type="checkbox"/> BSC	<input type="checkbox"/> STC	<input type="checkbox"/> SQSS
<input type="checkbox"/> European Network Codes	<input type="checkbox"/> EBGL Article 18 T&Cs ¹	<input type="checkbox"/> Other modifications	<input type="checkbox"/> Other

It is understood that other GB frameworks require revision as a result of the UK leaving the EU with an agreement. Modifications have been raised at the STC and Grid Code panels at the same time as this modification. However, this modification is not interactive with any proposal for changes to other GB frameworks.

¹ If your modification amends any of the clauses mapped out in Exhibit Y to the CUSC, it will change the Terms & Conditions relating to Balancing Service Providers. The modification will need to follow the process set out in Article 18 of the European Electricity Balancing Guideline (EBGL – EU Regulation 2017/2195) – the main aspect of this is that the modification will need to be consulted on for 1 month in the Code Administrator Consultation phase. N.B. This will also satisfy the requirements of the NCER process.

Acronyms, key terms and reference material

Acronym / key term	Meaning
BSC	Balancing and Settlement Code
CMP	CUSC Modification Proposal
CUSC	Connection and Use of System Code
EBGL	Electricity Balancing Guideline
STC	System Operator Transmission Owner Code
SQSS	Security and Quality of Supply Standards
T&Cs	Terms and Conditions
Brexit	UK leaving the European Union following result of 2016 EU exit referendum
IP completion day	Implementation Period completion day, which is the 31 December 2020.
European Union Withdrawal Act 2018	European Union Withdrawal Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020

Reference material

- [European Union \(Withdrawal\) Act 2018](#)
- [The Electricity and Gas etc. \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)
- [The Electricity Network Codes and Guidelines \(Markets and Trading\) \(Amendment\) \(EU \(EU Exit\) Regulations 2019](#)
- [The Electricity Network Codes and Guidelines \(System Operation and Connection\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#)
- [The Electricity and Gas \(Market Integrity and Transparency\) \(Amendment\) \(EU Exit\) Regulations 2019](#)
- [Statutory Consultation on licence modification in the event the UK leaves the EU without a deal](#)