

Final Self-Governance Modification Report			
<h1>CMP372: CUSC changes to reflect the terms of the UK's departure from the EU</h1> <p>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.</p>	<h2>Modification process & timetable</h2> <ol style="list-style-type: none"> 1 Proposal Form 14 April 2021 2 Code Administrator Consultation 20 May 2021 – 11 June 2021 3 Draft SG Modification Report 17 June 2021 4 Final SG Modification Report 07 July 2021 5 Appeals Window 07 July 2021 – 28 July 2021 6 Implementation 03 August 2021 		
<p>Have 5 minutes? Read our Executive summary</p> <p>Have 20 minutes? Read the full Final Self-Governance Modification Report</p> <p>Have 30 minutes? Read the full Final Self-Governance Modification Report and Annexes.</p>			
<p>Status summary: The Panel has made their determination vote and an appeals window has opened.</p>			
<p>Panel recommendation: The Panel has determined unanimously that the Proposer's solution is implemented.</p>			
<p>This modification is expected to have a: Low impact on all CUSC parties.</p>			
Governance route	Self-Governance modification to proceed to Code Administrator Consultation		
Who can I talk to about the change?	<table border="0"> <tr> <td style="vertical-align: top;"> <p>Proposer: Katharina Birkner National Grid ESO Katharina.Birkner@nationalgrid.com 07773647025</p> </td> <td style="vertical-align: top;"> <p>Code Administrator Contact: Paul Mullen Paul.J.Mullen@nationalgrideso.com 07794537028</p> </td> </tr> </table>	<p>Proposer: Katharina Birkner National Grid ESO Katharina.Birkner@nationalgrid.com 07773647025</p>	<p>Code Administrator Contact: Paul Mullen Paul.J.Mullen@nationalgrideso.com 07794537028</p>
<p>Proposer: Katharina Birkner National Grid ESO Katharina.Birkner@nationalgrid.com 07773647025</p>	<p>Code Administrator Contact: Paul Mullen Paul.J.Mullen@nationalgrideso.com 07794537028</p>		
Appeals window	If you want to appeal this decision, please send your appeals form and relevant documentary evidence to industrycodes@ofgem.gov.uk by 5pm on 28 July 2021 and ensure you copy in cusc.team@nationalgrideso.com		

Contents

Contents	2
Executive summary	3
What is the issue?	4
Why change?	4
What is the solution?	5
Proposer's solution	5
Legal text	5
What is the impact of this change?	5
Proposer's assessment against CUSC Non-Charging Objectives	5
Proposer's assessment of the impact of the modification on the stakeholder / consumer benefit categories.....	5
Code Administrator Consultation summary	6
Panel Recommendation Vote	6
When will this change take place?	9
Implementation Date	9
Date decision required by	9
Implementation approach	9
Interactions	9
Acronyms, key terms and reference material	9
Reference material	10
Annexes	10

Executive summary

This proposal seeks 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.

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.

In the Proposer's view 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.

What is the solution and when will it come into effect?

Proposer's solution: The Proposer is seeking 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.

Implementation Date: . As soon as reasonably practicable, and in alignment with the equivalent Grid Code and STC modifications

What is the impact if this change is made?

In the Proposer's view this proposal is expected to have a low impact on all CUSC parties. 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.

Interactions

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.

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?

In the Proposer's view, 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.

In the Proposer's view 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 solution?

Proposer's solution

In the Proposer's view 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.

Legal text

The legal text for this change can be found in Annex 3.

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

Code Administrator Consultation summary

The Code Administrator Consultation was run from 20 May 2021 to 5pm on 11 June 2021 with 1 non-confidential response received, which supported the change. The respondent did however note that:

“As part of the role of Critical Friend, the ESO should be prepared to help Proposers understand and be aware of the difference between this version of the CUSC (once implemented) and the current baseline. For example, some potential Proposers may not realise that EBR Article 18 places the same obligations in practicalities as EBGL Article 18”.

The full response can be found in Annex 4.

Panel Determination Vote

The Panel will meet on the 25 June 2021 to carry out their determination vote.

They assessed whether a change should be made to the CUSC by assessing the proposed change and any alternatives against the Applicable Objectives.

Vote 1: Does the Original facilitate the objectives better than the Baseline?

Panel Member: **Andy Pace**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
This mod is necessary to implement the EU withdrawal arrangements into the legal text of CUSC. We support this mod and assess it as better meeting applicable CUSC objectives (a) and (d).					

Panel Member: **Cem Suleyman**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
I believe that CMP372 better facilitates the Applicable CUSC Objectives for the same reasons as provided by the Proposer.					

Panel Member: **Garth Graham**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
My vote is positive on (a) and (d) (whilst being neutral on the other applicable objectives) for the reasons set out in the proposal.					

Panel Member: **Grace March**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
This modification ensures the CUSC is referencing the correct legislation and such ensures Network Operators can fulfil their obligations. It also improves the accuracy and efficiency of the CUSC itself.					

Panel Member: **Joe Dunn**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Neutral	Neutral	Neutral	Yes	Yes
Voting Statement					
Positive ACO (D) as aligns with other codes and therefore improves efficiency and administration.					

Panel Member: **Jon Wisdom**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
The original solution for CMP372 modifies existing references to EU Regulations with appropriate references so that the change in status to Retained EU law as in the European Union (Withdrawal) Act 2020 and the relevant Statutory Instruments that have been prepared under it are appropriately reflected. The solution ensures the CUSC remains accurate to avoid stakeholder confusion about the post Brexit arrangements. This better facilitates objective a) and d).					

Panel Member: **Mark Duffield**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
By updating the CUSC to reflect updates to UK law following the completion of the Brexit Transition Period on 31 December 2020, I believe that the amendment better facilitates applicable objectives a and d.					

Panel Member: **Paul Jones**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
Ensures CUSC accurately reflects the position with respect to retained EU law and how it impacts on the code.					

Panel Member: **Paul Mott**

	Better facilitates AO (a)?	Better facilitates AO (b)?	Better facilitates AO (c)?	Better facilitates AO (d)?	Overall (Y/N)
Original	Yes	Neutral	Neutral	Yes	Yes
Voting Statement					
CMP372 ensures the CUSC is accurate to avoid confusion. It will 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.					

Vote 2 – Which option is the best?

Panel Member	BEST Option?	Which objectives does this option better facilitate? (If baseline not applicable).
Andy Pace	Original	a, d
Cem Suleyman	Original	a, d
Garth Graham	Original	a, d
Grace March	Original	a, d
Joe Dunn	Original	d
Jon Wisdom	Original	a, d
Mark Duffield	Original	a, d
Paul Jones	Original	a, d
Paul Mott	Original	a, d

Panel conclusion

The Panel unanimously determined that the Proposer's solution should be implemented.

When will this change take place?**Implementation Date**

As soon as reasonably practicable, and in alignment with the equivalent Grid Code and STC modifications.

Date decision required by

As soon as reasonably practicable, and in alignment with the equivalent Grid Code and STC modifications.

Implementation approach

No implementation costs are associated with this modification.

Interactions

- | | | | |
|---|--|--|--------------------------------|
| <input checked="" type="checkbox"/> Grid Code | <input type="checkbox"/> BSC | <input checked="" 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.

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.
TCA	UK-EU Trade and Cooperation Agreement
European Union Withdrawal Act 2018	European Union Withdrawal Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020

¹ If the modification has an impact on Article 18 T&Cs, it 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.

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](#)

Annexes

Annex	Information
Annex 1	Proposal form
Annex 2	Self-Governance Statement
Annex 3	Legal Text
Annex 4	Code Administrator Consultation Response