

## Consideration of Implementation Dates within the CUSC

### A Paper by the Governance Standing Group

#### Background

1. This issue originated in discussions held by the BSC Governance Standing Modification Group where it was noted that there was potential for the BSC and the Transmission Licence to conflict. The issue centred on the fact that the Transmission Licence obliges the BSC Modification report to propose a timetable for the implementation of a modification that will contain within it an "Implementation Date". The BSC then appears to tie the Authority to this Implementation Date such that should the Authority decide to approve a BSC modification then it must be implemented on the proposed Implementation Date. If this Implementation Date has already passed however it would appear that the Authority could not approve a modification even though in the Authority's opinion it may better facilitate the applicable BSC objectives, as it would be impossible to implement by the Implementation Date.
2. Similar provisions exist within the CUSC itself and within the Transmission Licence Conditions that refer to the amendment of the CUSC. The Governance Standing Group has been asked by the BSC Panel to consider these provisions and to conclude on whether a similar issue arises in the context of the CUSC. This paper records the findings of the Governance Standing Group having considered the matter in detail.

#### The Transmission Licence and the CUSC – Key provisions

3. The Transmission Licence is the driver of the provisions within the CUSC that state the process to be followed when determining implementation dates for proposed amendments. The key provisions are in Licence conditions C10.6 (b) (v) and C10.6 (c). These state that an Amendment Report should set out:

*"a timetable for implementation of the modification and any alternative, including the date with effect from which such modification (if made) is to take effect"*

and that it is possible for

*"that timetable to be extended or shortened with the consent of or as directed by the Authority after those persons likely to be affected by the revision of the timetable have been consulted"*

4. The key provisions in the CUSC are as follows:

Section 8.20.2 (g) states that an Amendment Report should include

*"the proposed date for the implementation of the **Proposed Amendment** or any **Alternative Amendment**"*

Section 8.2.3.3 then allows NGC to apply for an extension to this date

*"**NGC** will carry out its role in an efficient, economical and expeditious manner and (subject to any extension granted by the **Authority** where **NGC** has applied for one having become aware of any circumstance which is likely to*

*cause a delay in the implementation of an **Approved Amendment**) in accordance with the date specified by the **Authority** in its approval.”*

5. The CUSC and the Transmission Licence do not appear to be inconsistent with each other. An issue remains however as the Amendment Report with contains the proposed date for the implementation of the Proposed Amendment. Therefore it appears that upon approving the Amendment the Authority is effectively also confirming the proposed date for implementation. Therefore if this proposed date has already passed and the amendment has become impossible to implement it would potentially mean that the Authority has little option but to reject the proposal even where it considers the proposed Amendment would better facilitate the applicable CUSC objectives.

### **Summary of the Findings of the Governance Standing Group**

6. The Governance Standing Group (GSG) has considered this issue at length and considers that this issue arises only rarely. Generally the timetables allowed for Implementation are quite broad and permit the timely implementation of approved amendments. Historically it has been rare for Amendments to be “timed out” in this manner. It was however noted by the GSG that the future environment into which amendments are submitted is such that disputes are possibly more likely and as such this issue may well become more prevalent. The introduction of Regulatory Impact Assessments (RIAs) that are now required with certain amendments is one instance of a development that has potentially put increasing pressure on implementation timetables.
7. It was recognised by the GSG that the existing process that relies on a fixed date for the implementation of Approved Amendments has the benefit of providing market certainty as to the date upon which a amendment will be implemented. The GSG considered that this element of the amendments process was beneficial and as such should be retained. The GSG recognised that a fixed implementation date does cause the existing issue where if a date for implementation becomes infeasible then the Authority may be forced to reject a proposal. The GSG also recognises that this element of the process is possibly not as efficient as it could be, however given that any amendment rejected in this way could be resubmitted at a later date and the assessment process potentially expedited, it was not considered to be a significant inefficiency.
8. The GSG has considered what it believes to be the most appropriate way forward given that it believes the concept of a fixed implementation date should be retained, but that the circumstance where a proposed amendment becomes “timed out” should be prevented as far as is practicable. In line with this thinking the GSG believe that future Amendment Reports should be prepared containing implementation dates that account for any reasonably foreseeable delays, such as the need for the Authority to carry out a RIA. Should an Amendment subsequently be approved by the Authority well in advance of the proposed implementation date, then there could be a secondary process that would allow the implementation date to be brought forward where appropriate. Any such advancement of the implementation of an Approved Amendment would be subject to suitable consultation with Parties that are likely to be impacted by such an Approved Amendment.

9. The GSG recognises that a process does not currently exist within the CUSC, which would allow for the timetable of an Approved Amendment to be foreshortened. The GSG therefore believes that a CUSC Amendment Proposal that would allow for this facility to be introduced into the CUSC could be appropriate.
10. The GSG therefore recommends to the CUSC Panel
  - That it APPROVES the findings of the GSG that the existing process by which implementation dates are determined is sufficiently robust under the present circumstances and those currently envisaged for the future.
  - That it APPROVES the retention within the CUSC of the concept of a fixed implementation date as this is viewed as beneficial as it provides market certainty as to the date upon which an amendment if approved would be implemented.
  - That it NOTES the view of the GSG that a CUSC amendment proposal could be introduced to allow for the implementation date of an Approved CUSC Amendment to be brought forward if necessary and that NGC were invited to consider whether to bring forward such an Amendment Proposal.