

**Distribution Code Review Panel  
Meeting 74 – Thursday 7 February 2019**

**Modifications to the Distribution Code and Associated Documents for a No Deal EU Exit**

**Paper by Gary Eastwood of Threepwood (on behalf of ENA)**

### **1. Introduction**

This Paper has been prepared by the DCode Administrator (ENA) and sets out proposed modifications to the Distribution Code and associated documents that are under the governance of the Distribution Code Review Panel (the Panel) that are necessary in the event the United Kingdom (UK) leaves the European Union (EU) without a deal.

The effect of the proposed modifications is to ensure that retained EU law and provisions in relevant Statutory Instruments, that have been prepared under the European Union (Withdrawal) Act 2018, are correctly addressed in the Distribution Code and associated documents. Ofgem is similarly proposing modifications to the Distribution Licence for such an event<sup>1</sup>.

For the avoidance of doubt, the proposed modifications will only be made in the event the UK leaves the EU without a deal.

The proposed modifications will need to be kept under review in light of any legislative changes that the UK Government could make ahead of exit day on the 29<sup>th</sup> March 2019. The intention is that the modifications, if necessary, would come into force on exit day.

### **2. Background**

In February 2018, Ofgem published its consultation on the implications for licences and industry codes and where amendments may be required in advance of the UK's exit from the EU<sup>2</sup>. Initial analysis accompanying that consultation identified potential modifications needed to the Distribution Code and linked industry code provisions.

Analysis carried out by the Energy Networks Association on behalf of the Panel has also identified potential modifications needed to the Distribution Code, the Distribution Code Review Panel - Rules and Constitution and certain Qualifying Standards as defined in the Distribution Code<sup>3</sup>.

A number of Distribution Code requirements reference the need for compliance with EU legislation. For example: Distribution Code requirement DPC7.1.5 requires that from the 27 April 2019, new or substantially modified Power Generating Modules must comply with the European Network Code on Requirements for Connection of Generators<sup>4</sup>.

---

<sup>1</sup> Ofgem letter dated 14 January 2019, Preparing for EU Exit: statutory consultation on consequential licence modifications in the event the UK leaves the EU without a deal.

<sup>2</sup> Preparing for EU exit – implications for licences and industry codes – 8<sup>th</sup> February 2018.

<sup>3</sup> DCRP\_17\_05\_09\_ENA\_powerpoint\_Brexit\_and\_DCode.

<sup>4</sup> COMMISSION REGULATION (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators.

In the event the UK leaves the EU without a deal, certain EU legislation and decisions of the European Commission and Agency for the Co-operation of Energy Regulators will cease to apply to the UK after exit day.

The UK Government plans to introduce Statutory Instruments, by virtue of the European Union (Withdrawal) Act 2018, to ensure legislation (of both UK and EU origin) governing the UK's energy networks is effective in this event.

Certain EU legislation and aspects of it, will continue to form part of UK legislation. This is termed "retained EU law" and has the meaning attributed to it in section 6(7) of the European Union (Withdrawal) Act 2018.

It is necessary to make modifications to certain text in the Distribution Code and associated documents to reflect these changes to legislation and to reference the application of retained EU law after exit day.

### **3. Proposed Modifications**

The purpose of the proposed modifications is to ensure that Distribution Code requirements are compatible with retained EU law and Statutory Instruments prepared under the European Union (Withdrawal) Act 2018 that would come into force on exit day in the event the UK leaves the EU without a deal.

The proposed modifications are not intended to change current obligations, duties, policies or technical requirements in the Distribution Code so far as they would still apply under retained EU law and related Statutory Instruments after exit day. As such, no changes are proposed to references to International, European and British standards.

The following approach to the proposed modifications has been taken.

1. To align, as appropriate, with the approach and legal text changes proposed for the Distribution Licence as being consulted on by Ofgem<sup>5</sup>.
2. To ensure any current requirements to comply with EU legislation generally are modified to reference retained EU law.
3. To remove the obligation to comply with binding decisions of the European Commission and/or Agency for the Co-operation of Energy Regulators so far as it, or part of it, is not retained EU law.
4. To reference primary legislation rather than secondary or tertiary legislation, to provide consistency of text changes and to minimise the need for amendments should secondary or tertiary legislation change.
5. To remove references to EU legislation that is to be revoked by UK Statutory Instruments made under the European Union (Withdrawal) Act 2018, namely COMMISSION REGULATION (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators.

The following documents, under the governance of the Panel, have been identified as requiring modification.

- Distribution Code.
- Distribution Code Review Panel – Rules and Constitution.

---

<sup>5</sup> Preparing for EU Exit: statutory consultation on consequential licence modifications in the event the UK leaves the EU without a deal – 14<sup>th</sup> January 2019.

- ENA Engineering Recommendation G83.
- ENA Engineering Recommendation G98.
- ENA Engineering Recommendation G99.

Annex 1 to this Paper includes a modification table containing: the current wording, the proposed change and explanatory note (explaining the reason for the proposed change) for each provision requiring modification.

#### **4. Next Steps**

The Panel is requested to review and approve the proposed modifications to the Distribution Code and associated documents in Annex 1 to this Paper.

Subject to unanimous approval of the proposed modifications by the Panel, a decision from the Panel not to go out to public consultation is sought. The agreement of the Authority not to consult publicly on the proposed modifications will then be sought.

The Panel is requested to confirm whether individual reports to Authority (RTAs) are required for each document proposed for amendment or whether they can be submitted under one RTA.

The RTA, or RTAs as appropriate, together with marked versions of each affected document containing the proposed modifications will be prepared for consideration of the Panel.

It is expected that the RTA will be issued in sufficient time for the Authority to consider and approve the proposed modifications before exit day on 29 March 2019.

In the intervening period It is proposed to monitor developments concerning the terms on which the UK will exit the EU and any material changes to legislation proposed by the UK Government as it effects the proposed modifications in this Paper. The Panel will be advised should any proposed modifications require amendment as a result of these developments and/or proposed changes to legislation.

The proposed modifications will only be made in the event the UK leaves the EU without a deal.