

Distribution Code Consultation DCRP/21/07/PC

DCode EU Exit Modifications

Modifications to The Distribution Code and Associated Documents Following the Exit from the EU by the UK

Target Audience:

The modifications will be of interest to all Distribution Code Stakeholders & Users including Distribution Network Operators, Transmission System Operators, Generators, Customers, Demand Side Response providers, Distribution Energy Resource providers and manufacturers of small scale embedded Power Generating Modules.

Date Published: 10 December 2021

Deadline for responses: 17:00 on Friday, 14 January 2022

Summary:

This Distribution Code public consultation is seeking the views from industry stakeholders on proposed modifications to the Distribution Code, the Distribution Code Review Panel - Rules and Constitution and certain Distribution Code Annex 1 and Annex 2 documents identified in this Consultation Paper, which require amendment following the exit from the European Union (EU) by the United Kingdom (UK).

The proposed modifications are aimed at ensuring that:

- retained EU law will function effectively in the context of the Distribution Code and associated documents under the governance of the Distribution Code Review Panel (the Panel) given the UK has left the EU following the UK-EU Trade and Cooperation Agreement and the end of the transition period.
- the Distribution Code takes into account the provisions in the relevant Statutory Instruments that have been prepared under the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020) as well as relevant consequential licence modifications.

1. Introduction

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. Initial analysis accompanying that consultation identified potential modifications needed to the Distribution Code and linked industry code provisions.

The Distribution Code 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.

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.

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 is no longer an EU Member State.

Subsequent analysis carried out by the Energy Networks Association (ENA) on behalf of the Panel determined the proposed modifications needed to the Distribution Code, as well as associated documents including the Distribution Code Review Panel - Rules and Constitution and certain Distribution Code Annex 1 and Annex 2 documents.

It is important to note that, on the 28 March 2019, the Panel submitted to the Authority for approval a proposed modification to the Distribution Code and Associated Documents (DCRP/MP/19/04) in preparation for the UK leaving the EU without a deal. That proposed modification is no longer required given the subsequent Trade and Cooperation Agreement between the UK and EU. This proposed modification [DCRP/MP/21/07] and the associated legal text changes are similar to those proposed in DCRP/MP/19/04 but reflect the current arrangements given UK-EU Trade and Cooperation Agreement and the end of the transition period.

2. Proposal

It is proposed to amend existing references to EU Regulations to ensure that the Distribution Code considers 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). The Panel has identified the following documents under its governance require modification.

- The Distribution Code.
- Distribution Code Review Panel – Rules and Constitution.
- ENA Engineering Recommendation G83.
- ENA Engineering Recommendation G98.
- ENA Engineering Recommendation G99.

The following principles have been applied in developing this modification proposal:

- References to individual Retained EU Laws have been retained, rather than referring to a generic term 'Retained EU Law', as keeping in the specific references is more useful for users of the Distribution Code.
- All 'European Regulation' defined terms referring to specific Commission Regulations have been removed from the Glossary & Definitions. Each specific Retained EU Law is now referenced in the relevant section of the Distribution Code in the format: "Retained EU Law (Commission Regulation (EU) YYYY/####)." Note that Retained

EU Laws became national law on IP completion day, but the names of the national laws often still include 'EU'¹.

- A sentence is added to DGD 2. (x) to explain how references to Commission Regulations are to be used within Distribution Code.
- The following is added as a defined term: "Legally Binding Decisions of the European Commission and/or the Agency", aligned with the modification of the licence conditions of the electricity distribution licence as outline in the Authority decision letter of 11 February 2021. While future decisions of the Commission and the Agency will no longer have any legal effect in the UK, decisions made prior to IP completion day are to continue to have effect. Definitions are also added for Retained EU Law and IP Completion Day.
- 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.

The proposed modifications to the legal text in these documents are tabulated in the document titled 'DCRP/21/07/PC - Legal Text Modification Tables', which is included in the Consultation Pack.

The Panel is now requesting comments from Industry stakeholders on these proposed modifications.

The proposed modifications are not intended to change current obligations, duties, policies or technical requirements in the Distribution Code and the associated documents stated in this Consultation Paper so far as they would still apply under retained EU law and related Statutory Instruments after IP completion day.

As such, no changes are proposed to references to International, European and British standards.

The proposed changes principally effect references to EU legislation (Directives and Regulations of the European Commission) and where compliance with decisions of the European Commission and/or Agency for the Co-operation of Energy Regulators is stated in The Distribution Code.

3. Applicable Distribution Code Objectives

The Applicable Distribution Code Objectives are to:

- a) permit the development, maintenance, and operation of an efficient, co-ordinated, and economical system for the distribution of electricity; and
- b) facilitate competition in the generation and supply of electricity; and
- c) efficiently discharge the obligations imposed upon distribution licensees by the distribution licences and comply with the Regulation and any relevant legally binding decision of the European Commission and/or the Agency for the Co-operation of Energy Regulators; and
- d) promote efficiency in the implementation and administration of the Distribution Code.

¹ This includes removal of references to EU legislation that has been revoked by UK Statutory Instruments made under the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020).

4. Consultation Questions

1. Do you believe that the proposed modifications, as set out in the DCRP/21/07/PC Consultation Pack, better facilitate the Applicable Distribution Code Objectives given the UK has left the EU following the UK-EU Trade and Cooperation?
2. Do you agree with the proposed legal text changes in the document titled 'DCRP/21/07/PC - Legal Text Modification Tables', in the DCRP/21/07/PC Consultation Pack? If not, please identify any alternative text changes with your reasoning.
3. Do you have any other relevant comments?

5. Next Steps

Responses to this consultation should be sent to the Distribution Code Review Panel Secretary at dcode@energynetworks.org by **17:00 on Friday, 14 January 2022** on the pro-forma provided expressly for the purpose, or via any other convenient means. The pro-forma is can be found in the Consultation Pack. Responses after this date may not be considered.

6. Consultation Pack

The DCRP/21/07/PC Consultation Pack can be found here - <http://www.dcode.org.uk/consultations/open-consultations/>

The Consultation Pack includes:

- This Consultation Paper
- Legal Text Modification Tables
- Response Proforma

For more information, please contact:

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