

**The Voice of the Networks**



# **Energy Networks Association**

**Competition in Connections  
Code of Practice**

**July 2015**

# **Competition in Connections Code of Practice**

Produced in accordance with standard condition 52 of the Electricity Distribution Licence

## **Version Control**

Ofgem Resubmission 4.0

### Preface

The market for the provision of electricity Connections to a DNO's Distribution System has evolved over the last 15 years, from a time where such Connections could only be provided by the DNO, to a market where providers other than the DNO can undertake many of the Connection Works in competition with the DNO.

As part of the Distribution Price Control Review for the period 2010-15 (DPCR5) Ofgem implemented measures to facilitate competition in the provision of Connections. One of these was the creation of a 'competition test' assessment process for nine Relevant Market Segments (RMSs) whereby DNOs could apply to have price regulation lifted if they were able to demonstrate that competition was sufficiently effective to protect the interests of Customers. At the end of the process Ofgem concluded that, across the 14 DNO Distribution Services Areas, effective competition existed in only 42 of the 126 RMSs and that:

- It was more prevalent in the Distribution Services Areas of some DNOs than it was in others; and
- Some RMSs may have better conditions for competition than others.

As a consequence of continued concerns about whether competition in the Connections market was effective, Ofgem commenced a review of that market in 2014. In January 2015 Ofgem published its findings document<sup>1</sup> where, in its executive summary, it stated:

*"Our review has found problems that combine to limit the development of competition. Together, these can make it hard to compete against the DNO on price and the timeliness of connection. These issues also increase the perceived risk and hassle of using an alternative connection provider for customers.*

*Effective competition should lead to lower prices, better service and more innovation. If competition is not being allowed to develop then customers are losing out.*

*Many of the issues restricting competition relate to the DNO's role in the connection process. In each region, the DNO is the sole provider of a number of the key inputs needed to make a connection. It provides these to both its own connections business and to its competitors.*

*Over the last decade, the DNOs have gradually changed their processes and procedures to minimise the impact of their position in the competitive process. Electricity North West Limited and Western Power Distribution have been particularly praised by stakeholders for their recent efforts to improve. However, no DNO has independently put in place enduring arrangements to deal with all the issues. Also, across GB, we have found inconsistencies between DNOs in how they manage the competitive connection process – creating further complexity for competitors."*

In setting out its proposed remedy Ofgem summarised:

*"...we think there is sufficient evidence to show that there are behavioural changes that can be made by the DNOs that could resolve the issues identified without the need for fundamental structural reform."*

Ofgem went on to say:

*"We are acting to ensure that there is an enduring focus by all DNOs on adopting, harmonising and maintaining best practice behaviour across all of this market. We*

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<sup>1</sup> "The findings of our review of the electricity connections market", Ofgem, 21 January 2015

*intend to do this by introducing a new licence condition to require DNOs to reduce the extent to which competitors depend on them for essential services. Where the DNO is required to provide these services, it will need to do so on the same basis to both its competitors and its own connections business. DNOs will collectively need to harmonise their arrangements for competition. This will be achieved by an enforceable code of practice (CoP) with which DNOs will have to comply."*

The main body of Ofgem's consultation went on to set out its views on the requirements for such code of practice and on the structure and content of the licence condition that would underpin it.

On 16 February 2015 the ENA, acting for and on behalf of DNOs, wrote to Ofgem confirming DNOs' intent to work together with the aim of producing a common code of practice.

DNOs are committed to putting arrangements in place that facilitate effective and efficient competition in the market for the provision of Connections. Such arrangements will help improve the quality of service that Customers receive and reduce the cost of Connection. Competition can also encourage innovation in the type of services on offer. A well-functioning market for Connections to the distribution network should benefit us all – Connections that are timely and cost-effective help the economy to grow and help to decarbonise the energy we use.

This code of practice sets out the processes and practices that DNOs will follow to facilitate competition in the provision of Connections to DNOs' Distribution Systems by third-party Connection providers. The code of practice is expected to evolve in line with and in response to changes in the Connections market.

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## Part A

### 1. Introduction

1.1 The goal of this document is to codify the established and developing arrangements between DNOs and ICPs for facilitating the effective operation of competition in the market for the provision of Connections. In doing so it addresses the issues Ofgem has identified in its review of the Connections market. It also seeks to foster the same high standards of performance by all relevant parties in all aspects of their involvement in the competitive Connections market and promote the harmonisation of processes across DNOs to help foster competition.

1.2 In seeking Connections to a DNO's Distribution System, Customers can choose to use an ICP to undertake certain elements of the Connection Works that would otherwise be undertaken by the DNO. Such elements of work are described as Contestable Works.

1.3 Contestable Works can be carried out by:

- i) The DNO; or
- ii) an Independent Connections Provider (ICP) who may undertake Contestable Works on the basis that (following successful completion of the Contestable Works):
  - the Contestable Works are adopted by the DNO to form part of its Distribution System; or
  - some or all of the Contestable Works are operated by an IDNO or by a licence exempt electricity distributor as a separate distribution network which connects to the DNO's Distribution System.

1.4 This code of practice is provided and maintained pursuant to standard condition 52 of the Electricity Distribution Licence. The code of practice sets out the processes, practices and arrangements that DNOs will use to facilitate, to the extent reasonably practicable, competition in the market for the provision of Connections.

1.5 The code of practice is structured into the following parts:

#### Part A – Introduction

1.6 This part incorporates:

- Introduction
- Scope and Objectives
- Definitions

1.7 It sets out the overarching aims for the code of practice. Any proposed changes to the scope or content of the code of practice will be assessed as to whether implementing the change would enable the code to better meet the set objectives.

#### Part B - The Connections Process

1.8 This sets out the end-to-end Connections process at a high level. It then describes each process element in more detail. In doing this it sets out:

- the Input Services that the DNO will make available;
- the process steps in undertaking the activity;

- the information that the party undertaking the Contestable Works will need to provide to, or receive from, the DNO;
- the relevant standards that need to be followed in undertaking the work;
- the relevant accreditations or authorisations applicable to an ICP; and
- any inspection or audit Requirements.

### **Part C - Accreditations and Authorisations**

1.9 This section will set out the accreditation arrangements for ICPs carrying out Contestable Works and the basis under which Accredited ICPs will be authorised to work on or at the boundary of the DNO's Distribution System.

### **Part D - Auditing and Inspection**

1.10 This section describes the arrangements in place for auditing ICPs undertaking Contestable Works according to whether they are Accredited or not.

1.11 Also, the section describes the arrangements for DNOs inspecting Contestable Works.

### **Part E – The Legal Process**

1.12 This sets out the arrangements for Land Rights and Adoption Agreements.

### **Part F - The Governance Arrangements**

1.13 This sets out how the governance of this code of practice will be administered.

## **2 Scope and Objectives**

### **2.1 Scope**

2.1.1 This code of practice applies to all the activities undertaken by DNOs in facilitating the competitive market<sup>2</sup> for the provision of Connections. It includes, but is not restricted to, the end-to-end processes, practices and requirements that a DNO will use where an ICP seeks to undertake the Contestable Works.

2.1.2 Included in the scope are specific areas of the competition in Connections process that have previously been identified by Ofgem as requiring inclusion in the code of practice. These areas relate to:

- Accreditation
- Determining Point of Connection
- Convertible Quotations
- Design approval
- Link boxes
- Inspection

### **2.2 Out of Scope**

2.2.1 Areas not included in this code of practice are:

- where the Customer has accepted a DNO quotation for both the Contestable and Non-Contestable Works;

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<sup>2</sup> The competitive market extends across the nine Relevant Market Segments defined in the Electricity Distribution Licence.



- connection charges – these are subject to the Connection Charging Methodology and Statement ;
- a DNO’s detailed procedures and forms – albeit these will be referenced where appropriate; and
- standards and reference documents that support the Connections process including, but not restricted to, design manuals.

2.2.2 However, where information is required to be made available the DNO will publish and publicise the availability of such information.

### 2.3 Relevant Objectives

2.3.1 The Relevant Objectives of this code of practice are to:

- a) facilitate competition in the market for new electricity distribution connections through:
  - i) minimising, to the fullest extent reasonably practicable, the number and scope of Input Services which are only available from the DNO;
  - ii) providing Input Services on an equivalent basis to all Connection Parties that operate in the Local Connections Markets;
  - iii) harmonising, to the fullest extent reasonably practicable, the Input Services provided by Distribution Service Providers.
- b) not distort, prevent or restrict competition in the market for new electricity distribution connections; and
- c) facilitate compliance with the regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

*n.b. These will need to replicate the final objectives in the licence. The above are taken from Ofgem’s draft licence condition emailed to DNOs on 30 June and updated on 6 July by Ofgem. These have been adapted slightly to apply to all DNOs rather than individual licensees.*

### 3. Definitions

Accredited	means, in respect of Contestable Works: <ul style="list-style-type: none"> <li>• accredited under NERS; or</li> <li>• accredited by a DNO in relation to its own Distribution System, in respect of the relevant activity.</li> </ul>
Adoption Agreement	Means an agreement for the DNO to adopt the Contestable Work (so that the Contestable Work becomes part of the DNO’s Distribution System), subject to the satisfaction of certain conditions.
Act	Means the Electricity Act 1989 (as amended).
Connection	Means a network extension and the assets that will connect the network extension to the DNO’s Electricity Distribution System at the Point of Connection. For unmetered activities, transfers and disconnections will be treated as within the scope of this definition.

Connections Activities	means any and all of such activities that comprise or are associated with the provision, modification, or retention of a Relevant Connection to the licensee's Distribution System as are able, in accordance with the licensee's Connection Charging Statement, to be undertaken by persons other than the licensee, where those activities are fully funded by the owner or occupier of the premises in respect of which the activities are required.
Connection Charging Methodology and Statement	Means the methodology and the statement that a DNO is required to have in place under its Electricity Distribution Licence that sets out the methodology and basis that DNOs use to set their connections charges. Any changes to this are governed by Ofgem.
Connection Works	Means the works that are required to be undertaken to provide a Connection and includes determination of the Point of Connection.
Contestable Works	Means Connection Works that are identified by a DNO in its Connection Charging Methodology as able to be carried out by an Independent Connections Provider (and 'Contestable' will be interpreted accordingly).
Convertible Quotation	means a Connection offer that separately identifies the charges for Non-Contestable Works and Contestable Works and can be accepted by: <ul style="list-style-type: none"> <li>• the recipient in its entirety; or</li> <li>• the recipient, or the recipient's duly appointed agent acting on his behalf, in relation only to that part of the quotation relating to the charges for Non-Contestable Works.</li> </ul>
Customer	Means the person requesting a Connection.
Distribution Network Operator (DNO)	Means an Electricity Distributor that is a Distribution Services Provider, in relation to that part of its Distribution System that is within its Distribution Services Area.
Distribution Services Area	Means, in relation to an Electricity Distributor, the area (if any) specified as such under its Electricity Distribution Licence.
Distribution Services Provider	Means any Electricity Distributor in whose Electricity Distribution Licence the requirements of Section B of the standard conditions of that licence have effect (whether whole or in part).
Distribution System	Means the system consisting (wholly or mainly) of electric lines owned or operated by an Electricity Distributor that is used for the distribution of electricity.
DNO	See Distribution Network Operator.
Electricity Distribution Licence	Means an electricity distribution licence granted or treated as granted under section 6(1)(c) of the Act.
Electricity Distributor	Means any person who is authorised by an Electricity Distribution Licence to distribute electricity.
Financial Year	Means the financial year adopted by the Code of Practice for Connections from time to time and established, at the date of this Agreement, as 1 April to 31 March.
ICP	See Independent Connections Provider.

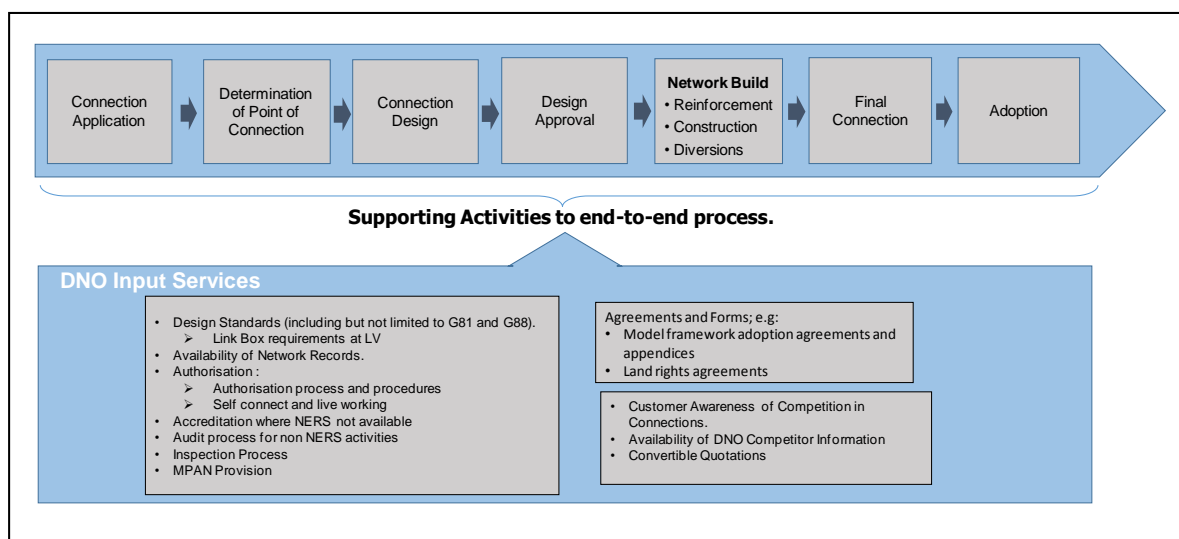
IDNO	See Independent Distribution Network Operator.
Independent Connections Provider (ICP)	Means a person other than the DNO who is appropriately Accredited to undertake Contestable Works in relation to the provision of a Connection to the DNO's Distribution System.
Independent Distribution Network Operator (IDNO)	Means an Electricity Distributor that is not a Distribution Services Provider (or, if it is, is operating in relation to that part of its Distribution System that is outside its Distribution Services Area).
Input Services	<p>Means any essential input required to enable another party to connect to the licensee's Distribution System. These currently include, but are not limited to, the inputs needed to:</p> <ul style="list-style-type: none"> <li>• accredit and authorise individuals or organisations to carry out specified activities;</li> <li>• determine the point of connection;</li> <li>• inspect and audit assets that the DNO will adopt;</li> <li>• create MPANs; and</li> <li>• approve connection designs.</li> </ul> <p>For the avoidance of doubt, it does not include undertaking Contestable Work as defined in the Common Connection Charging Methodology, but does include the essential inputs needed to allow another party to undertake Contestable Work.</p>
Local Connections Market	means the market for the procurement and provision of Connection Activities within the DNO's Distribution Services Area.
Land Rights	Means freehold land ownership, leasehold land ownership, easements, servitudes and wayleaves (wayleaves being special electricity rights governed by the Electricity Act).
Model Distribution Safety Rules	Means a set of generic rules produced and approved by the Safety, Health and Environment Committee of the Energy Networks Association that electricity companies may use as the foundation of their safety management system for operations on their networks.
MPAN	Means a meter point administration number by which an industry settlement meter at a connection to the DNO's Distribution System is to be identified.
National Electricity Registration Scheme (NERS)	Means the scheme operated on behalf of the DNOs under which ICPs may be assessed, audited, surveyed, etc. leading to the issue and maintenance of accreditation for the carrying out of Contestable Works.
Non-Contestable Works	Means Connection Works that are identified by a DNO in its Connection Charging Methodology and Statement that may only be carried out by the DNO (and 'Non-Contestable' will be interpreted accordingly).
Ofgem	Means the Office of Gas and Electricity Markets (the electricity and gas regulator for Great Britain).
Point of Connection	Means, for each proposed Connection, the point (or points) of physical connection between the extended network and the DNO's existing Distribution System.

Relevant Market Segment	Means any of the Relevant Market Segments that are described in, or determined in accordance with, Appendix 1 of CRC 2K of the Electricity Distribution Licence.
Relevant Objectives	Means the objectives set out in section 2.3
Safety Management Scheme	Means the processes and procedures put in place to minimise safety risk and comply with health and safety legislation.
Standard Design Matrix	Means a matrix or set of rules provided by the DNO to allow Connections that meet the criteria set out in them without further network analysis.

## Part B

### 4. The Connections' Process

4.1 The process for making a Connection to the DNO's Distribution System comprises a number of component steps, each component comprising its own sub-process. In addition to each of the process components there are a number of supporting or Input Services that the DNO needs to provide in order to facilitate Independent Connection Providers (ICPs) undertaking Contestable Work. Figure 1 shows a high-level summary of the end-to-end process and indicates the Input Services that the DNO is likely to be required to provide either on a Contestable or on a Non-Contestable basis.



**Figure 1. High Level Competition in Connections Process**

4.2 The following sub-sections describe the main components of the end-to-end process in more detail. As well as setting out the procedural steps, they describe:

- the Input Services that only the DNO can provide;
- the activities that an ICP can undertake as Contestable Work;
- Contestable Work that an DNO may provide for an ICP;
- information exchanges between the DNO and the ICP;
- the Accreditations required by an DNO or an ICP to undertake Contestable Work; and
- inspection and audit regimes that apply to Contestable Works.

#### 4.3 The Connection Application

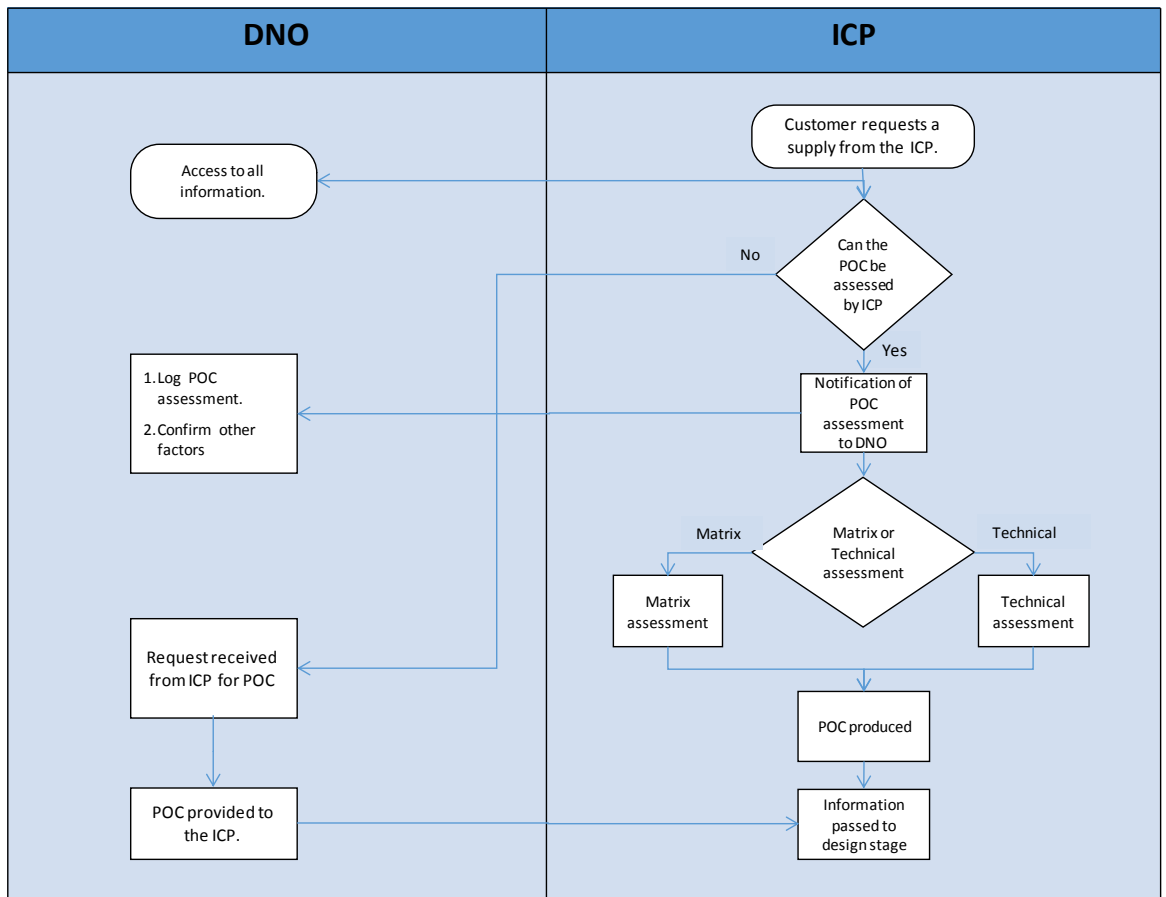
4.3.1 The Connections process starts when a request for a Connection to a DNO's Distribution System is made. In making such request, there are a number of different options available. For example, the Customer can choose the DNO or an ICP to carry out some or all of the activities in providing the Connection.

4.3.2 On receiving a Connection request, the DNO will provide the Customer with a detailed explanation of the competitive Connections market and ICPs that may be available in their Distribution Services Area.

- 4.3.3 In addition, each DNO will ensure that its website contains consistent and clear information for Connection Customers that enables them to access the competitive Connections' market.
- 4.3.4 Where the Customer makes a request to the DNO for a Connection in a Relevant Market Segment, the DNO shall provide the Customer with a Convertible Quotation. The Customer can either accept the Convertible Quotation or provide the Point of Connection to an ICP in order to obtain a competitive quote for the Contestable Works. The Customer can then choose whether it wants the DNO or an ICP to carry out all or some of the Contestable Work.
- 4.3.5 As part of producing a Convertible Quotation the DNO will determine:
- the Point of Connection to its Distribution System;
  - whether any reinforcement of the existing Distribution System is required;
  - whether part of the Distribution System needs to be diverted;
  - the Convertible Quotation the DNO issues shall contain details of:
    - the charges for the Non-Contestable Works;
    - the charges for Contestable Works;
    - the work and costs of providing the new Connection; and
    - the options the Customer has for accepting the quotation or progressing with an ICP.
- 4.3.6 The charges for the Non-Contestable Works in a Convertible Quotation shall be comparable irrespective of whether an ICP or the DNO undertakes the Contestable Works.
- 4.3.7 Once the Customer has appointed an ICP and confirmed the ICP's status as the Customer's agent, the DNO will deal with the ICP as if it was the Customer.
- 4.3.8 Where the Customer engages an ICP before the Customer has made any application to a DNO for a Connection, the ICP shall be entitled to either specify the Point of Connection (subject to section 4.4 below) or to apply directly to the DNO for a Point of Connection.

#### **4.4 Determining the Point of Connection**

- 4.4.1 Figure 2 below sets out the key process interactions between an ICP and the DNO in determining the Point of Connection.



**Figure 2. Key Process Interactions between ICP and DNO in determining the Point of Connection**

**4.5 Determining whether ICP can undertake assessment of POC**

4.5.1 In the majority of circumstances, determining the Point of Connection will be an activity where Accredited ICPs can either:

- request the DNO to determine the Point of Connection; or
- elect to determine the Point of Connection themselves.

4.5.2 The DNO will publish circumstances, and the reasons why, where an Accredited ICP cannot undertake the assessment of the Point of Connection. The ICP will be unable to determine the Point of Connection because the DNO:

- has not made sufficient information available; and/or
- has stated that only it can undertake the assessment.

4.5.3 Circumstances where Accredited ICPs can elect to determine the Point of Connection to the DNO's Distribution System are likely to be where:

- the load to be connected can be assessed by the ICP;
- the DNO is able to make available all of the information required to make the assessment;
- the ICP holds the appropriate accreditation; and



- there are no interactive projects that would affect the ability to assess the Point of Connection.

4.5.4 Where the Accredited ICP elects to determine the Point of Connection it shall submit a notice (a Point of Connection notice) to register it with the DNO. This notice will be taken as the project's Connection application date if the project becomes interactive. Details of DNO interactivity processes can be found in the Connection Charging Methodology and Statement. Point of Connection notices are not required for unmetered connections.

4.5.5 Where the ICP requests that the DNO undertakes the assessment of the Point of Connection, the DNO will do so in accordance with the standards prescribed by its Electricity Distribution Licence and any applicable regulations.

#### **4.6 DNO Input Services where the ICP determines the POC**

4.6.1 The DNO will make available access to such information as the ICP is reasonably likely to require in order to assess the Point of Connection. This information will be available on an equivalent basis as it is to the DNO, normally on a 24/7 basis. The information will enable ICPs to either:

- i) self-select a Point of Connection in combination with the Standard Design Matrix (see section 4.9 below); or
- ii) carry out assessment and design of the Point of Connection using the DNO's standards and process utilizing the technical competency of the ICP's design team (see sections 4.10, 4.12 and 4.15 below).

4.6.2 Such information may include, where appropriate:

- geographical network records showing the location, size and type of assets;
- load information for the Distribution System, including guidance on the rules to be applied when allocating demand diversity of new and existing Customers to circuits; and/or
- relevant design standards and documents (e.g. the Energy Network Association's engineering recommendation G81).

#### **4.7 DNO Input Services where the DNO determines the POC**

4.7.1 Where the ICP requires the DNO to determine the Point of Connection, the ICP shall submit to the DNO a request, using a standard application form, providing details of the Connection. This will include:

- contact details;
- the location of the Connection works;
- the nature and size of the electrical load/generation that is to be connected at the Point of Connection; and
- the date by which the Connection is required.

4.7.2 The DNO will undertake the assessment of the Point of Connection and provide the information to the ICP in accordance with the relevant service standards set out in the Electricity Distribution Licence or the Electricity Act.

#### **4.8 Point of Connection Accreditation**

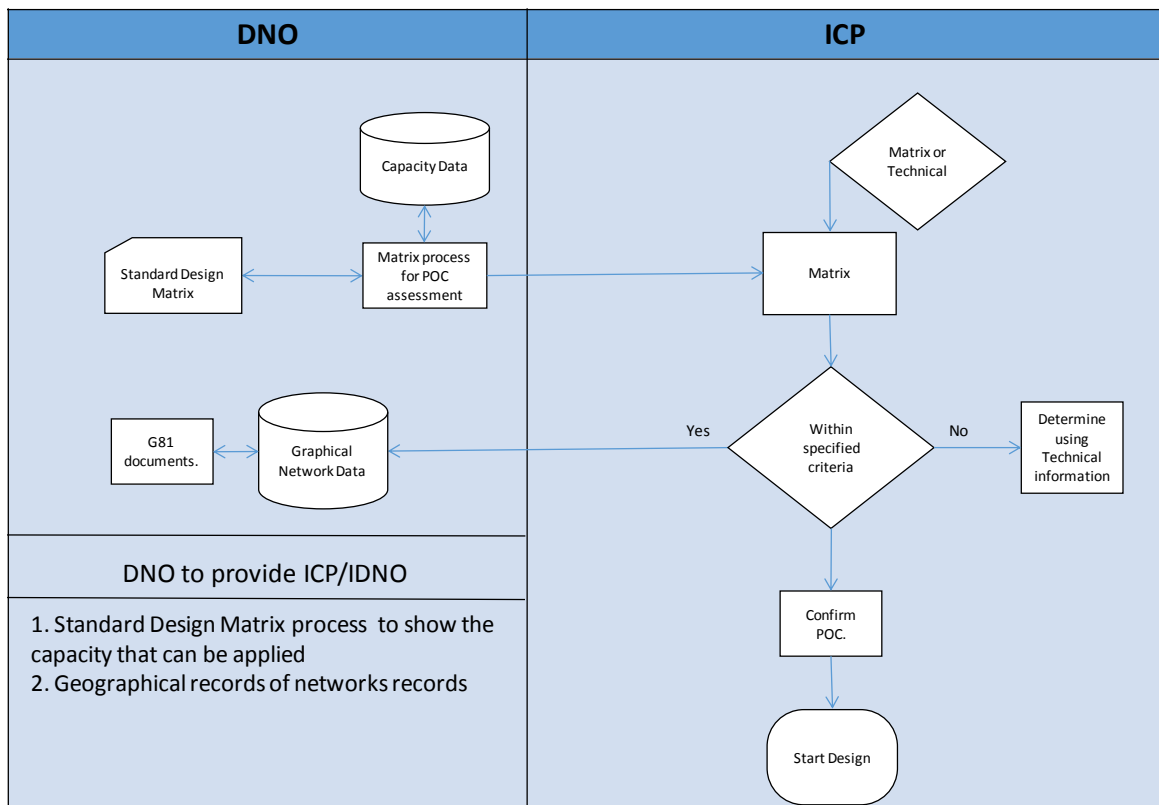
4.8.1 ICPs accredited under the NERS are deemed competent to determine the Point of Connection.



4.8.2 Each DNO will, at least annually, assess the areas where accreditation is not available and ensure that the NERS service provider is aware of these omissions from the overall NERS scheme. Once these have been identified the DNOs will work with NERS to put in place the appropriate scope changes or additions to increase areas of accreditation where practicable.

**4.9 POC assessment Using Standard Design Matrix**

4.9.1 Some Point of Connection designs can be determined using a Standard Design Matrix. To facilitate this, the DNO shall publish an up-to-date Standard Design Matrix for use by the ICP. Figure 3 below sets out the key process steps in using the Standard Design Matrix.



**Figure 3. Key process steps in using Standard Design Matrix**

4.9.2 To allow the ICP to use the Standard Design Matrix the DNO will provide the following;

- the process to be applied when using the Standard Design Matrix;
- a Standard Design Matrix that will assist in assessing the capacity that can be connected to an existing network;
- capacity data to be used within the Standard Design Matrix; and
- geographical network data to allow the ICP to check where the Point of Connection is to be located on the DNO’s Distribution System.

4.9.3 Where the ICP has assessed the Point of Connection that complies with the DNO’s Standard Design Matrix the ICP shall use that Point of Connection to complete the site design. If capacity issues arise once the Connection is made,

the DNO will be responsible for rectifying the issue so long as the ICP has complied with the requirements of the DNO's Standard Design Matrix.

#### **4.10 POC assessment by using the technical competence of the ICP**

4.10.1 For some Points of Connection not covered by 4.9 a higher level of technical competence will be needed due to additional requirements of the capacity required or the DNO's network constraints. In these situations the ICP designer will have to utilise the DNO's records and standards to achieve a Point of Connection that can be used.

4.10.2 The ICP will follow a similar process to the matrix assessment to ensure that the DNO is aware of the Connection and that it is registered on the system to ensure that it is visible to the DNO.

#### **4.11 Information Exchanges**

4.11.1 The ICP and DNO shall each use their reasonable endeavours to exchange information required to determine the Point of Connection. The information from the ICP will be provided at the following stages:

- Point of Connection Notice – when the ICP commences investigating a Point of Connection;
- Point of Connection Issue – when the ICP issues a quotation to a Customer; and
- Point of Connection Acceptance – when the Customer accepts the quotation issued by the ICP.

4.11.2 Information the ICP shall provide to the DNO includes:

- confirmation of the capacity required;
- the nature and type of load or generation that is to be connected;
- the timing of the connection;
- the proposed network owner that will be responsible for the end-consumer connections and MPAN creation;
- a polygon showing the location and the size of the development;
- a build-out programme over a five-year period showing the growth of the capacity required ; and
- other additional information agreed between the ICP and the DNO.

4.11.3 The DNO will also provide details as required to assist the assessment of the Point of Connection. This will include but will not be limited to;

- network constraints that may impinge on the Connection; and
- timescales for any upstream reinforcement that is planned but not available on-line.

4.11.4 The DNO will ensure that all relevant information is made available to the ICP either on-line or on request.

#### **4.12 Review of processes where the ICP can determine POC**

4.12.1 By 15 January 2016, the DNO shall, in co-operation with the other DNOs, review the processes and procedures for self-determination of POC by ICPs, taking into account lessons learned from practical application of the processes and consultation with stakeholders. The conclusions of this review must

propose a modification or series of modifications to this Code. The modification(s) must be progressed to decision through the change governance process. The modification(s) must ensure that the Code contains a clear, common process for determination of POC by ICPs. The modification(s) must contain the criteria that establish when an ICP can determine its own POC, the criteria that dictate whether the Standard Design Matrix or Technical Competency approach is used and a definitive list of what information the DNO will provide to ICPs.

4.12.2 The DNO must take all reasonable steps to progress the modification(s) through the governance process and have them implemented in the Code by 30 April 2016.

### 4.13 Connection Design

4.13.1 Figure 4 below sets out the key process steps in carrying out the Connection Design.

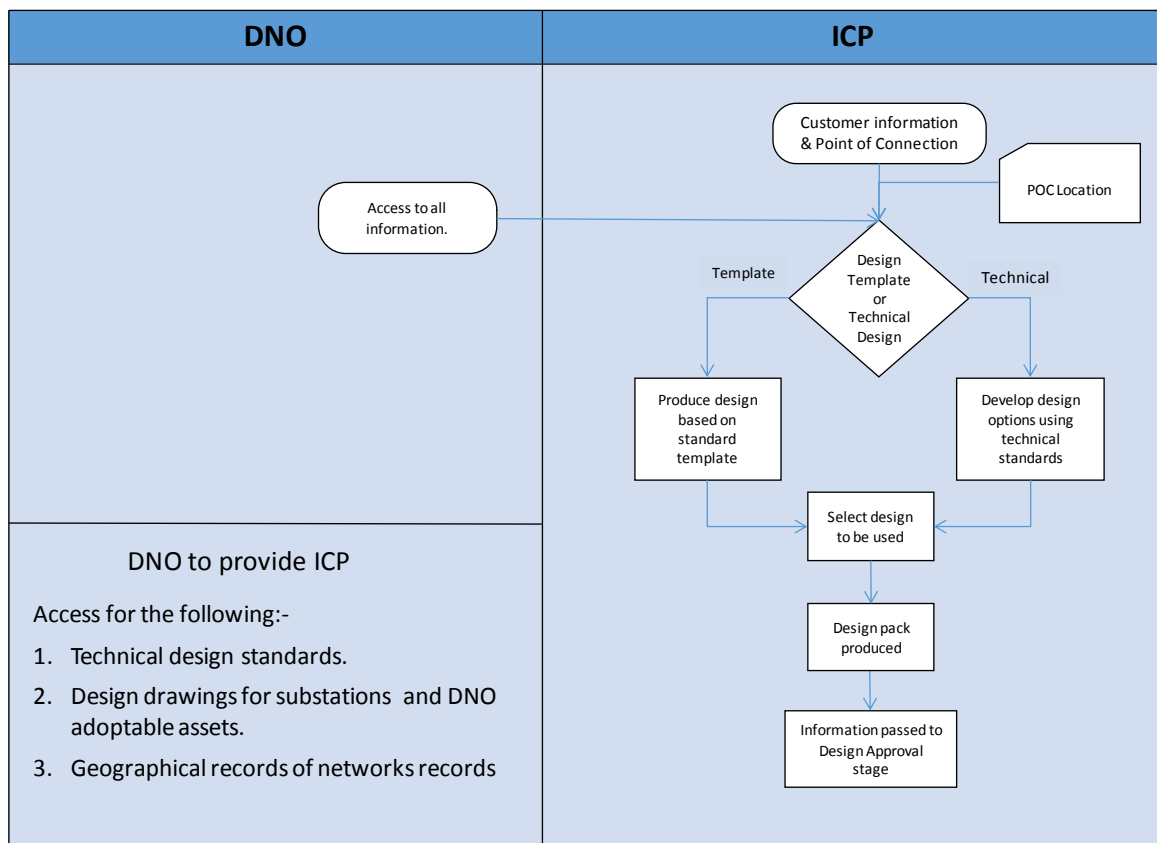


Figure 4 Process steps in carrying out the Connection Design

4.13.2 In designing the Connection the ICP shall take account of any reasonable requirements of the DNO, and all of the DNO's design standards in place at the time. All relevant design standards and specifications, such as G81, will be made available.

4.13.3 Where the Connection Works are to be adopted by an IDNO, the DNO shall not require unduly onerous boundary requirements between the IDNO's network and the DNO's Distribution System. Where the DNO requires additional assets to be provided at the boundary (other than those it would require if it was connecting the Connection Works to its own Distribution System) the DNO shall set out the reasons.

4.13.4 These will need to be taken into account and the ENA document G88 needs to be read in conjunction with the code of practice.

#### **4.14 Use of Link Boxes for LV Connections**

4.14.1 Where a link box is required at the connection boundary between the DNO's Distribution System and the network of an IDNO, the link box shall be considered to be in addition to the Connection's minimum scheme (as described in the Connection Charging Methodology and Statement):

- where the link box is requested by the ICP or the IDNO, the link box will become the property of the IDNO;
- where the link box is requested by the DNO, the link box will become the property of the DNO; and
- The cost of providing the link box will be funded by the party that is to own the link box (as described above).

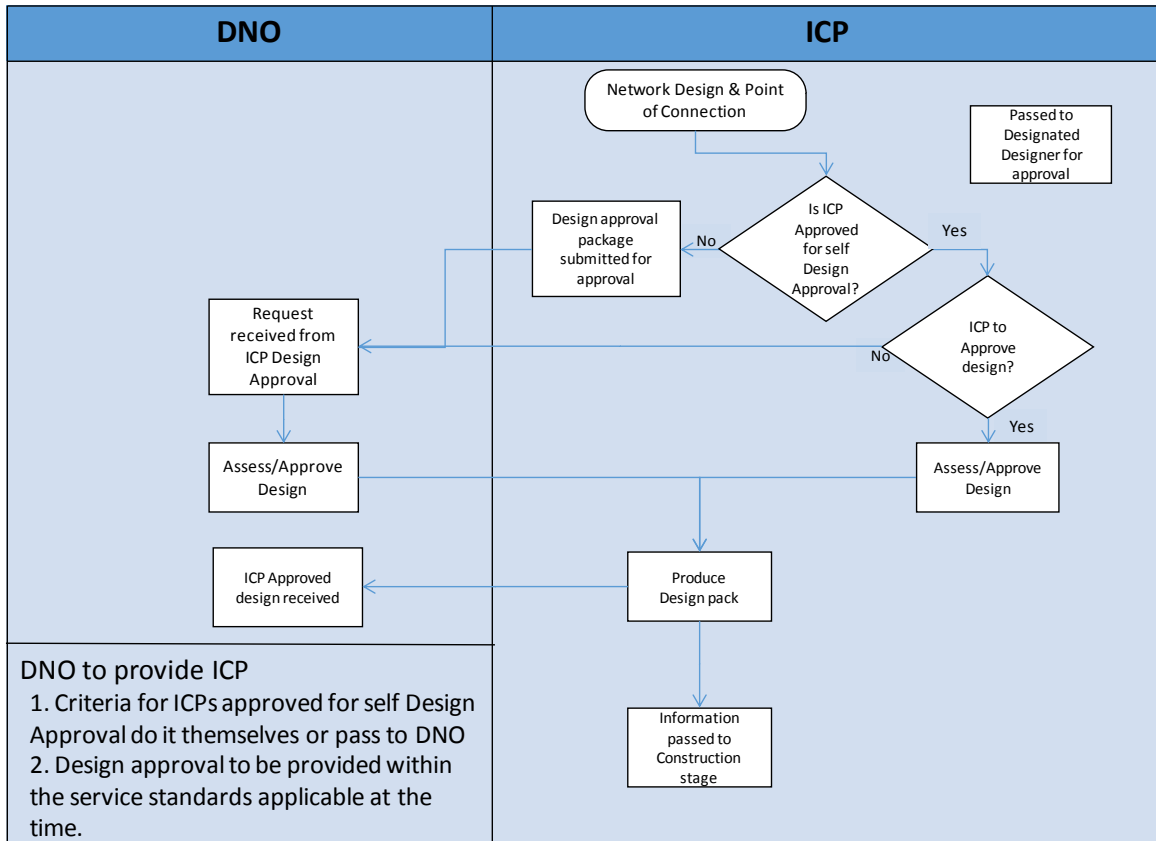
#### **4.15 Boundary Metering**

4.14.1 Where the DNO requires boundary metering to be fitted between the DNO's Distribution System and the network of an IDNO, then the boundary metering and the accommodation for such metering shall be considered as being in excess of the minimum scheme (as described in the Connection Charging Methodology and Statement).

4.14.2 In such circumstances, all costs covering boundary metering, including any related costs such as legal advice, must be funded by the DNO.

#### **4.16 Design Approval**

4.16.1 Figure 5 below sets out the key process steps for design approval.



**Figure 5 Process steps in carrying out the Connection Design Approval**

- 4.16.2 This section 4.16 does not apply to unmetered connections except where mains extensions are required.
- 4.16.3 DNOs will set out the criteria by which ICPs can carry out their own design approval.
- 4.16.4 Where an ICP, having met the criteria set out by the DNO, undertakes design approval of the Connection Works the ICP shall not require design approval from the DNO. However, the ICP may still ask the DNO to approve or validate the design.
- 4.16.5 Where an ICP does not undertake the design approval, the DNO shall be entitled to require the ICP to submit their design for approval.
- 4.16.6 Where the design approval for Contestable Works is to be undertaken by an Accredited ICP, the ICP shall nevertheless submit the approved design to the DNO for inspection. As construction shall not need to wait to commence, such inspection shall not unduly delay the ICP in carrying out its works. Such inspection shall not exceed the level of inspection the DNO employs in its own connection services. To assist the inspection, the DNO may request the ICP to provide additional information. Where the inspection identifies non-conformance with the DNO's design standards or there was an issue with the POC, the DNO shall notify the ICP of such non-compliances and any required corrective actions. The DNO shall be entitled to re-inspect the design following completion of the corrective actions by the ICP.
- 4.16.7 Charges for inspection visits and re-visits will apply where non-conformance issues fall within the scope of the DNO's Connection Charging Methodology and Statement.
- 4.16.8 If the DNO has any concerns as to the competency of the Accredited ICP this must be highlighted to the NERS service provider and the ICP.

### **4.17 Review of self-design approval processes**

- 4.17.1 By 15 January 2016, the DNO shall, in co-operation with the other DNOs, review the processes and procedures for design approval by ICPs, taking into account lessons learned from practical application of the processes and consultation with stakeholders. The conclusions of this review must propose a modification or series of modifications to this Code. The modification(s) must be progressed to decision through the change governance process. The modification(s) must ensure that the Code contains a clear, common process for design approval by ICPs. The modification(s) must contain the criteria that establish when an ICP can approve its own designs, the criteria that dictate when the ICP can approve its own designs and a definitive list of what information the DNO will provide to ICPs.
- 4.17.2 The DNO must take all reasonable steps to progress the modification(s) through the governance process and have implemented in the Code by 30 April 2016.

#### 4.18 Construction Works

4.18.1 Construction Works may comprise three main elements of work. These are:

- the construction of the network extension that will connect to the DNO's Distribution System, including making the connection to the DNO network at the Point of Connection in order to make the extended network 'live';
- the diversion of parts of the DNO's existing Distribution System to accommodate the construction of the development to which the Connection is being provided; and
- the reinforcement of the existing Distribution System to accommodate the quantity of electricity to be conveyed across the Point of Connection.

4.18.2 These areas may be undertaken by an ICP subject to the accreditation held by the ICP and to the extent they are identified as Contestable Works by the DNO.

4.18.3 All works will be subject to an audit regime by the NERS service provider and inspection regimes by the DNO. Where works are audited or inspected and any non-conformance is identified, the non-conformance will be highlighted to the ICP to be resolved. Part D of this document explains audits and inspections in more detail.

4.18.4 All construction work must be undertaken based on the specifications and standards of the DNO (which will be made available).

4.18.5 Failure to operate to the standard required could result in improvement notices or loss of accreditation as well as the costs of rectification.

#### 4.19 Final Connection

4.19.1 The DNO shall set out the processes for facilitating the provision and registering of MPANs for premises that will connect to Connection Works that the DNO will adopt.

4.19.2 The DNO will provide this service in the same manner that it would provide to either a customer directly or its own business.

4.19.3 The ICP will be provided with any data or contact details of the DNO's MPAN creation team.

## Part C

### 5. Accreditation and Inspection of ICPs/DNOs

#### 5.1. Accreditations

- 5.1.1. Accreditation means accreditation awarded to an ICP under the National Electricity Registration Scheme (NERS).
- 5.1.2. ICPs accredited under NERS to undertake specific contestable activities shall be deemed to be competent to undertake such activity normally.
- 5.1.3. In all cases where NERS accreditation is not available DNOs will work with the scheme administrator to implement a scope change to cover the relevant activity consistent with the Relevant Objectives in section 2.3.

#### 5.2. Authorisations

- 5.2.1. Authorisation means approval of individual ICP employees or their contractors, and recognition of the competence of such persons, to carry out specified contestable activities on a DNO's existing Distribution System. Authorisation shall include use of the following terms: Competent Person, Authorised Person, Senior Authorised Person as defined in the ENA Model Distribution Safety Rules and will be issued specifically for the activities to be undertaken at any given voltage level.
- 5.2.2. Training and / or authorisations relating to G39 authorisations accepted by a given DNO shall be accepted by other DNOs
- 5.2.3. The following options for authorisation of ICP employees will be available, subject to agreement between the ICP and the DNO in consideration of the type of work being undertaken and in accordance with the specific DNO requirements for each option and published on its website:

##### Option 1 - ICP authorisation of ICP Employees and Contractors

- 5.2.4 ICPs shall operate under their own Safety Management System (SMS), including the ICP's Safety Rules, which shall be of an equivalent relevant standard to the DNO's (in all cases the SMS should align to OHSAS18001 or equivalent).
- 5.2.5 ICPs are responsible for determining the relevant competence requirements for the work to be undertaken and for the issue of an appropriate authorisation to their employees or contractors. The relevant competence requirements shall include any network specific issues identified by the ICP following consultation and communication with the DNO on whose Distribution System the work is to be carried out.
- 5.2.6 ICPs shall provide, if requested, details of their SMS to the DNO before first accessing the DNO's Distribution System.
- 5.2.7 ICPs shall thereafter provide, when required, reasonable information regarding their ongoing SMS to a requesting DNO.



- 5.2.8 The DNO will be entitled to carry out reasonable checks on the application of the relevant SMS to demonstrate so far as reasonably practicable to the Health and Safety Executive (or other interested parties) that safety assurance is in place for any ICP working on its Distribution System.
- 5.2.9 Either party shall make available to the other relevant policies, operational processes, local information and procedures as required to facilitate safe working on a DNO's Distribution System. This may be in writing or by personal briefing as may be appropriate, but in all cases the information exchanged shall be recorded and such records must be held for future reference by each party.

Option 2 - DNO authorisation of ICP Employees

- 5.2.10 ICPs shall operate under the DNO's Safety Management System, including the DNO's version of the Model Distribution Safety Rules.
- 5.2.11 The DNO will determine the relevant competence requirements and issue authorisations to the ICP's employees or contractors.
- 5.2.12 The DNO will be entitled to undertake appropriate checks to demonstrate, so far as is reasonably practicable, that the ICP's employee or contractor has an appreciation of network hazards and local procedures.
- 5.2.13 The DNO shall take account of authorisations issued by other DNOs in order to minimise circumstances where repeat authorisation assessments are required for work on different DNOs' Distribution Systems.
- 5.2.14 The charges to get authorised must be cost-reflective and opportunities to be authorised must be available on a sufficiently frequent basis.
- 5.2.15 Each party shall make available to the other the relevant policies, operational processes, local information and procedures as required to facilitate safe working on a DNO's Distribution System. This may be in writing or by personal briefing as may be appropriate, but in all cases the information exchanged shall be recorded and such records must be held for future reference by each party.

Option 3 - Transfer of Control

- 5.2.16 The DNO shall transfer control of a specified part of its Distribution System for the purposes of the ICP's activity.
- 5.2.17 The ICP shall have full control of the specified part of the DNO's Distribution System and shall carry out the work in accordance with its own SMS, including its Safety Rules.
- 5.2.18 Each party shall make available to the other the relevant policies, operational processes, local information and procedures as required to facilitate safe working on the DNO's Distribution System. This may be in writing or by personal briefing as may be appropriate, but in all cases the information exchanged shall be recorded and such records must be held for future reference by each party.

## Part D

### 6. Auditing and Inspection

#### 6.1. Auditing

- 6.1.1. Auditing means the ongoing surveillance and assessment of an ICP organisation against the NERS accreditations that it holds or against the DNO's accreditations, as applicable.
- 6.1.2. Auditing is undertaken to assess and validate the ability of ICPs to undertake specified NERS activities. ICPs Accredited under NERS will be subject to the audit provisions of NERS. DNOs are not required to, and will not, without reasonable cause, undertake additional audits of NERS accredited ICPs.
- 6.1.3. Where a DNO elects to provide its own ICP Accreditation (either where there is no accreditation available under NERS for particular activities or as an alternative to NERS in agreement with the ICP) the DNO shall undertake its own surveillance and assessment. In these cases the arrangements should be consistent with the arrangements used by the DNO for its own Connection Works and for its sub-contracted works and shall be not more onerous than that used by NERS.

#### 6.2. Inspection

- 6.2.1. DNOs shall be entitled to inspect ICP works. However, DNOs should be mindful of their obligations in respect of competition in Connections, and should therefore consider appointing independent inspectors to undertake this activity. In any case, such inspection should not unduly restrict or delay the Accredited ICP from undertaking work and must be no more onerous than the quality assurance regime used for the DNO's own Connections' activities.
- 6.2.2. To facilitate inspection, ICPs shall provide DNOs with whereabouts sheets advising the DNO of when and where the ICP is undertaking work. The DNO will be entitled to visit the site identified in the whereabouts sheet to inspect the works.
- 6.2.3. If the DNO identifies a non-conformance, the DNO shall specify what the non-conformance is and set out the corrective actions that need to be undertaken. On completion of the corrective actions, the ICP shall advise the DNO and the DNO shall be entitled to revisit the site and carry out a further inspection.
- 6.2.4. Charges for inspection are out of scope of this code of practice and are detailed in the DNO's Connection Charging Methodology and Statement.

## Part E

### 7.1 The “Legal” Process

7.1.1 To underpin the provision of a Connection a number of legal documents and statutory consents will need to be completed. The principal ones that impact on ICPs relate to:

- securing rights for the assets to be installed on the land of a third-party (“Land Rights”);
- securing rights for the assets on the Customer’s land;
- securing all necessary statutory, planning and environmental consents; and
- Adoption Agreements covering the transfer of assets from the ICP to the DNO, together with all the ongoing liabilities and warranties.

### 7.2 Land Rights

7.2.1 The DNO will publish criteria which trigger the need for Land Rights relating to assets they will adopt or require access to, which shall be no more onerous than those it would seek for its own Connections activities.

7.2.2 Subject to and in accordance with the terms of the agreed and applicable incorporated process, the IDNO will be able to negotiate on behalf of the DNO where IDNO and DNO dual use land right agreements are required so that they can secure the rights required for the connection and extension of the network.

7.2.3 DNOs shall provide model standard Land Rights documentation for use by ICPs. The ICP may prepare the legal documentation for the Land Rights for the signature or authorisation of the DNO.

### 7.3 Planning and Environmental Consents

7.3.1 The ICP shall secure all relevant statutory, planning and environmental consents required to facilitate the installation and retention of the Connection Works and shall ensure that they are transferrable where required.

### 7.4 Adoption

7.4.1 Once the Connection Works are energised, the DNO will adopt those network assets that are to form part of the DNO’s Distribution System as per the design, under an Adoption Agreement.

7.4.2 The ICP will provide the DNO all as-laid drawings and test certificates as specified by the DNO. This information should be no more onerous than the information provided by the DNO’s own Connections’ activities.

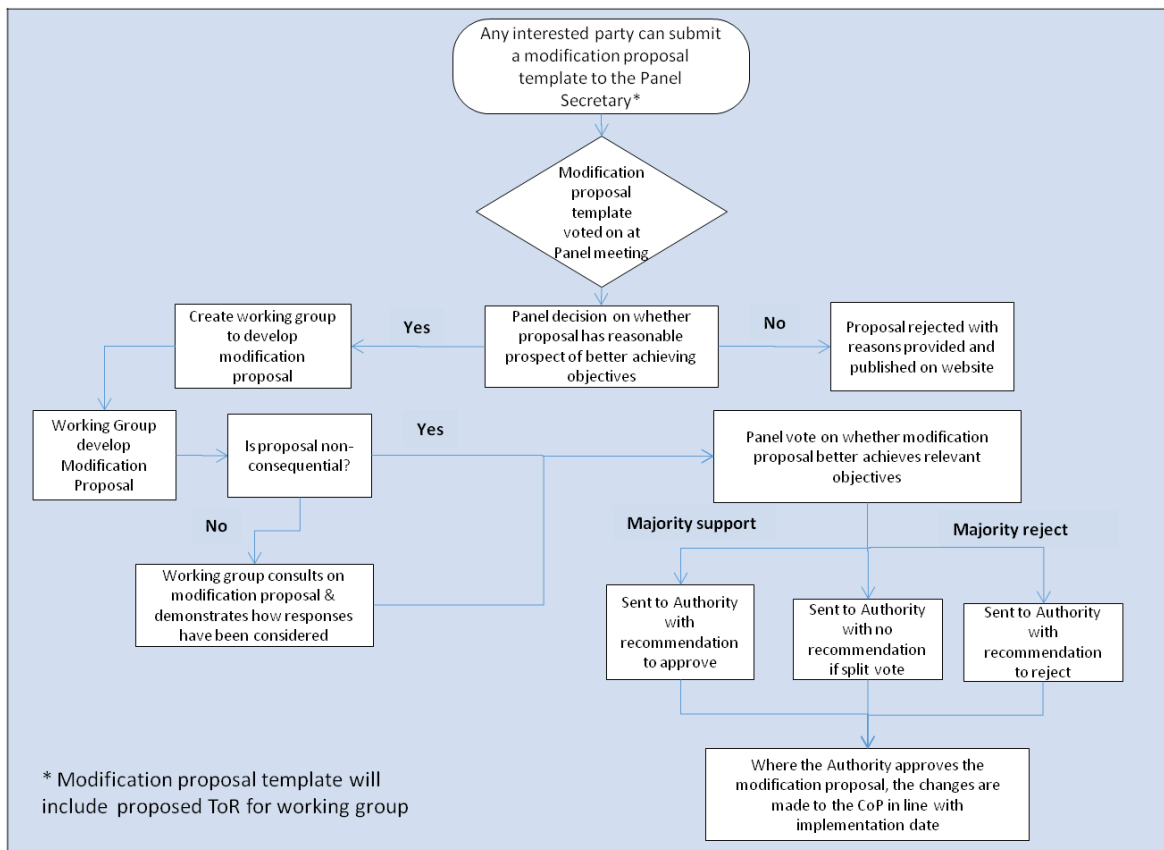
7.4.3 The information may be provided electronically in a timescale similar to that of the DNO’s own activities. Failure to provide the correct information in the timescale required will result in a referral to the NERS service provider for investigation.

7.4.4 DNOs will update new asset records into their graphical information system (GIS).

## Part F

### 8. Governance Arrangements

8.1 The governance arrangements for this code of practice are set out in Appendix 1. Figure 6 below summaries the process a modification proposal would need to follow to become approved by Ofgem and reflected in this code of practice:



**Figure 6 Process steps for raising a modification**

## Part G

### 9. Reporting Requirements

- 9.1. Each DNO shall publish an annual report by the end of September each year to demonstrate their compliance with this code of practice. This report shall include reporting on the volume of inspections by the DNO on connections completed by all parties (including the DNO's own business or affiliates and competitors).
- 9.2. The report will include such detail on processes and procedures and available metrics to demonstrate the DNO is providing the equivalent level of service to independents as to them undertaking connection activities themselves for each of the Input Services.
- 9.3. The detail of the reporting requirements will be developed in conjunction with stakeholders and approved by Ofgem. These details shall be finalised by 15 January 2016 and if appropriate a modification raised. If a modification is not deemed appropriate the DNO shall, in co-operation with the other DNOs, provide an explanation to Ofgem.

## Part H

### 10. Dispute Resolution

- 10.1. The DNO's complaints process will be used where any party considers that a DNO is not meeting their obligations under this code of practice. The complaints process will include appropriate levels of escalation within the DNO organisation. Each DNO shall publish their complaints resolution process on their website.
- 10.2. Either party may request that the panel established under the governance arrangements in appendix 1 provides a view on any matter being disputed.
- 10.3. Once that complaints process has been exhausted the party may refer their issue to Ofgem. This would not affect the ability of parties to raise issues of alleged non-compliance with competition law or licence obligations directly with Ofgem at any time.

## Appendix 1 Governance Arrangements

### 1. Scope

The provisions of this code of practice set out the governance arrangements for the Competition in Connections Code of Practice which is established pursuant to Licence Condition 52. Governance of the code of practice will be administered by a Panel established and maintained by DNO Parties.

This Appendix 1 sets out:

- the Panel Objectives for administering this code of practice;
- the arrangements for selecting Panel Members;
- the roles, responsibilities and duties of the panel; and
- the process for making changes to the code of practice.

Compliance with the code of practice is a matter for each DNO Party, and the Panel shall have no vires in respect of auditing DNO Parties or in respect of taking actions in respect of any DNO Party's non-compliance with the code of practice.

The Energy Networks Association will own this code of practice on behalf of its DNO members and act as the legal entity to help DNOs fulfil the obligations under these governance arrangements.

### 2. Definitions and Interpretation

The following words and expressions shall have the following meanings in this Appendix 1:

**“Alternate”** means the nominated representative who can act as an alternate to a Panel Member in line with Clause 4.2 of this appendix.

**“Approved Budget”** means the budget for the Code Administrator which has been agreed by DNOs in line with Clause 6.3 of this appendix.

**“Authority”** means the Office of Gas and Electricity Markets.

**“Code Administrator”** means the party who administrates this code of practice in line with the requirements in the Code Administrator' Code of Practice.

**“Code Administrator Code of Practice”** means the guidance document for industry code panels of this name published by the Authority and updated from time to time.

**“DNO Parties”** means the collective of DNO Party from all six DNOs.

**“DNO Party”** means a person representing company which is a DNO.

**“Interested Party”** means any persons or organisation who has an interest in this code of practice.

**“Non-DNO Parties”** means the collective of non DNO Party.

**“Non-DNO Party”** means a person or organisation who is not a DNO Party.

**“Panel”** means the body established under Clause 4 of this appendix.

“**Panel Chair**” means the person nominated to chair the Panel in line with Clauses 5.1 to 5.7 of this appendix.

“**Panel Objectives**” means the objectives set out in Clause 3.1 of this appendix.

“**Panel Secretary**” means the specific individual (which may change from time to time) who has been appointed by the Code Administrator to assist the Panel in its duties and fulfil the Panel Objectives .

“**Recoverable Costs**” costs which can be recovered via the Code Administrator in line with Clause 6.5 of this appendix.

“**Relevant Objectives**” means the objectives set out in section 2.3 of the code of practice and Licence Condition.

“**Working Days**” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day that is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

“**Working Group Chair**” means the chair of a working group in line with Clause 5.38 of this appendix.

“**Working Group**” means a group established by the Panel in line with Clause 5.28 of this appendix .

### 3. Functions and constitution of Panel

#### Panel Objectives

3.1 The objectives of the Panel are to:

- administer the governance of this code of practice in accordance with the provisions of this Appendix 1;
- maintain a procedure and process by which any Interested Party can propose changes to the code of practice which better meet the objectives set out in the code of practice or in Licence Condition 52;
- review all proposals submitted by any Interested Party to the Panel for changes to the code of practice which, in the proposer’s opinion, would result in the DNO Parties better meeting the objectives set out in Licence Condition 52 or section 2.3 of the code of practice;
- publish details of all change proposals to the code of practice submitted to the Panel for consideration;
- consult and seek views of all Interested Parties on proposed changes to the code of practice, where appropriate establishing work groups to develop and better consider the change proposal;
- make, publish and submit recommendations to the Authority on whether a proposed change to the code of practice should be made to better meet the objectives as set out in the code of practice or in Licence Condition 52 together with the reasons for such recommendation;



- implement the decision of the Authority in respect of a proposed change to the code of practice, where appropriate amending and publishing the revised code of practice; and
- facilitate compliance with the Regulation and any relevant legally binding decisions of the European Commission and/or the Agency for the Co-operation of Energy Regulators.

### Duties

3.2 Without prejudice to any other duties or obligations imposed on it under this Agreement, the Panel shall, subject to and in accordance with the other provisions of this code of practice:

- manage and co-ordinate the process by which Panel Members are appointed, in accordance with Clause 4;
- develop budgets in accordance with Clause 6;
- manage and co-ordinate the modification process as outlined in this code of practice;
- periodically review this code of practice and operations under it, in order to evaluate whether this code of practice meets the Relevant Objectives, and report on the outcome of each such review;
- at the written request of the Authority, undertake a review in accordance with Clause 3.2.4 in respect of such parts of this code of practice as the Authority may specify;
- procure the creation, hosting and maintenance of a website, which the Panel shall endeavour to ensure complies with the requirements of this code of practice;
- make an accurate and up-to-date copy of this code of practice available on a website and for an accurate and up-to-date copy of the code of practice, including these governance arrangements to be supplied to any person requesting a copy (in return for a charge not exceeding the reasonable cost of so doing);
- endeavour to establish joint working arrangements with other relevant industry committees and panels in order to facilitate robust interaction between this code of practice and the industry documents for which such industry committees and panels are responsible;
- consider whether it is appropriate to obtain insurance in respect of the costs, charges, expenses, damages and other liabilities referred to in Clause 4.12 and, where it is appropriate to do so, obtain such insurance; and
- to act independently, not as a delegate when assessing proposals against the Relevant Objectives.



### Powers

- 3.3 Without prejudice to any other rights or powers granted to it under this code of practice, the Panel shall, subject to and in accordance with the other provisions of this code of practice, have the power to:
- 3.3.1 appoint and remove the Code Administrator;
  - 3.3.2 appoint and remove professional advisers;
  - 3.3.3 consider, approve and authorise the entering into by the Panel of contracts under which the Panel procures the performance by a third party of any activities which might otherwise be carried out by the Panel under this Agreement;
  - 3.3.4 constitute working groups to which the Panel may delegate any of its duties and powers under this Agreement;
  - 3.3.5 without prejudice to the generality of Clause 5.28 or the process for considering modifications to this code of practice, and only where it sees fit, constitute working groups to consider and report on issues and problems relating to the operation of this code of practice that have been brought to its attention; and
  - 3.3.6 do anything necessary for, or reasonably incidental to, the discharge of its duties under this code of practice.

### Panel Composition

- 3.4 The Panel shall comprise the following persons (each a Panel Member):
- 3.4.1 six persons nominated by the DNO parties; and
  - 3.4.2 six persons nominated by the non-DNO parties.
- 3.5 If the number of non-DNO Party nominations is greater than six then the Code Administrator will inform all the nominees and ask them to consider whether they still wish to be nominated. Following this, should there still be more than six nominations then the Code Administrator will refer to the Authority for a decision on the six nominations.
- 3.6 No one person can hold more than one office as a Panel Member.
- 3.7 The following persons shall be entitled to attend and speak (but not vote) at any meeting of the Panel:
- 3.7.1 one person appointed from time to time, by notice to the Panel Secretary, by the Authority;
  - 3.7.2 one person appointed from time to time, by notice to the Panel Secretary, by Customer representatives who are not on the Panel; and
  - 3.7.3 if the number of Customer representatives nominations is greater than one then the Code Administrator will inform all the nominees. Should there still be more than one nomination then the Code Administrator will refer to the Authority for a decision on the nomination;

- 3.7.4 one person appointed from time to time, by notice to the Panel Secretary, by a representative of NERS; and
- 3.7.5 any other person or persons who the Panel agrees (subject to a majority vote where necessary) should be invited to a Panel meeting.

#### **Natural Persons**

- 3.8 Each Panel Member, each Alternate, each person appointed in accordance with Clause 3.7, and each person serving on a Working Group from time to time must be an individual (and cannot be a body corporate, association or partnership).

#### **4. Panel Members**

##### **Nomination of Panel Members**

- 4.1 The Panel Members from time to time shall be nominated in accordance with the following provisions:
  - 4.1.1 no later than 10 Working Days following any decision by the Authority to approve this code of practice, each DNO Party will nominate to the Panel Secretary a single representative to sit on the Panel;
  - 4.1.2 no later than 30 Working Days following any decision by the Authority to approve this code of practice, non-DNO Parties must nominate representatives for the Panel to the Panel Secretary; and
  - 4.1.3 Nominations should be sent via email to the Energy Networks Association ([regulation@energynetworks.org](mailto:regulation@energynetworks.org)) who will facilitate the Panel meetings until a Panel Secretary and Code Administrator is established.

#### **Alternates**

- 4.2 Persons who are nominated Panel Members can chose a nominated Alternate to represent them at Panel meetings. Names of Alternates must be submitted in email or in writing to the Panel Secretary within 25 Working Days of a person being nominated:
  - 4.2.1 Where a Panel Member is not present at a Panel meeting, his/her Alternate shall be entitled to attend (and count, in his/her capacity as Alternate, towards the quorum at) that meeting and to exercise and discharge all the functions, powers and duties of his/her appointor at that meeting.
  - 4.2.2 Each Panel Member may, by notice in writing to the Panel Secretary, remove or replace the person appointed from time to time by that Panel Member as his/her alternate. An Alternate shall immediately cease to be an Alternate on the occurrence of any of the events set out in Clause 4.5 in respect of the Alternate.
  - 4.2.3 Where a person ceases to be a Panel Member, that Panel Member's Alternate shall be appointed the replacement Panel Member. Following such appointment, a new Alternate will be appointed in accordance with Clause 4.2.1.

- 4.2.4 Unless the context otherwise requires, any reference in this code of practice to a Panel Member shall be construed as including a reference to that Panel Member's Alternate.

### **Term of Office and Removal from Office of Panel Members**

- 4.3 Each person nominated as a Panel Member shall be appointed as such with effect from the date on which notice is sent to either the Panel Secretary or the Energy Networks Association acting as Panel Secretary.
- 4.4 Each Panel Member can remain in post for a period of two years unless Clause 4.5 applies. At the end of the two year period, a Panel Member can be re-nominated to sit on the Panel. No more than four Panel Members are able to retire in any one year.
- 4.5 A Panel Member shall immediately cease to be a Panel Member (and his/her office shall become vacant) if he/she:
  - 4.5.1 resigns his/her office by notice in writing to the Panel Secretary;
  - 4.5.2 fails, in person or by his/her Alternate, to attend three consecutive meetings of the Panel that have been duly convened;
  - 4.5.3 For a DNO Party, ceases to be, or to be employed by an DNO which was entitled to have a seat as a DNO Party or non-DNO Party;
  - 4.5.4 For a non-DNO Party, ceases to be, or to be employed by an ICP or Customer group;
  - 4.5.5 becomes bankrupt or makes any arrangement or composition with his/her creditors;
  - 4.5.6 becomes prohibited by law from being a director of a company under the Companies Act 2006;
  - 4.5.7 is convicted of an indictable offence;
  - 4.5.8 is admitted to hospital in pursuance of an application under the Mental Health Act 1983 or the Mental Health (Care and Treatment) (Scotland) Act 2003, or an order is made by a court with competent jurisdiction in matters concerning mental disorder for his/her detention or for the appointment of a receiver, curator bonis or other person with respect to his/her property or affairs; or
  - 4.5.9 dies.

### **Replacement of Panel Members**

- 4.6 Where the office of a DNO Panel Member becomes vacant for any reason, then DNO Parties can nominate a replacement under the same process set out in Clause 4.1.1.
- 4.7 Where the office of a non-DNO Panel Member becomes vacant for any reason, then non-DNO Parties can nominate a replacement under the same process set out in Clause 4.1.2.

### **Duties of Panel Members**

- 4.8 A person appointed as Panel Member, when acting in that capacity, shall:
- 4.8.1 exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 2006; and
  - 4.8.2 act in a manner designed to facilitate the performance by the Panel of its duties under this Agreement.
- 4.9 A person shall not be appointed as a Panel Member unless he/she has first:
- 4.9.1 confirmed in writing or in email to the Panel Secretary that he/she agrees to act as a Panel Member in accordance with this code of practice and with particular regard to the requirements of Clause 3.2; and
  - 4.9.2 his/her Panel Member position shall be deemed to have become vacant if he/she does not confirm within 20 Working Days of his/her nomination.
  - 4.9.3 Where a DNO Panel Member changes employer, the Panel Member shall, as soon as reasonably practicable after such change, notify the Panel Secretary of such change in writing. At such point they will cease to be a Panel Member.
  - 4.9.4 Where a non DNO Panel Member changes employer, the Panel Member shall, as soon as reasonably practicable after such change, notify the Panel Secretary and the other non- DNO Panel Members. The remaining non-DNO Panel Members will need to jointly agree whether the individual can remain a Panel Member and inform the Panel Secretary of their decision in writing or by email within 10 Working Days.

### **Protections for Panel Members and Others**

- 4.10 The Panel must ensure that the following parties are indemnified against the responsibilities set out within this code of practice:
- each Panel Member;
  - each Alternate ;
  - the Panel Secretary; and
  - each person who serves on a Working Group from and against any and all costs (including legal costs), charges, damages or other liabilities properly incurred or suffered by that person or party in relation to the exercise of the person's powers, duties or responsibilities under this Agreement, including where such powers duties or responsibilities are exercised negligently.
- 4.11 The indemnity set out in Clause 4.10 shall not apply to any costs, charges, expenses, damages or other liabilities that are:
- recovered in accordance with the procedures set out in Clause 6;
  - in respect of any charge for the time of persons referred to in Clause 4.10;
  - recovered under any policy of insurance in favour of any or all of the persons and parties referred to in Clause 4.10; or
  - suffered or incurred or occasioned by the wilful default or bad faith of, or breach of contract by, the relevant person.
  - The Panel Secretary shall hold the benefit of Clause 4.10 as trustee.

### 5. Operation of the Panel

#### The Panel Chair

- 5.1 The Panel Chair shall be one of the twelve Panel Members. Nominations for Chair will be voted on by the Panel as such, and appointed by a simple majority of the Panel Members, informed by email to the Panel Secretary.
- 5.2 Where there are no nominations put forward for Chair, DNO parties will propose a Chair in order to allow the functioning of the Panel.
- 5.3 The Panel Chair will serve a 12 month term of office unless Clause 4.5 applies.
- 5.4 The Panel Chair may at any time be removed from the office of Panel Chair by a 60 per cent majority of the other Panel Members.
- 5.5 The Panel Chair shall preside at every meeting of the Panel at which he/she is present. If the Panel Chair is unable to be present at a meeting, he/she may nominate, by notice in writing to the Panel Secretary, another Panel Member (or his/her Alternate) to act as Panel Chair for that meeting. If neither the Panel Chair nor any person nominated by him/her in accordance with this Clause 4.2 is present at a Panel meeting, the Panel Members present may, by simple majority, appoint any one of their number to preside at that meeting.
- 5.6 The Panel Chair shall be entitled to vote in his/her capacity as a Panel Member.
- 5.7 The Panel Chair shall in no circumstances be entitled to an extra or casting vote.

#### The Panel Secretary

- 5.8 The first task of the Panel, once nominated will be to appoint a Panel Secretary and Code Administrator. Options for the role of Panel Secretary, Code Administrator and the budget to appoint them will be prepared by DNO Panel Members. Non DNO Panel Members will be entitled to provide views on the options but unless they agree to provide funding, will not have a vote on the appointment of the Panel Secretary.
- 5.9 The Panel Secretary shall be entitled to attend and speak (but not to vote) at Panel meetings.
- 5.10 The Panel Secretary's duties shall be to facilitate the operations of the Panel and in particular to:
  - attend to the requisition of meetings and serve the necessary notices;
  - maintain a register of names and addresses, from time to time, of the Panel Members, of any Alternate appointed by each Panel Member;
  - keep minutes of all meetings;
  - circulate all relevant notices, papers and minutes;
  - coordinate the modification process; and
  - establish working groups; and draft modification reports and consultation documents.
- 5.11 The Panel shall be responsible for ensuring that the Panel Secretary undertakes these duties.

### Meetings of the Panel

- 5.12 The Panel shall hold meetings at such times as it may decide but in any event shall meet at least once every three months. The venues for meetings shall be determined by the Panel Members.
- 5.13 No business shall be transacted at any meeting of the Panel unless a quorum is present at that meeting. The quorum for each Panel meeting shall be six Panel Members who are present and who have voting rights
- 5.14 The Panel may, subject to the other provisions of this code of practice, regulate the conduct of its meetings in a business-like manner. Details of all decisions shall be recorded and published as it sees fit.
- 5.15 Any Panel Member may, by written notice to the Panel Secretary:
- 5.15.1 request the requisition of an additional Panel meeting. Any such notice given to the Panel Secretary must contain a list of matters to be included in the agenda for the meeting. Following receipt of such a notice, the Panel Secretary shall proceed to convene the meeting within 20 Working Days provided a majority of the Panel are in agreement with the need for a meeting; and
  - 5.15.2 request the consideration of additional matters at a meeting for which notice has already been given. Provided such notice is given at least three Working Days before the date of the relevant meeting, the Panel Secretary shall amend the agenda for that meeting to include the additional matters.
- 5.16 Nothing shall prevent a meeting from being held by telephone or other technological means, so long as all the criteria regarding notice and minutes are met.

### Notice of Meetings

- 5.17 All meetings of the Panel shall be convened by the Panel Secretary on at least five Working Days' notice. Such notice (which may be given by email) must be given to the Panel Members (and any appointed Alternates) along with:
- any Authority representative
  - any Customer representative; and
  - any NERS representative.
- 5.18 The notice of each Panel meeting shall contain the time, date and venue of, and an agenda and any supporting papers for, the relevant meeting. The Panel Secretary shall circulate amendments to the agenda where necessary.
- 5.19 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a Panel meeting by, a person entitled to receive notice shall not invalidate the proceedings of that meeting.

### Representation and Voting

- 5.20 Each Panel Member shall be entitled to attend, and to speak and vote at, every meeting of the Panel. Voting can be undertaken outside the meeting via email to the Panel Secretary.

- 5.21 Any Panel Member shall be entitled to send as representative a named Alternate to attend a Panel meeting provided it gives the Panel Secretary two Working Days' notice in advance of such meeting. Such a representative shall be entitled to vote at the meeting.
- 5.22 The Panel will be entitled to vote on the establishment of Working Groups to develop potential modifications to this code of practice and on whether a modification to this code of practice should be recommended to the Authority for approval.
- 5.23 A vote of the Panel can produce one of three results:
- Proposal supported by a simple majority;
  - Proposal rejected by a simple majority; or
  - Proposal results in a split vote.

### Minutes of Panel Meetings

- 5.24 The Panel Secretary shall, as soon as practicable (and in any event within five Working Days) following each Panel meeting, circulate copies of the minutes of that meeting to each person who was entitled to receive a notice of that meeting.
- 5.25 If any Panel Member disagrees with any item of the minutes, he/she shall, within 10 Working Days of receipt of the minutes, notify the Panel Secretary of those items with which he/she disagrees, and the Panel Secretary shall incorporate those items upon which there is disagreement into the agenda for the next following meeting of the Panel, as the first item for resolution.
- 5.26 The Panel Secretary shall maintain a record of all resolutions voted on by the Panel, indicating how each Panel Member voted on each resolution, and shall make such record available on request to any party. Such a record of voting will be submitted to the Authority alongside the modification proposal.
- 5.27 A resolution in writing signed by or on behalf of all the Panel Members, or email from Panel members shall be as valid and effective as if it had been passed at a meeting of the Panel duly convened and held.

### Establishing Working Groups

- 5.28 For a Working Group to be established, a proposal for terms of reference must be submitted to the Panel Secretary for consideration by the Panel by any Interested Party. The Panel will then vote on whether the terms of reference provide a reasonable expectation that the Working Group will produce a modification which can better achieve the Relevant Objectives of this code of practice.
- 5.29 The Working Group will only be established if:
- 5.29.1 a simple majority the Panel agree that the establishment of a Working Group will lead to the development of a modification which has a reasonable expectation of better achieving the Relevant Objectives of this code of practice; or
- 5.29.2 a split vote of the Panel must have been made on whether the establishment of a Working Group will lead to the development of a modification which has a reasonable expectation of better achieving the Relevant Objectives of this code of practice.



- 5.29.3 Once established, each Working Group shall be subject to the written terms of reference voted on (or amended) by the Panel. No Working Group may further delegate any of its duties, powers and functions unless expressly authorised to do so by such terms of reference.
- 5.30 Each Working Group shall publish, on a website, details of that Working Group's:
- membership;
  - terms of reference;
  - timetable for business and meetings;
  - minutes of meetings; and
  - governance procedures.
- 5.31 The Working Group must consider whether the modification it develops better achieves the Relevant Objectives of this code of practice. At any time, the Working Group (by simple majority of members) can state to the Panel (in person or by email) that they no longer consider the modification to have a reasonable prospect of better achieving the Relevant Objectives of this code of practice. This request to the Panel, along with the reasons must be published on a website and the Panel's views and discussion must be published in the Panel meeting minutes.
- 5.32 Prior to submitting a modification report to the Panel for voting, a Working Group must publically consult on whether the modification better achieves the Relevant Objectives of this code of practice. This consultation must include a proposed implementation date.
- 5.33 Any public consultation under Clause 5.32, will identify the reasons for the modification and its implications for ICPs and Customers. The key points for consultation shall involve an evaluation of whether any modification would better achieves the Relevant Objectives of this code of practice. The consultation paper will be published on a website and provide sufficient time for response (this time not being less than 10 Working Days).
- 5.34 The Working group must assess all comments raised in the public consultation and demonstrate how those comments have been considered in the modification report which is sent to the Panel under Clause 5.36.
- 5.35 Where a Working Group considers that a modification concerns non-consequential issues, it can request that the Panel votes on whether a public consultation, under Clause 5.32 is required. Where the Panel votes unanimously that public consultation is not required then Clause 5.32 does not have affect. When the Panel takes such a decision, its reasons will be captured in the Panel meeting minutes and published on a website.
- 5.36 Following public consultation a Working Group will consider whether it wishes to continue progressing the modification. If it does wish to continue, it will need to produce a modification report which outlines the reason the modification better achieves the Objectives of this code of practice. The modification report will be submitted to the Panel for consideration under Clause 5.37.
- 5.37 The modification report must be submitted to the Panel Secretary at least 10 Working Days prior to a Panel meeting and must also be published on a website.



### Membership of Working Groups

- 5.38 Each Working Group shall be composed of such persons with experience and expertise suitable to the Working Group's remit, and who are willing to serve, as the Panel may direct. Each Working Group must have at least four members of whom at least one shall be a Panel Member. The Working Group shall be chaired by such person (the Working Group Chair) as the Panel may direct.
- 5.39 Before establishing each Working Group, the Panel shall invite (by such means as it considers appropriate) applications from Interested Parties who wish to serve on that Working Group. If the Working Group cannot meet the requirements of Clause 5.38 then it will not be established.
- 5.40 Once a Working Group is established, the Working Group Chair shall (unless the Panel otherwise directs) be entitled to admit such additional persons to serve on that Working Group as the Working Group Chair considers appropriate. The Panel may, at its discretion, subsequently remove any such additional persons from service on that Working Group.
- 5.41 The Authority, a Customer representative and a NERS representative shall be entitled to attend any Working Group meeting, and be entitled to speak (but not to vote) at that meeting. Any party shall be entitled to send a representative to attend and (at the Working Group Chair's invitation) speak (but in no circumstances vote) at any Working Group meeting.

### Duties of those Serving on Working Groups

- 5.42 Each Working Group shall act in a manner designed to develop a modification which better achieves the Relevant Objectives of this code of practice.
- 5.43 Those persons serving on a Working Group from time to time, when acting in that capacity, shall:
  - 5.43.1 act independently, not as a delegate when assessing proposals against the Relevant Objectives;
  - 5.43.2 exercise reasonable skill and care to the standard reasonably expected of a director of a company under the Companies Act 2006; and
  - 5.43.3 act in a manner designed to facilitate the performance by the Working Group of the duties delegated to it.
- 5.44 Unless the Panel otherwise directs, a person who is to serve on a Working Group shall not be appointed to that Working Group unless he has first confirmed in writing to the Code Administrator that he agrees to act in accordance with Clause 5.43.
- 5.45 Each Working Group must prepare a report ahead of each Panel meeting which sets out the progress made and likely timescales to bring a modification for voting. This report will be published on a website along with other Panel papers. The report should be submitted to the Panel Secretary at least five Working Days prior to the Panel meeting.

### Decisions of Working Groups

5.46 Resolutions of Working Groups shall not have binding effect unless the Panel has formally delegated the decision-making powers to the Working Group or has ratified the resolution in question.

### Panel voting on modifications

5.47 In order for a modification to be recommended to the Authority for approval, a simple majority of the Panel must support the view that the modification better achieves the Relevant Objectives of this code of practice.

5.48 Where there is a split vote on whether a modification better achieves the Relevant Objectives of this code of practice, the modification will still be submitted to the Authority for decision with no recommendation.

5.49 Where the a simple majority of the Panel rejects that modification better achieved the Objectives of this code of practice then it is sent to the Authority for decision but with a recommendation for rejection.

5.50 Where the Authority approves a modification, the amendments contained within that modification will be made to this code of practice. These changes will be effective from implementation date outlined in the modification proposal.

### Code Administrator

5.51 The DNO Panel Members (and other Panel Members who provide funding) may, from time to time, appoint and remove, or make arrangements for the appointment and removal of, any such person or persons (such person or persons to be known as the Code Administrator) as the Panel requires to assist:

- the Panel;
- the Panel Secretary; and/or
- any Working Group,

in the proper performance of its, his/her or their duties and responsibilities under this code of practice.

5.52 The Code Administrator shall perform the role of code administrator in respect of this code of practice. Accordingly, the Code Administrator shall (in addition to any other roles allocated to it under this code of practice):

5.52.1 from time to time, together with other code administrators, publish, review and (where appropriate) report to the Panel and the Authority on any proposed amendments to the Code Administration Code of Practice;

5.52.2 where the Authority approves any proposed amendments to the Code Administration Code of Practice, working together with other code administrators, amend the Code Administration Code of Practice in accordance with such approval;

5.52.3 periodically review and report to the Panel on whether the provisions of this Agreement are consistent with the Code Administration Code of Practice (to the extent relevant);

- 5.52.4 have regard to, and (to the extent relevant) act in a manner consistent with, the principles contained in the Code Administration Code of Practice; and
- 5.52.5 provide assistance (insofar as is reasonably practicable and on reasonable request) to parties (including, in particular, small participants) and (to the extent relevant) customer representatives that request the Code Administrator's assistance in relation to this code of practice; such assistance to include:
- drafting change proposals;
  - understanding the operation of this code of practice;
  - their involvement in, and representation during, the change proposal processes (including in respect of Panel or Working Group meetings); and
  - accessing information relating to change proposals.
- 5.52.6 The Panel shall be responsible for ensuring that the Code Administrator undertakes any responsibilities and duties that are either assigned to it under Clause 3.52 or ascribed to it in this code of practice. In particular, the Panel shall ensure that the arrangements under which the Code Administrator is appointed shall oblige the Code Administrator to undertake such duties and responsibilities on the same applicable terms as are provided for under this code of practice.
- 5.53 Any appointment by the Panel under Clause 5.51 shall be on such terms and conditions and in return for such remuneration as the Panel sees fit.
- 5.54 In no event shall the Code Administrator be an employee of any of the companies or organisations represented by Panel Members.

## **6. Costs of the Code Administrator and Panel Secretary**

### **Recovery of Costs**

- 6.1 The Panel shall be entitled to recover, in accordance with the procedures set out in this Clause 6, all the reasonable costs properly incurred by:
- the Panel;
  - the Panel Secretary;
  - any Working Group; and
  - Code Administrator

in performing their respective duties, powers and functions under this code of practice (the Recoverable Costs), which may include their general administration costs, any costs and expenses of any professional advisers properly retained by them, or costs of holding meetings. Recoverable Costs shall not include any payment to Panel Members, or those who serve on Working Groups in respect of their time and any costs and expenses they incur in travelling to meetings.

### **Preparation of a Budget**

- 6.2 In respect of:
- 6.2.1 the Financial Year ending on 31 March 2016, the DNO Parties shall, as soon as reasonably practicable following the date on which this code of practice has been approved by the Authority; and

- 6.2.2 each subsequent Financial Year, the Panel shall (not earlier than 60, nor later than 30, Working Days before the commencement of that Financial Year),
- 6.2.3 prepare and circulate to all the Panel Members a budget for the financial year which in the reasonable opinion of the Panel is sufficient to undertake the activities prescribed in the code of practice.

### **Approval of Budgets**

- 6.3 The budget for the Financial Year ending on 31 March 2016 and in each subsequent Financial Year will need to have the agreement of DNO parties. Once this agreement has been communicated to the Panel Secretary via email, then the budget becomes the Approved Budget for the Financial Year.

### **Amendments to Budgets**

- 6.4 The Approved Budget relating to each Financial Year may be amended by DNO parties, from time to time.

### **Payment of Costs Incurred**

- 6.5 Where the Panel, the Panel Secretary, any Working Group, the Code Administrator wishes to recover any cost or expense under this Clause 6, details of the cost or expense in question shall be submitted to the DNO Parties (or a named person approved by the Panel) for approval. Such cost or expense shall only be approved to the extent that it falls within a category of Recoverable Cost provided for in an Approved Budget, and only if such cost or expense:
  - 6.5.1 will not (in aggregate with those costs and expenses previously approved for the Financial Year, and those likely to be approved for the remainder of the Financial Year) cause the total budget to be exceeded to a material extent; and
  - 6.5.2 is submitted in a timely manner (and in any event on or before the 20th Working Day following the end of the relevant Financial Year). Once approved, details of the cost or expense shall be submitted to the Code Administrator for payment.
  - 6.5.3 Upon receipt of an invoice or other statement relating to costs or expenses that have been approved in accordance with Clause 6.5, the Code Administrator shall pay the amount stated in such invoice or other statement (together with VAT thereon, if applicable) to the person named in such invoice or other statement.