

EU Exit – Implications for industry codes

1. Background

Since August 2017, industry Code Administrators have been working alongside Ofgem to undertake a trawl of Codes and licences. This activity is being carried out to ensure that the regulatory framework is fit for purpose after the United Kingdom exits from the European Union on 29th March 2019. The workgroup established to complete this exercise met most recently on 26th January 2018, where Ofgem set out its proposed next steps for the project.

2. Workshop on EU exit preparations

At the workshop meeting on 26th January 2018, Ofgem presented indicative findings from joint analysis of licence conditions and industry Code trawls, and presented its expectations of how any necessary modifications should be delivered.

Ofgem considered that there are no provisions within licence or Code which are likely to prove legally inoperable on exit day – that is, there will be no circumstance where an entire condition, licence or Code provision would fail from a legal perspective, resulting in a regulatory gap. This assumes that all EU law will be either converted to an equivalent domestic law or retained as a domestic law on exit day, as proposed in the EU (Withdrawal) Bill 2017.

However, Code modifications will be required to avoid confusing outcomes. Within the iGT UNC, this includes examples where Code objectives refer to compliance with EU law, and where there are procedures for Ofgem initiated industry Code modifications to secure compliance with EU law. We believe that the impacts on the iGT UNC are minor, and may even meet the criteria for self-governance, as any changes will be to align the Code with licence provisions. Impacts on other Codes may be greater – for example, where there are Code references to certification and exemption regimes, cross-border cooperation, or EU information gathering powers.

Ofgem presented a proposed compressed modification process for required changes, given the timeframe before EU exit, and given the requirement to facilitate both licence and code changes. Rather than completing the licence modification process before commencing changes to codes – as per ordinary circumstances – Ofgem has proposed running the two modification processes concurrently.

3. Ofgem consultation

The key output from the workshop was the publication of an industry consultation on Ofgem's proposed way forward, by way of an open letter which was distributed on 8th February 2018. The letter can be found on [the Ofgem website](#), alongside the detailed initial analysis. The letter seeks stakeholder views on whether Ofgem has identified all interactions between EU law, licences and code provisions, and whether parties agree with Ofgem's analysis and proposed actions.

4. Recommendation

The iGT UNC Panel is invited to **NOTE** the contents of this paper.

Paul Rocke

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