

Gas Industry Co

Guidelines for the management of proposed changes to gas governance rules and regulations

Introduction

The development of these guidelines had been prompted by the anticipated need to deal with proposals for rule changes for Downstream Reconciliation, but they have been framed so that they apply to proposed changes for any gas governance rules or regulations. For simplicity, unless otherwise specified in this document, references to rules include references to regulations.

Initiation of proposed rule changes

Proposals for rule changes can be initiated in a number of ways, including:

- as an outcome of consultation processes carried out for other purposes, eg for the development of determinations and notices required under rules;
- to remedy an acknowledged gap in rules or a need to cover unanticipated circumstances, most particularly, but not exclusively, as a result of exemptions put in place by Gas Industry Co to provide a temporary remedy for such an acknowledged gap;
- through a general policy review initiated by Gas Industry Co; and
- by the submission of a rule change proposal by an industry participant.

General guidelines and constraints

Rule changes can occur only in accordance with the requirements and processes set out in the Gas Act. In order to maximise the efficiency of this process:

- In general, individual rule change proposals will be accumulated until there are sufficient proposals in hand to justify initiating the rule change process, but, budget constraints permitting, there will usually not be a delay of longer than six to nine months from the receipt of a proposal able to be actioned (see below) and the initiation of the rule change process. (As an example, it is known that a number of relatively straightforward changes have been proposed for the Gas (Downstream Reconciliation) Rules 2008 and the intention is to initiate a process for these changes no later than April 2009).
- Proposals for rule changes will be processed on an individual basis only if there is a clear need to do so or if there are significant benefits so that delay would create a significant disbenefit or the benefit would otherwise not be obtained. The criterion of 'need' will generally be met if the change is urgently required to enable rules to operate effectively, or to remedy an unanticipated, unfair and significant disadvantage to some participants.
- Notwithstanding the above, it will be open to industry participants proposing a rule change to suggest and justify an alternative timeline, and Gas Industry Co will consult informally with the industry before making a decision on this.

- In instances where a major policy review is carried out, this will include the initiation of a rule change process for rule change proposals resulting from the review, ie the six to nine-month delay will not apply.

As set out below, proposed rule changes can be progressed under the Gas Act through the full process or a simplified process. As far as possible, rule changes of these two types will be kept in separate packages, but this may not always be possible.

Proposals for rule changes submitted by industry participants will not be automatically accepted into the rule change process. First they will be subjected to a preliminary review by Gas Industry Co, intended to identify and set aside proposals which do not meet any or all of the following criteria:

- the proposal must be for a matter that is already covered to some degree by the rules or by exemptions to the rules, ie an ad hoc proposal cannot be used to introduce a completely new matter;
- the proposal must be consistent with the purpose of the Gas Act and the rules;
- the proposal must be legally possible, eg a proposal that contravenes or seeks to change provisions in the Gas Act could not be accepted;
- the proposal must fall within the empowering provisions of the Gas Act; and
- the proposal must be of reasonably wide applicability to participants or deal with a matter of principle, ie a proposal which purely serves the commercial interest of the participant making the proposal is unlikely to be accepted.

Proposals that are set aside will still be listed in the register, noting whether they have been deferred to the next major policy review or declined because they are unlawful.

Processing of rule change proposals under the Gas Act

Proposals will be processed and considered in accordance with the provisions of the Gas Act. The Gas Act provides for two sets of circumstances in this regard.

Unless a rule change is minor or will not substantially adversely impact upon the interests of any person, section 43N(1) of the Act must be applied. In particular:

- the proposed rule changes must meet the test in s43N(1)(c) which is to confirm that the objective of the rule change cannot be reasonably met by other means than through a rule change;
- in accordance with section 43N(1) of the Gas Act, proposed rule changes will be set out in a statement of proposal (SOP) which identifies all of the reasonably practicable options for achieving the objective of the rule change, and assesses the options by looking at:
 - the benefits and costs of each option;
 - the extent to which the objective of the rule change would be promoted or achieved for each option; and

- any other matters considered to be relevant;
- as required by section 43L(1) of the Gas Act, the SOP will then be issued to all interested and potentially affected parties, so they have the opportunity to make submissions. As required by the Gas Act, consultation will be full and robust, irrespective of whether the rule change is individual or part of a package. The minimum consultation period will be two weeks and can be expected to be up to six weeks for a substantial package resulting from a policy review; and
- submissions will be considered before a recommendation for changes to the rules is made to the Minister of Energy.

For rule changes that are minor and will not have a substantial adverse impact on the interests of persons, section 43N(3) of the Act provides for a simplified process to apply, which removes the need to comply with section 43N(1) of the Act. However, consultation will still need to occur in accordance with section 43L(1) of the Act. This simplified process will be implemented by issuing a SOP, but restricting it to:

- a statement of the rule changes proposed;
- a brief description of why the changes are needed and what effect they will have; and
- any relevant information on implementation, eg timing, which allocation participants will be affected and how.

There is also provision in s43P of the Act for making urgent rule changes if Gas Industry Co is satisfied that it is necessary or desirable in the public interest to do so. Urgent rule changes do not require consultation prior to making the change, but the normal process must be followed within six months to allow the Minister to decide whether to revoke, replace or amend the urgently made rule change.

Process

The first part of the process (Step 1) covers proposals put forward by industry participants. The second part of the process (Steps 2 to 7) covers all proposals for rule changes. If the proposals for rule changes have been generated by a general policy review then this will have its own process, involving consultation with industry participants, before getting to Step 2.

Step 1:	Proposal received by GIC and assessed against the criteria set out above. If the proposal does not meet the criteria, the participant is so advised. the proposal is placed on the rule change register in the deferred/declined category and the reasons given. If the proposal is acceptable against the criteria, the participant is so advised and the proposal is placed on the rule change register for inclusion in the next package to be considered, or for individual consideration if this is considered to be justified. In either case, reasons will be given.
Step 2:	Proposed rule changes may be discussed with MED to ensure there are no higher-level issues to consider as a part of the rule change process.
Step 3A:	For rule changes other than those that are minor and do not have a substantial impact, assessment will be carried out as required by section 43N(1) of the Act.

Step 3B:	A draft statement of proposal (SOP) is prepared, incorporating an assessment as required by section 43(1), which is then approved by the GIC Board and released to industry participants for submissions.
Step 4:	Usually, between two and six weeks will be allowed for submissions to be made. The shorter period will apply to proposals that accord with the criteria in the Act for a simplified process to apply. Submissions will be analysed and typically, both the analysis of submissions and the submissions will be made available to participants where there are no confidentiality or other concerns with disclosure.
Step 5:	Subject to the outcome of the submissions process, a recommendation to the Minister will be prepared for approval by the GIC Board, and forwarded to the Minister. The industry will be so advised and the status of the rule changes concerned updated on the register
Step 6:	The Minister will consider the proposal and in the case of rules made under s43F, the Minister has 90 days to either accept or reject the recommendation. If approved, the rule changes will be published in the Gazette. For regulations, the changes will need to be approved by PCO and Cabinet prior to publication in the Gazette.
Step 7:	After 28 days, the rule changes take effect.

The total duration between the start of step 2 and the completion of step 7 may be six to nine months, or more. This takes into account the duration of the legislative process including that, for recommendations under s43F (which is restricted to defined topics), the Minister has 90 days to accept or decline the recommendation.

Register

As indicated by the process above, a register of rule change proposals will be maintained on the Gas Industry Co website. There will be a separate register for each set of rules. The registers will include the following information:

Date of proposal:

Initiated by:

Title and brief description:

Reason for proposal:

Initial status on register: (Accepted for individual initiation and when/ Accepted for initiation in next package/Deferred for next major policy review/Declined) and the reasons for the decision on initial status.

Current status:

Rule change outcome:

The registers will be periodically edited to remove items on which action is completed, but the full registers will be archived by Gas Industry Co so that the information can be retrieved if necessary.