



Final Modification Report – Send Back Process

Modification Rules	Comments on Process
<p>9.3 Consultation – Final Modification Report</p> <p>9.3.3 Upon receipt of the final Modification Report under paragraph 9.3.1 or 9.3.2 the Modification Panel shall assess whether the final Modification Report complies with paragraph 9.4, and if it is compliant, shall:</p> <p>(a) determine whether or not to recommend the implementation of the Modification Proposal to the Authority; and</p> <p>(b) submit to the Authority its determination under paragraph 9.3.3(a) and the factors which (in its opinion), justify its determination and which shall include details of the Modification Panel's reasoning for determining whether or not the Modification Proposal better facilitates achievement of the Relevant Objectives or not; and</p> <p>instruct the Secretary to send the final Modification Report, together with its recommendation to the Authority, to the Code Administrator.</p>	<p>The Modification Panel provides its views and recommendations on the Final Modification Report (FMR). This information is recorded in the FMR and sent to Ofgem for their decision.</p>
<p>9.3 Consultation – Final Modification Report</p> <p>9.3.8 Where a Modification Report is received by the Authority, the Authority, pursuant to Standard Special Condition A11, may direct that the Modification Report, including any legal text, should be amended and resubmitted and where it makes such a direction:</p> <p>(a) the Secretary shall notify each Transporter, each User, each Member, each Third Party Participant and each Non-Code Party (if any) that the Authority is of such opinion (and the Authority's reasons for making such direction);</p> <p>(b) the Modification Panel shall discuss the Modification Report at the next meeting of the Modification Panel, shall instruct the Code Administrator to amend the Modification</p>	<p>Ofgem may request the Panel to reconsider an FMR and legal text.</p> <p>The JO publish Ofgems letter, notify the industry and add the FMR to the next panel agenda.</p> <p>The Panel then consider the FMR and legal text and can agree amendments to the legal text, timetable, analysis and supporting information based on Ofgems request.</p> <p>It should be noted that the Solution should only be amended by the proposer and not by the JO at the request of Panel. This may be required to allow amendments to the legal text and creates an issue/conflict see Modification Rules 6.5 below.</p> <p>issue/conflict see Modification Rules 6.5 below.</p>

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<p>Report (including in respect of the legal text, the timetable, analysis or supporting information) in accordance with the direction of the Authority and decide on what steps to take, in accordance with paragraph 7.2 and shall send the Authority a revised Modification Report as soon as reasonably practicable (taking into account the complexity, importance and urgency of the Modification Proposal).</p>	<p>The Panel also need to consider what steps should be taken consider the FMR and agree what changes are required. See Modification Rules 7.2 below – should this require the FMR to be sent to Workgroup and/or Consultation</p> <p>Once Panel has considered the amendments the FMR should be returned to Ofgem.</p>
<p>7.2 Discussion of Modification Proposals</p> <p>7.2.3 (b) a Modification Proposal:</p> <ul style="list-style-type: none"> . (i) subject to paragraph 7.2.3(d), should proceed to Consultation in accordance with paragraph 7.3; or . (ii) should be referred to a Workgroup for Workgroup Assessment in accordance with paragraph 7.5 (and the Modification Panel may determine the Terms of Reference for such work (including terms as to the identity of any third parties to be consulted) and the date upon which it requires the Workgroup to submit its Workgroup Report); or . (iii) should be deferred to a subsequent meeting of the Modification Panel for further discussion; . (iv) be implemented, subject to unanimous determination under 7.2.3(a)(ii) that Fast Track Self-Governance Criteria are satisfied and subject to Panel determining unanimously that the Modification Proposal be implemented. 	<p>When considering the FMR and deciding what amendments should be made, Panel may decide that it would be more beneficial to seek a view from a Workgroup or send the FMR out for consultation.</p> <p>Panel may also defer consideration e.g. while waiting for amendments to legal text before considering what actions should follow.</p>
<p>6.5 Withdrawal or variation of Modification Proposals</p>	<p>Should the amendments to the FMR or Legal Text require an amendment to the Solution, the proposer would be required to submit a Variation Request to Panel as the modification has previously been</p>

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<p>6.5.1 A Proposer may:</p> <p>(c) subject to paragraphs 6.4, 6.5.7 and 12.4, request a variation to a Modification Proposal (“variation request”), at any time after the Modification Panel has determined to proceed to Consultation pursuant to paragraph 7.2.3(b)(i) and before the Modification Panel has made a determination in respect of such Modification Proposal pursuant to paragraph 9.3.3(a), by notice to the Secretary, and any such variation request shall contain a description of the nature of the variation</p>	<p>issued to consultation. However, modifications cannot be varied after the Panel has made its recommendations on implementation and sent the FMR to Ofgem for decision.</p> <p>Note:</p> <p>Recently, Modifications that had been sent back were varied by requesting a disapplication of the Modification Rules. This requires consultation to consider industry support or opposition and therefore adds delay to the process.</p> <p>It is proposed that where an FMR is sent back by Ofgem, the proposer should be allowed to raise a variation request where an amendment to the solution is required.</p> <p>This allows Panel to test the materiality of the variation and what steps should be followed under 7.2 above without the need to delay the process by undertaking a consultation to allow the rules to be disappplied.</p>
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Previously, Modifications that had been sent back which required variation by the Proposer could only be varied by requesting a disapplication of the Modification Rules. This requires consultation to consider industry support or opposition and therefore adds delay to the process.

It is agreed that where an FMR is sent back by Ofgem, the proposer should be allowed to raise a variation request where an amendment to the solution is required.

This allows Panel to test the materiality of the variation and what steps should be followed under 7.2 above without the need to delay the process by undertaking a consultation to allow the rules to be disappplied

The Modification Panel approved the publication and use of this Send Back process at its meeting on 15 May 2014.