

UNC Modification	At what stage is this document in the process?
<h1 data-bbox="134 322 657 416">UNC 0839:</h1> <h2 data-bbox="134 450 1101 591">Revision of the Modification Panel Membership Cessation Provisions</h2>	<div data-bbox="1209 309 1473 622"> <div data-bbox="1209 309 1473 383">01 Modification</div> <div data-bbox="1209 389 1473 463">02 Workgroup Report</div> <div data-bbox="1209 470 1473 544">03 Draft Modification Report</div> <div data-bbox="1209 551 1473 624">04 Final Modification Report</div> </div>
<p data-bbox="129 680 507 719">Purpose of Modification:</p> <p data-bbox="129 743 1469 875">To revise the Modification Rules to mandate that where a Member of the Modification Panel ceases to be employed or engaged by the same specified entity as at the time of nomination, that Member will cease to be a Member of the UNC Modification Panel</p>	
<p data-bbox="129 922 309 960">Next Steps:</p> <p data-bbox="129 976 1458 1102">The Workgroup recommends that this Modification should not be subject to Self-Governance. The Panel will consider this Workgroup Report on 15 June 2023. The Panel will consider the recommendations and determine the appropriate next steps.</p>	
<p data-bbox="129 1200 400 1238">Impacted Parties:</p> <p data-bbox="129 1254 1469 1328">High: Current and prospective Members of the Modification Panel and the entity, or constituency, which that Member represents, or will represent.</p> <p data-bbox="129 1344 287 1382">Low: None</p> <p data-bbox="129 1397 842 1435">None: All parties other than those identified above</p>	
<p data-bbox="129 1478 389 1516">Impacted Codes:</p> <p data-bbox="129 1541 209 1579">None</p>	

1 Summary

What

The UNC Modification Panel comprises up to fourteen Voting Members and four non-voting Members. All but one of these eighteen Members (i.e. fourteen Voting Members and three non-voting Members) are required to represent an entity (or entity type as part of a constituency).

These entities/constituencies are:

- Transporters
- Users (Relevant Shipper or Trader User)
- Ofgem
- Terminal Operators
- Consumers
- Independent Suppliers
- Independent Gas Transporters.

Why

Whilst the Modification Rules set out the entity or constituency that each Member is required to represent (Modification Rules Paragraph 3.2.1), *within a period of appointment* there are no explicit rules setting out the consequence for an existing Member who, due to a change in circumstances, is no longer employed or engaged by the same specified entity as at the time of nomination.

How

It is proposed that, within a period of appointment, where a Member of the Modification Panel no longer represents the same specified entity as at the time of nomination, the Member is required (as soon as is practicable) to inform the Secretary of such change in circumstances and the date from which this change took, or will, take effect.

It is proposed that as a consequence of this (or where the Secretary is otherwise made aware of such change in circumstances), that Member shall cease to be a Member of the Modification Panel with effect from the latter of:

- a) the date from which that Member will no longer be employed or engaged by the relevant entity; and
- b) the day following the date the Secretary is informed, or made aware, of such change in circumstances.

2 Governance

Justification for Self-Governance, Authority Direction or Urgency

Application of Self-Governance procedures is sought because the changes proposed are unlikely to have a material effect on the Uniform Network Code governance procedures (nor any of the other aspects described in the Self-Governance criteria).

This is because the nature of the proposed change is to provide for the resolution of a scenario that is not currently explicitly addressed in the Modification Rules. The proposed resolution is entirely consistent with the existing ‘representative’ requirement for relevant individual Members and therefore represents a non-material impact on the governance procedures.

The ‘[UNC – Self Governance Modifications: Guidance for Proposers](#)’ sets out that proposed changes to the UNC modification procedures will only be sufficiently material (such as to require Authority Direction) where the change:

- affects the rights of the industry to be engaged in proposed changes to the UNC; or
- changes the User or Transporter representation obligations; or
- changes any Authority decision-making capacity.

We believe that as the Proposal seeks to effectively **maintain** the existing User and Transporter representation obligations and the existing rights of the industry to be engaged in proposed changes to the UNC, the application of self-governance procedures is appropriate.

Workgroup’s Assessment

Following discussion at Workgroup in March 2023 the consensus was that this Modification should be considered a material change and subject to Authority Direction due to it introducing changes to the User or Transporter representation obligations. This was also the decision reached by Panel when the Modification was introduced at the March 2023 UNC Modification Panel with there being no overall majority in favour of Self Governance.

3 Why Change?

As set out in section 3.2 of the Modification Rules, the Modification Panel comprises up to fourteen Voting Members and four non-voting Members as follows:

Voting Members

Representative	Quantity	Appointed by
Transporters	5	Transporters
Users	If appointed, up to 6	Designated Person
Consumers	If appointed, up to 2	Citizens Advice or Citizens Advice Scotland (the appointee being an employee, representative, officer or contractor of the Citizens Advice or Citizens Advice Scotland) (1); and

		the Authority (the appointee being an individual, or an employee, representative or officer of a corporate entity or other organisation, other than the Authority) (1)
Independent Gas Transporters	If appointed, 1	Independent Networks Association

Non-voting Members

The Panel Chairperson, and the following Representatives:

Representative	Quantity	Appointed by
Ofgem	if appointed, 1	The Authority
Terminal Operators	if appointed, 1	Terminal Operators
Independent Suppliers	if appointed, 1	Designated Person

Therefore, all Members (aside from the Chairperson) are required to be a Represent a specific entity (or entity type, as part of a constituency).

Whilst the Modification Rules set out the entity, or entity type, that each Member is required to represent, within a period of appointment there are no explicit rules setting out the consequence for an existing Member who, due to a change in circumstances, is no longer employed or engaged by the same specified entity as at the time of nomination.

A Voting Member is any Transporters' Representative, any Users' Representative, the Independent Gas Transporters' Representative and any Consumers' Representative and are therefore expected to represent the views of either Transporters, Users (relevant Shipper or Trader User), Independent Transporter or Consumer. If a Voting Member is no longer employed or engaged by any of the entities listed above, they are no longer in a position to represent them.

The Modification Rules provide for '*Retirement*' (section 4.2) which is principally concerned with arrangements at the conclusion of Appointment Periods. Section 4.4 deals with '*Ceasing to be a Member*' and currently provides for cessation in the following circumstances:

- voluntary cessation by the Member; or
- where a Voting Member does not comply with certain meeting attendance requirements; or
- where a Voting Member holds a Conflicting Appointment

Accordingly, as the latter deals with 'mid-appointment term' issues, the Proposer is of the opinion that for Members other than the Chairperson the '*Ceasing to be a Member*' provisions should be modified to explicitly deal with instances where due to a change in circumstances, a Member is no longer employed or engaged by the same specified entity as at the time of nomination.

Arguably, the arrangements *implicitly* deal with this in that all such Members must represent an entity or a constituency and therefore where such a Member ceases to be employed or engaged by the same specified entity as at the time of nomination (and therefore is no longer able to effectively represent the relevant entity or constituency), their Membership of the Modification Panel is 'outwith' the existing rules (even if this is only for a brief interim period pending employment/engagement with an alternative entity). However, as a requirement for consequential cessation of Membership is only implicit, we believe that there is a defect in the arrangements which would benefit from explicit additional rules to address this uncertainty.

It is worthy of note that arrangements for the Data Services Contract (DSC) Committees do provide an explicit outcome for such change of circumstances in the case of Shipper Users. In this case, General Terms D, Annex D-2 (Committee Representatives) Section 5.2 provides that *“In the event a Shipper User Representative who when nominated was employed or engaged by a Shipper User ceases to be so employed or engaged by the Shipper User, the Shipper User Representative shall be deemed to retire, and it shall be the responsibility of the relevant Shipper User to notify the Committee Secretary of the Shipper User Representative's effective date of retirement”*.

Accordingly, our proposed approach is to provide for an equivalent outcome for all Members of the Modification Panel who are required to represent an entity (or entity type as part of a constituency).

Re-Engagement / Re-Employment Within the Same Constituency

In the case of Membership to represent a constituency, whilst it is entirely plausible that a former Member may be subsequently engaged by an alternative entity within the same constituency (with no time gap between employments/engagements), it is nevertheless the case that each constituency has a specified person or entity responsible for the appointment of specified Members of the Modification Panel.

Accordingly, as opposed to making assumptions regarding the relevant persons ongoing suitability to remain a Member in these circumstances, in this event, we believe the optimal approach is to enforce cessation of membership and allow the person or entity responsible for appointment to identify a replacement (which may indeed be the same person, in this case employed or engaged by a different entity).

4 Code Specific Matters

Reference Documents

[UNC Modification Rules](#)

Knowledge/Skills

Knowledge of the existing UNC governance arrangements would be beneficial.

5 Solution

It is proposed that the existing ‘Ceasing to be a Member’ provisions of the UNC Modification Rules (as set out in Section 4.4 of the Modification Rules) are revised to reflect the following:

- within a period of appointment, where (due to a change in circumstances) a Member of the Modification Panel (other than the Chairperson) is no longer employed or engaged by the same entity as at the time of nomination, the Member is required to inform the Secretary of such change in circumstances (and the date from which this change took, or will take, effect) as soon as practicable; and
- as a consequence of the above, (or where the Secretary is otherwise made aware of such change in circumstances), that Member shall cease to be a Member of the Modification Panel with effect from the latter of:
 - (a) the date from which that Member will no longer be employed or engaged by the specified entity; and
 - (b) the day following the date the Secretary is informed, or made aware, of such change in circumstances.

6 Impacts & Other Considerations

Does this Modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

No

Consumer Impacts

Implementation of the change will ensure that Consumer Representatives will continue to comply with the requirements set out section 3.8 of the Modification Rules i.e. that the two Representatives are (and continue to be):

- an employee, representative, officer or contractor of Citizens Advice or Citizens Advice Scotland (as appointed by Citizens Advice or Citizens Advice Scotland); and
- an individual, or an employee, representative or officer of a corporate entity or other organisation, other than the Authority (as appointed by the Authority).

What is the current consumer experience and what would the new consumer experience be?

Whilst no specific benefits are detailed below, the change is expected to ensure maintenance of the Consumers current experience in terms of ensuring appropriate consumer representation on the Modification Panel.

Impact of the change on Consumer Benefit Areas:	
Area	Identified impact
Improved safety and reliability No impact expected	None
Lower bills than would otherwise be the case No impact expected	None
Reduced environmental damage No impact expected	None
Improved quality of service No impact expected	None
Benefits for society as a whole No impact expected	None

Cross-Code Impacts

In addition to alignment with the arrangements for membership of DSC Committees, the approach advocated by this Proposal also reflects that adopted for the iGT UNC Modification Panel. The iGT Uniform Network Code, Part L – Modification Rules states:

5.9 A Member shall cease to be a Member if:

- (c) the Member ceases to be in the employment of the IGT UNC Operator or Pipeline User, or an affiliate of the IGT UNC Operator or Pipeline User, that they were employed by when appointed...

EU Code Impacts

None.

Central Systems Impacts

None.

Rough Order of Magnitude (ROM) Assessment *(Workgroup assessment of costs & lead times)*

Cost estimate from CDSP	N/A
Insert Subheading here	N/A

Performance Assurance Considerations

There are no performance assurance considerations

Initial Representations

None Received

Panel Questions

1. What happens if a representative changes company but still represents the same constituency?

The Proposer confirmed that under this Modification the representative would cease to be a UNC Panel Member once their employment/engagement came to an end regardless of whether they gained employment/engagement with another User in the same constituency. However, the individual could then be nominated again, under their new employer, on the condition that the nominating criteria were met as per the UNC Modification Rules (n.b. The nomination could occur in the same Gas Year).

Workgroup agreed with the proposer at the 22 May 2023 workgroup meeting.

2. Consider how this is covered in other Codes, particularly the iGT UNC

Both the DSC (GT section D Annex D-2) and IGT-UNC (part L 5.9) have specific clauses that address the scenario where a Shipper User Representative ceases to be employed or engaged by the User:

UNC GTD Annex D-2

(5.2) In the event a Shipper User Representative who when nominated was employed or engaged by a Shipper User ceases to be so employed or engaged by the Shipper User, the Shipper User Representative shall be deemed to retire, and it shall be the responsibility of the relevant Shipper User to notify the Committee Secretary of the Shipper User Representative's effective date of retirement.

IGT-UNC (Part L 5.9)

(c) the Member ceases to be in the employment of the IGT UNC Operator or Pipeline User, or an affiliate of the IGT UNC Operator or Pipeline User, that they were employed by when appointed under Clause 4.5 or 4.6 of Section L.

The Proposer pointed out that this Modification would bring the UNC in line with both of these Codes.

Workgroup had nothing further to add.

Workgroup Impact Assessment

A Workgroup Participant referred to *Modification 0656 - Changes to Modification Panel arrangements* which was implemented in 2018 and introduced a conflict of interest clause and asked what issue this Modification was attempting to solve that was different from Modification 0656. The Proposer explained that this Modification merely seeks to address the issue of a Member who is no longer employed/engaged by the entity as at the time of nomination.

The Workgroup discussed how employment status could equal/demonstrate competency and ability to represent their constituency. There was a debate around how a Panel representative could represent their constituency when a User (Shipper or Trader) no longer employs them, and whether it would be expected that they would have to demonstrate how they could do this. For fairness, would you have to ‘test’ the competency of all Panel members to be able to demonstrate they represent their constituency or is competency assumed as they are still employed/engaged by their nominating party.

A workgroup participant raised concern about linking employment to competency. The Proposer pointed out the following clause:

General Terms C – Interpretation

2 INTERPRETATION

2.9 Miscellaneous

2.9.5 A reference in the context of any provision of the Code to a “representative” of any person is a reference to any director, officer or employee of that person or any agent, consultant or contractor appointed or engaged by that person for purposes connected with the subject matter of the relevant provision of the Code.

It was noted that this Modification does not reference competency.

Some Workgroup Participants agreed that it would be difficult to represent your constituency if not employed by a User, whereas other Workgroup Participants disagreed and said that there are other ways of being able to demonstrate you represent your constituency.

The Proposer referred to section 3.2.2 of the Modification Rules:

It is expected that each Voting Member shall, as appropriate, represent and inform the Modification Panel of the views of that Member’s appointor (or appointors) in relation to Modification Proposals and Requests.

Discussions around knowledge and access to information also took place, specifically questioning at what point someone’s knowledge becomes “old” if they cease to be employed by a User and does their ability to represent their constituency and/or their appointor reduce over time. A question was raised around whether being a full-time, part-time or contract employee made a difference to the individual’s ability to represent their constituency/appointor. It was noted that this would be the responsibility of the nominating party at the time they nominate the individual to assess their ability to be able to effectively represent their constituency and appointor and provide relevant views.

A Workgroup Participant raised a question about the difference between appointor and constituency.

Some Workgroup Participants agreed that this Modification supports bringing consistency across Industry Codes and is therefore a strong argument for change as it brings clarity to this area.

The Proposer pointed out that the change is not retrospective and there is an implicit onus on the Secretary to confirm the change in employment status. Legal Text now ensures that the Secretary takes such steps as are reasonable in the circumstances and is satisfied as to the accuracy of such information it has been provided with.

The Proposer's view is to limit the Modification Proposal to the objective question of whether the member is still employed or engaged by the same entity as at the time of nomination. Competency of otherwise is a subjective opinion hence the Proposer does not wish to include it in this Modification.

The Workgroup was satisfied that the Modification Rules specified what was required of Panel members under 3.2.2 (see above).

7 Relevant Objectives

Impact of the Modification on the Transporters' Relevant Objectives:	
Relevant Objective	Identified impact
a) Efficient and economic operation of the pipe-line system.	None
b) Coordinated, efficient and economic operation of (i) the combined pipe-line system, and/ or (ii) the pipe-line system of one or more other relevant gas transporters.	None
c) Efficient discharge of the licensee's obligations.	None
d) Securing of effective competition: (i) between relevant shippers; (ii) between relevant suppliers; and/or (iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	None
e) Provision of reasonable economic incentives for relevant suppliers to secure that the domestic customer supply security standards... are satisfied as respects the availability of gas to their domestic customers.	None
f) Promotion of efficiency in the implementation and administration of the Code.	Positive
g) 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.	None

Proposer's view:

Clarification of the arrangements where a Member of the Modification Panel ceases to be employed or engaged by the same specified entity as at the time of nomination better facilitates the objective of the promotion of

efficiency in the implementation and administration of the Code by adding the clarity which is absent under the current rules.

Workgroup view:

Some Workgroup Participants disagreed, stating that the changes introduced as part of Modification 0656 address this and believe that this Modification restricts the ability to access Industry expertise. Modification 0656 did not want to be overly restrictive.

A Workgroup Participant supported the Proposer's view and also noted that this Modification covers the scenario where, as a result of a change in employment, your ability to represent is changed.

A Workgroup Participant noted that membership of the Panel is limited to a maximum period of 2 years and expressed concern as to whether someone's knowledge/competency could reduce in that time which meant they would not be able to discharge their role.

The Workgroup acknowledge that this Modification does not address competency. The Proposer pointed out that this Modification addresses employment/engagement status only.

8 Implementation

Implementation should be as soon as possible following Authority Direction.

9 Legal Text

Workgroup Assessment

The Workgroup considered the Legal Text on 17 April 2023 and 22 May 2023 and is satisfied that it meets the intent of the Solution.

Text

[0839 - Revision of the Modification Panel Membership Cessation Provisions | Joint Office of Gas Transporters \(gasgovernance.co.uk\)](#)

10 Recommendations

Workgroup's Recommendation to Panel

The Workgroup asks Panel to agree that:

- This Modification should be subject to Authority Direction.
- This Modification should proceed to consultation.