

Draft Modification Report
Specific Amendments to the Modification Rules
Modification Reference Number 0008(0731)

Version 2.0

This Draft Modification Report is made pursuant to Rule 7.3 of the Modification Rules and follows the format required under Rule 9.6.

1. The Modification Proposal

In the Justification section, the Proposer referred to the work of the Governance Workstream on the issues raised by Modification Proposal 0716. the Proposer suggested that Workstream members had reached the following conclusions on where changes should be made to Network Code Governance.

1. Modification Panel

Giving the Panel, rather than Transco alone, more decision making in the operation of the governance regime.

Proposals include:

- The introduction of a User Vice Chairman;
- Clearer arrangements for overseeing and directing the work carried out by Workstreams; and
- Changing voting so that all determinations are by Panel Majority with the provision of clear default positions where a determination is not made.

2. Modification Proposals & Reports

Giving greater equality to Users and sharing more information earlier in the process.

Proposals include:

- Defined points at which the Proposer may change a Modification Proposal
- The removal of the confusing Alternative Proposals provision; and
- The need for additional information about systems impacts and implementation timescales during consultation.

3. Development

Making the process more transparent and participative.

Proposals include:

- Giving wider ability for appeals to be made to the Panel;
- Tighter terms of reference and clearer defaults;
- Making it easier for a Proposal to be sent to consultation.

The Nature of Proposal section the Proposer suggested the following:

To effect the changes as detailed in 1 - 3 above ie

- Affording greater control of the decision making process to the Panel itself
- Introduction of a Vice-Chairman to ensure that the business of Panel and Workstreams is able to progress.
- Greater oversight of the work of workstreams and review groups
- Amendment of voting to make a panel majority the required level of agreement for all decisions with a clear default where a majority is not achieved.
- Facilitating the sharing of information at the earliest possible stage in the process.
- Defining the process and points in a proposals lifecycle at which User's may propose variation of their proposals.
- Facilitating consideration of systems impacts within the assessment of each proposal where appropriate.
- Introducing greater participation and transparency into the process.
- Clarifying terms of reference and default positions, therefore simplifying the assessment of readiness for consultation

An indicative copy of the Rules with marked-up revised text which has been developed in keeping with the 'themes' is attached, (the changes themselves are too detailed to list exhaustively here). This version was considered by the workstream to be 'near final' on the assumption that other Modification Proposals would have been successfully implemented. It is recognised that the responsibility and obligation for provision of legal text rightly resides with Transco as the owner of the Network Code at present. Therefore, this drafting is not definitive and will be subject to the approval of other Modification Proposals and some minor amendment raised in discussions at the workstream.

2. **Extent to which implementation of the proposed modification would better facilitate the relevant objectives**

Transco does not at this stage recommend implementation. It particularly wishes to see responses on the following issues:

- **The new position of Vice Chairman appointed by User's representatives.** This differs from the current provision where, in the absence of the Panel Chairman, one of the other Transco representatives in their role of deputy chairman will preside at Panel Meetings. Transco believes that the current arrangements have provided continuity and dealt satisfactorily with situations where the Panel Chairman has been unavoidably absent. It is also consistent with Transco's licence obligations in respect of the Network Code and it should be recognised that Users do not have the same obligations.
- **The removal of the concept of Qualified Majority and Unanimity in the context of Panel decisions.** The intention of these differences was so that User Representatives would have certain rights of insistence that a Proposal be referred to a Workstream even where the

majority of Users Representatives were not of the same view. Once the Proposal has been returned to the Panel following Workstream discussions the voting arrangements sought to prevent further delay by a majority of User Representatives in insisting that it be returned to the Workstream where a minority of Users favoured progress to consultation. Transco does not object to this aspect of this Proposal but would suggest that Users address the advantages and disadvantages of this aspect of this Proposal in their representations.

- **Removal of Alternative Proposal provision.** Transco recognises that this provision is rarely used (only 24 cases out of 731 at the time of writing) and Transco would have the option of raising a new Proposal. It is also relevant that a Proposal supported by Transco can be revised. Transco, therefore, does not object to this element of this Proposal. Transco would wish to point out that it has a licence requirement to bring to the attention of Users any alternative means by which furtherance of the relevant objectives can be achieved and therefore there may be cases where Transco is left with no alternative but to make a new Proposal to address the same issues.
- **Clarification of Variation Provisions.** The provision of varying a Proposal currently exists with all Proposals raised or adopted by Transco. Modification Proposal 0713, presently being considered by Ofgem, sought to extend the provision to Proposals raised by Users. Transco recognises that currently there is no specific governance process and that this Proposal seeks to introduce one that would include Panel approval to the variation with criteria to guide it in making its decision. Transco therefore has no objections to this aspect of the Proposal but would point out that an informed decision can only be made after Ofgem has reached a decision on Modification Proposal 0713.
- **Workstream Guidelines.** This seeks to introduce a process by which the Panel may determine the terms of reference for Workstreams and approve the appointment of a chairman nominated by Transco. It also requires the Workstream Chairmen to attend Panel Meetings (or provide a User Representative to attend on that Workstream's behalf) and provides a mechanism by which Chairmen follow the guidance, clarification and instructions of the Panel with a "no confidence" provision by which a Chairman might be removed from office. Finally, more detailed guidance is provided on how Workstreams may report in respect of Modification Proposals. Transco does not believe that attendance by all Workstream Chairmen is necessary for all Panel Meetings. For example, there may be occasions where a Workstream has not met between Panel Meetings. Transco also believes that as Workstreams are often attended by more than one Transco Representative the Chairman should be able to delegate the task of presenting reports to the Panel to one of the other Transco Representatives on the Workstream, particularly where this reduces the number. Users should reflect on whether requiring Transco to send all Panel Chairman to meetings of the Modification Panel is consistent with efficient and economic operation by Transco of its pipe-line system. Transco, therefore, does not support this aspect of this Modification Proposal in its present form.

3. The implications of implementing the Modification Proposal on security of supply, operation of the Total System and industry fragmentation

The Proposer considered that "implementation of the amendments to the Modification Rules as contained within this Modification Proposal would better facilitate relevant objective (b) by

permitting Transco to better discharge its licence condition 4D "Conduct of Transportation Business" by making the Rules more neutral and removing present examples of discrimination which favour Transco and Transco proposals above those of Users."

Transco would wish to point out that the provision quoted in licence condition 4d relates to Transco gaining unfair commercial advantage "in connection with a business **other** than its transportation business." It therefore does not believe that the Proposer is justified in citing this licence condition.

Transco recognises, however, that good governance is consistent with economic and efficient operation by Transco of its pipeline system and this is in turn consistent with facilitating the development of competition. However, Transco does not believe that the additional governance process are necessary in practice and if anything will adversely affect efficiency. Transco also believes that appointment of Users to key chairmanship, even on a stand-in basis is inconsistent with facilitating the relevant objectives as neither shippers nor suppliers have those objectives in their licences.

4. The implications for Transporters and each Transporter of implementing the Modification Proposal, including

a) implications for operation of the System:

Transco is unaware of any direct implications that implementation would have for the operation of the System.

b) development and capital cost and operating cost implications:

Transco believes that such costs would be minor.

c) extent to which it is appropriate to recover the costs, and proposal for the most appropriate way to recover the costs:

Transco does not intend to recover these costs.

d) analysis of the consequences (if any) this proposal would have on price regulation:

Transco is unaware of any such consequence.

5. The consequence of implementing the Modification Proposal on the level of contractual risk of each Transporter under the Code as modified by the Modification Proposal

Transco believes that any such consequences would be minor and restricted to its management of the Modification Process.

6. The high level indication of the areas of the UK Link System likely to be affected, together with the development implications and other implications for the UK Link Systems and related computer systems of each Transporter and Users

Transco believes that the implications would be minor and restricted to document management systems.

7. The implications of implementing the Modification Proposal for Users, including administrative and operational costs and level of contractual risk

Users would have a reduced ability to require the debate of Proposals in Workstreams. Potentially, Users may have more information on which to make consultation responses and would be able to appoint people to chair meetings in the absence of the person nominated by Transco.

8. The implications of implementing the Modification Proposal for Terminal Operators, Consumers, Connected System Operators, Suppliers, producers and, any Non Code Party

Those attending the Modification Panel and Workstreams would be affected by the changes in governance identified in this Proposal.

9. Consequences on the legislative and regulatory obligations and contractual relationships of each Transporter and each User and Non Code Party of implementing the Modification Proposal

Transco believes that any such consequences would be minor.

10. Analysis of any advantages or disadvantages of implementation of the Modification Proposal

Transco has identified the following potential advantages of implementation of this Modification Proposal:

- Faster progress with Modification Proposals.
- Greater transparency in the Workstream process.
- Greater flexibility in development of User Proposals (but only if Modification Proposal 0713 were implemented).

Transco has identified the following potential disadvantages of implementation of this Modification Proposal:

- Less ability for Users taking the minority view in panel for ensuring debate of Proposals in Workstreams.
- More onerous processes to be followed by Workstream Chairman potentially reflecting on efficiency.
- Greater potential for disputes on Transco appointments.

11. Summary of representations received (to the extent that the import of those representations are not reflected elsewhere in the Modification Report)

Transco now invites representations.

12. The extent to which the implementation is required to enable each Transporter to facilitate compliance with safety or other legislation

Transco is unaware of any such requirement.

13. The extent to which the implementation is required having regard to any proposed change in the methodology established under paragraph 5 of Condition A4 or the statement furnished by each Transporter under paragraph 1 of Condition 4 of the Transporter's Licence

Transco is unaware of any such requirement.

14. Programme for works required as a consequence of implementing the Modification Proposal

Transco is unaware of any such requirement.

15. Proposed implementation timetable (including timetable for any necessary information systems changes)

The Proposal could be implemented from the first Modification Panel Meeting following approval.

16. Implications of implementing this Modification Proposal upon existing Code Standards of Service

17. Recommendation regarding implementation of this Modification Proposal and the number of votes of the Modification Panel

Transco does not at this stage recommend implementation of this Proposal but will reflect on its recommendation after considering the representations.

19. Text

Representations are now sought in respect of this Draft Report and prior to the Transporters finalising the Report

Subject Matter Expert sign off:

I confirm that I have prepared this modification report in accordance with the Modification Rules.

Signature:

Date :

Signed for and on behalf of Relevant Gas Transporters:

Richard Court
Commercial Frameworks Manager

Signature:

Date :