



Urgent Process

What is wrong?

Following the receipt of feedback, the proposer of Modification 0513 - (URGENT) - UK Link Programme (Project Nexus) - independent project assurance for Users wanted to amend the modification after it had been issued to consultation following the timetable set out in Ofgems decision letter.

The Modification Rules are not clear that amendments or variations are allowed to Urgent modifications once they have been issued to consultation unless the rules are specifically set out in the decision letter as part of any process to be adopted.

It is assumed that proposers can amend a modification that is seeking Urgency anytime prior to Ofgem granting Urgent status and setting a timetable to be followed.

The proposer of Modification 0513 submitted a Variation Request to Panel and Panel considered this when considering the consultation responses and making its recommendation to Ofgem. As the timetable set out in Ofgems decision letter did not anticipate the submission of a Variation Request, Panel could not adopt the usual Variation procedures and therefore Modification 0513 was not varied, although Panel did make a recommendation on the Variation Requests materiality.

The following proposed process offers a potential solution to allowing proposers to submit a Variation Request when following Urgent procedures. The box reference refers to a proposed new high-level step in the process diagram above:

Box Reference	Business Rules
1.	The proposer has identified a need to amend the modification, which has been granted Urgency and has been issued to consultation to a specified timetable. (the proposed amendment would modify the solution and possibly legal text): <ul style="list-style-type: none">i) The proposer should seek permission from Ofgem to submit a Variation Request.ii) The proposed Variation Request should include an assessment as to the likely impact to the timetable and Urgent procedures adopted.
2.	Ofgem considers the Variation Request and if permission is not granted, the process continues on the original

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	<p>timetable.</p> <p>If Ofgem accept the Variation Request:</p> <ul style="list-style-type: none"> i) The proposer should submit a Variation Request to the Joint Office using the appropriate template; ii) The Joint Office notifies industry parties that a Variation Request has been proposed and the next steps to be followed.
3.	Ofgem considers the Variation Request and may ask the Joint Office to arrange a view from Panel on the materiality of the request (this may be at a separate meeting or the meeting arranged to consider consultation responses and prior to making its implementation recommendation to Ofgem).
4.	Should Ofgem agree that the Variation Request is immaterial, the proposed amendments are made and the process continues using the process set out in 6.5.4 of the Modification Rules. This includes the Joint Office notifying industry participants of the outcome.
5.	<p>Should Ofgem agree the Variation Request is material, it is likely that a new timetable would be required to allow further consultation on the amendments made by the Variation Request. This may include additional changes to the rules and process to be followed. The Joint Office would notify any such changes to industry parties.</p> <p>It may also be appropriate that Urgent procedures are no longer required and the modification should continue following normal modification procedures.</p>
6.	The current Urgent Process requires Panel to review Urgent modifications that are directed for implementation and if required refer the topic of the modification to a Workgroup for further assessment. It may be appropriate that an Urgent modification that is not directed for implementation, should be assessed by a Workgroup should Panel require further information why an Urgent modification was raised.

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Modification Rules	Comments on Process
<p>2.1 Definitions</p> <p>"Urgent Modification": a Modification made pursuant to an Urgent Modification Proposal;</p> <p>"Urgent Modification Proposal": a Modification Proposal in respect of which it is to be submitted to the Authority that the Modification is required as a matter of urgency as described in Standard Special Condition A11(9)(g);</p>	<p>Where the UNC is modified following implementation of an Urgent Modification Proposal;</p> <p>This definition describes where the urgency criteria may be found in the Transporters licence.</p>
<p>6 MODIFICATION PROPOSALS</p>	<p>This section sets out which parties can raise a Modification Proposal and what it should contain.</p>
<p>6.1.4 If:</p> <p style="padding-left: 40px;">the Code Administrator in respect of any Modification Proposal considers that such Modification Proposal should be treated as an Urgent Modification Proposal; or</p> <p style="padding-left: 40px;">the Proposer shall in accordance with paragraph 6.2.1(e) have identified the proposal as one which the Proposer considers should be treated as an Urgent Modification Proposal,</p> <p style="padding-left: 80px;">that Modification Proposal shall be subject to paragraph 10.</p>	<p>This section advises that the Code Administrator or the Proposer may decide that a Modification Proposal should be treated as Urgent and subject to Urgent procedures set out in paragraph 10.</p>
<p>6.2.1</p> <p style="padding-left: 40px;">(j) shall, if the Proposer considers that the Modification Proposal should be treated as an Urgent Modification Proposal, identify the Modification Proposal as such and indicate the Proposer's justification for such belief;</p>	<p>Extracted from paragraph 6.2 Content of Modification Proposal. The proposer is required to identify that a Modification Proposal is Urgent and provide the reasons why it should be treated as such when the modification is submitted to the Code Administrator.</p>

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<p>7 MODIFICATION PROCEDURES</p>	
<p>7.1.1 The Secretary shall:</p> <p style="padding-left: 40px;">on receipt of a Modification Proposal allocate a unique reference number to that proposal;</p> <p style="padding-left: 40px;">by the later of:</p> <p style="padding-left: 80px;">(i) the end of the first Business Day following the date on which the Secretary receives notification of any decision of the Authority pursuant to paragraph 10.1.2 or 10.1.3 as to whether the Modification Proposal should be treated as an Urgent Modification Proposal,</p>	<p>Following receipt of Ofgems decision on Urgency, the Code Administrator is to notify the industry that a Modification Proposal has or has not been granted Urgent status within 1 Business Day.</p>
<p>7.1.2 Where:</p> <p style="padding-left: 40px;">(a) the Authority decides that a Modification Proposal should not be treated as an Urgent Modification Proposal; and</p> <p style="padding-left: 40px;">(b) at the date on which the Secretary receives notification of such decision, no meeting of the Modification Panel will, in accordance with paragraph 5.2, take place within ten (10) Business Days of such date,</p>	<p>If Ofgem does not grant Urgent Status then the Modification Proposal will be included on the next Panel Agenda where this is more than 10 Business Days after the Code Administrator has received the decision.</p>
<p>9.5 Further Consultation</p>	
<p>9.5.1 If, in respect of a Modification Proposal which is the subject of a Modification Report previously submitted to the Authority by the Code Administrator in accordance with paragraph 9.3.4 or 10.2:</p> <p style="padding-left: 40px;">(a) the Authority has not given notice of its decision in respect of that Modification Report within two (2) calendar months (in the case of Urgent Proposals), or four (4) calendar months (in the case of non-Urgent proposals) from the date upon which the relevant Modification Report was submitted to it; or</p> <p style="padding-left: 40px;">(b) the Authority, or any Voting Member, by notice to the Secretary expresses the reasonable opinion that the circumstances relating to</p>	<p>Where an implementation decision has not been received from Ofgem within 2 months, or Ofgem or a Voting Members express concerns that the circumstances of the Modification Proposal have materially changed, the Modification Proposal should be included on the next Modification Panel Agenda.</p>

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<p>that Modification have materially changed, the Secretary shall place that Modification Proposal on the Agenda for consideration at the next Modification Panel meeting.</p>	
<p>9.5.2 Having considered the circumstances relating to the Modification Proposal which is subject to paragraph 9.5.1, the Modification Panel may determine that:</p> <ul style="list-style-type: none"> (a) the Secretary should request the Authority to give an indication of the likely date by which the Authority's decision shall be made; or (b) the Code Administrator should within five (5) days of the date of the meeting prepare and circulate a notice to each Transporter, Users and Non-Code Parties outlining the change in circumstances or reasons for delay and inviting further representations within ten (10) days of the date of the notice; or (c) the Secretary should place the Modification Proposal on the Agenda for further consideration at a future meeting of the Modification Panel as determined by the Modification Panel. 	<p>Following consideration of the Modification Proposal, the Panel may request the Code Administrator to:</p> <ul style="list-style-type: none"> i) request a likely decision date from Ofgem; or ii) issue the Modification Proposal for supplemental consultation; or iii) defer consideration. <p>Where the Modification proposal is issued for Supplemental Consultation, any subsequent Supplemental Report will be reviewed by the Panel and issued to Ofgem. However, this process would not prevent Ofgem making their decision on the Modification Proposal prior to receiving the Supplemental Report.</p>
<p>10 URGENT MODIFICATION PROPOSALS</p>	
<p>10.1 Procedure</p> <p>10.1.1 If a Modification Proposal has been considered or identified pursuant to paragraph 6.1.3(b) [should be corrected to 6.14] as one which should be treated as an Urgent Modification Proposal the Secretary shall as soon as possible send a copy of the Modification Proposal to the Authority and:</p> <ul style="list-style-type: none"> (a) following consultation with the Authority the Code Administrator shall recommend the procedure and timetable to be followed in respect of each Urgent Modification Proposal (b) where the Authority requests the Modification Panel to provide 	<p>Following identification of a proposed Urgent Modification, the Code Administrator is to send a copy to Ofgem asap.</p> <p>The Code Administrator is to recommend a procedure and timetable to be followed by the Urgent Modification.</p> <p>Issue – currently the Modification Rules do not allow an Urgent Modification to be amended unless there is specific provision within the Urgent procedures to be followed when Ofgem provides its decision on Urgency.</p>

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<p>the Authority with the opinion of the Modification Panel on whether or not the Modification Proposal should be considered as an Urgent Modification:</p> <ul style="list-style-type: none">(i) the Secretary shall convene a meeting of the Modification Panel within five (5) Business Days of the Authority requesting the opinion of the Modification Panel and place such request on the Agenda for that meeting; and(ii) the Modification Panel shall provide the Authority with its opinion. <p>10.1.2 If the Authority considers it appropriate that the Modification Proposal referred to in paragraph 10.1.1 should be treated as an Urgent Modification Proposal:</p> <ul style="list-style-type: none">(a) the Secretary shall notify each Transporter, each User, each Member and each Non-Code Party (if any);(b) to the extent that the Authority agrees with the recommendation made in the procedure and timetable submitted by the Code Administrator, all or any of the Modification Rules (including, but without limitation, consulting with the Modification Panel and seeking representations from each Transporter, Users and any Non-Code Party), may be deviated from or any other procedure accepted by the Authority may be followed;(c) the Secretary shall prepare and submit to the Code Administrator, a Modification Report in a format and in accordance with a timetable accepted by the Authority; and(d) the Code Administrator shall send the Modification Report to the Authority. <p>10.1.3 If the Authority does not accept that the Modification Proposal should be treated as an Urgent Modification Proposal the Secretary shall notify the Proposer and paragraphs 7, 8 (if applicable) and 9 shall apply in respect of the Modification Proposal.</p>	<p>Q should the proposed procedures for Urgency include a process to allow an Urgent Modification to be amended or varied, including a possible revision to the timetable? There is a risk that Ofgem may not want to use the proposed rules or decide on a different process to be adopted based on individual circumstances.</p> <p>Ofgem may request the Code Administrator to arrange a Panel meeting within 5 Business Days so that Panel can provide its opinion on Urgency and the proposed timetable to be followed.</p> <p>Should Ofgem make a decision to grant urgency to the modification, it will confirm the timetable and procedures to be followed in its decision letter. The Code Administrator will notify the industry of Ofgems decision.</p> <p>Following the procedures and timetable set out in Ofgems decision letter, the Code Administrator will prepare a Final Modification Report and send the completed report to Ofgem (see 10.2 below).</p> <p>Should Ofgem decide that the modification should not be granted urgency, the Code Administrator will notify the Proposer of the process to be adopted and follow the process in 7.1.2 above.</p>
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<p>10.2 Modification Report</p> <p>10.2.1 Each Modification Report and attachments (if any) prepared pursuant to paragraph 10.1.2(c) shall, in addition to reporting to the extent relevant upon the matters referred to in paragraph 9.4.1, detail:</p> <ul style="list-style-type: none"> (a) the reasons why it is an Urgent Modification Proposal; and (b) the procedures that the Code Administrator has followed pursuant to paragraph 10.1.2(b) where these differ from the Modification Procedures. <p>10.2.2 The Code Administrator may submit a Modification Report (in whole or in part) orally and/or in writing. The Code Administrator shall in respect of any Modification Report (or any part thereof) submitted orally as soon as possible confirm that oral submission in writing. The Code Administrator shall as soon as reasonably practicable send a copy of each such report to each Transporter, each User, each Member and each Non-Code Party (if any).</p>	<p>This section confirms what should be included in the Final Modification Report, although the listing is not exhaustive.</p> <p>The report is to included the reasons why the Modification is Urgent and it will also confirm the procedures followed where these are different to the standard Modification Rules.</p> <p>The Code Administrator may submit the report in whole or in part orally or in writing. Where the report is submitted orally (this may be due to a constrained timetable), the Code Administrator is to confirm the oral report in writing asap.</p> <p>The Code Administrator is to circulate a copy of the report to the industry asap.</p>
<p>10.3 Report on Modification</p> <p>Where an Urgent Modification is implemented, the Secretary shall at the next following meeting of the Modification Panel report to the Modification Panel in respect of the Urgent Modification. The Modification Panel may determine at that meeting that the subject matter of the Urgent Modification so made shall be referred to a Workgroup. If the Modification Panel shall so determine, the Code Administrator shall refer such proposal to the relevant Workgroup together with the Terms of Reference to be applicable.</p>	<p>Following receipt of Ofgems decision to implement an Urgent Modification, the Code Administrator is to add the topic of the modification to the next Panel agenda.</p> <p>The Panel may then decide that the topic of the modification and associated terms of reference should be issued to a relevant Workgroup, requesting a report to consider if further work or analysis is required.</p> <p>Q. Should Panel consider requesting reports on Urgent Modifications, which have been rejected by Ofgem?</p>