

Representation - Draft Modification Report UNC 0656

Changes to Modification Panel arrangements

Responses invited by: 5pm on 11 October 2018

To: enquiries@gasgovernance.co.uk

Representative:	Gerry Hoggan
Organisation:	Scottish Power
Date of Representation:	11 October 2018
Support or oppose implementation?	<ul style="list-style-type: none"> • Support the extension of the Panel Member Term of Office • Oppose the arrangements for Panel Member Alternates • Comments regarding Conflict of Interest Rules and Panel Member participation
Relevant Objective:	f) Positive regarding Panel Member Term of Office Negative regarding arrangements for Panel Member Alternates

Reason for support/opposition: Please summarise (in one paragraph) the key reason(s)

Overarching comments

- These proposals are stand alone and with no interdependencies. Despite this there is no assessment of each against the Relevant Objectives.
- The proposals within the Draft Report appear disjointed with some proposals appearing within the Summary but not the Solution and vice versa.
- There appear to be some inconsistencies between the Draft Modification Report and the Legal Text.

Proposal specific comments

- Conflict of Interest
 - Whilst not opposed, we are not necessarily convinced on the need for conflict of interest rules. Undertakings have already been given that Panel Members will act impartially on behalf of all UNC Users rather than on behalf of a vested corporate interest. That having been said those independence provisions currently sit outside the UNC and are left to the electoral rules as administered by the JO. As such we would consider it preferable to see those requirements enshrined in the UNC in the same way as in the BSC and CUSC.
 - The Conflict of Interest Business Rules envisage the possible appointment of the “nominated Alternate” in the event of a Panel Member being identified as “conflicted”. It is not clear which of the two proposed Alternates would be appointed in those circumstances but regardless in such a case an election should be held. As and when a Panel Member ceases to be a Member, for whatever reason, then any Alternate appointment should likewise cease

- There is no right of appeal from the decision of the Panel Chair. This is a significant process involving the possible removal of an elected member from office and therefore we consider that some form of appeal mechanism should be provided
- Alternates
 - We consider that extending the power of an Alternate to appoint a further alternate becomes too remote from the original elected (or appointed) Panel Member and loses an element of accountability. That is especially so in the former case where there was an initial election process such that the Panel Member has particular responsibilities and obligations to the wider User Group. That having been said we cannot find this proposed power referenced in the Legal Text.
It is also not clear why this provision should be necessary where elsewhere it is proposed that two Alternates must be appointed.
 - There is no rationale or justification given for the requirement to appoint two Alternates. We consider that having two Alternates only creates the potential for confusion and/or conflict. Where the Panel Member is absent the Legal Text appears to envisage something of a race to a meeting by the two Alternates but no provision for how that would be determined.
 - It is also not clear what happens in the event of a Panel Member failing to appoint two Alternates. The present arrangements provide only that a Panel Member “may” appoint an Alternate
- Panel Member Participation
 - The Draft Report refers to “participate in three (3) consecutive meetings...that have been duly convened”. In contrast the Legal Text refers to if “the Member is absent from three (3) consecutive monthly meetings”. As it is the UNC currently makes no reference to “monthly” meetings but only those duly convened. Allowing for special Panel meetings three consecutive meetings could be convened over a fairly short period of time e.g. this year there were 3 Panel Meetings between 19th and 26th April and it is not clear which of those meetings would be regarded as the “monthly meeting”.
 - Neither the Draft Report nor the Legal Text explicitly includes or excludes participation by teleconference and clarification on that point would be beneficial. We would suggest that participating by teleconference should not be regarded as “failure to participate” or “absence”.
 - The cessation of office provision would benefit from a “without good cause” qualification to allow for exceptional circumstances, such as described above, rather than automatic cessation of office.
- Panel Member Term of Office
 - Although no argument is advanced for the proposed extension of the term of office, we agree this would be beneficial. It would provide greater continuity of representation and avoid inefficient short term churn, whilst also reducing the administrative burden and cost of the electoral process. It would also align with the provisions of both the BSC and CUSC.

Implementation: *What lead-time do you wish to see prior to implementation and why?*

We believe implementation could be immediately following direction from the Authority

Impacts and Costs: *What analysis, development and ongoing costs would you face?*

None

Legal Text: *Are you satisfied that the legal text will deliver the intent of the Solution?*

We consider there to be a number of inconsistencies between the Legal Text and the Solution that would merit further review

Are there any errors or omissions in this Modification Report that you think should be taken into account? *Include details of any impacts/costs to your organisation that are directly related to this.*

None identified other than as detailed above

Please provide below any additional analysis or information to support your representation

None