

Modification Proposal 623

Commentary of Legal Text

The definition of “Self-Governance Modification Proposal” has been amended to reflect the fact that, even though it may meet the Self-Governance Criteria a Modification Proposal will not be a Self-Governance Modification Proposal if it is: (a) an alternative Modification Proposal to a Modification Proposal which isn’t a Self-Governance Modification Proposal; or (b) a Modification Proposal in respect which an alternative Modification Proposal has been made which is not a Self-Governance Modification Proposal.

New paragraph 6.6.2 provides that a Self-Governance Statement may not be submitted in respect of a Modification Proposal which is an alternative to a Modification Proposal which isn’t itself a Self-Governance Modification Proposal and paragraph 6.6.4 (as renumbered and revised) provides for such a Modification Proposal to be treated accordingly.

New paragraph 6.6.6 provides that where an alternative Modification Proposal is made which isn’t a Self-Governance Modification Proposal or where an alternative Modification Proposal ceases to be a Self-Governance Modification Proposal, the Modification Proposal to which it is an alternative loses its status as Self-Governance Modification Proposal (if any). Paragraph 6.6.7 (as renumbered and revised) provides that where an original Modification Proposal has ceased to be a Self-Governance Modification Proposal in such circumstances and Ofgem subsequently determines that the alternative Modification Proposal should in fact have Self-Governance Modification Proposal status, the alternative Modification Proposal will also resume its Self-Governance Modification Proposal status.

Paragraph 9.3.10 has been amended to make it clear that where the Panel is called to assess a Self-Governance Modification Proposal alongside any alternative Modification Proposals (which will necessarily also be Self-Governance Modification Proposals), the Panel must, in addition to assessing them against the status quo, weigh each up against the other in deciding whether or not to implement them.

The changes to paragraph 9.3.10 and a minor change to paragraph 9.3.9(b) address, to the extent necessary and consistent with the Transporters’ Licence conditions, the concerns expressed in the Modification Report that the Modification Rules should allow the Panel to consider alternative Modification Proposals in the light of each other and the original Modification Proposal with the aim of maximising the implementation of a modification that satisfies the Relevant Objectives. The changes to the definition of “Self-Governance Modification Proposal” and the new paragraphs 6.6.2 and 6.6.6 and related changes to section 6.6 implement Option 2 with regard to mixed modifications as set out in the Modification Report: where an alternative to any Modification Proposal is not a Self-Governance Modification Proposal, the

original will not be one either, and vice versa. Cross references to section 6.6 at paragraphs 9.3.14, 9.7.2 and 12.12.5 are revised as appropriate.

The table below sets out the Legal Draftsman's response to the table of suggested amendments to the text of the Modification Rules set out in the Solutions section of the Modification Proposal.

Modification Rules para	Purpose	Amendment required?	Legal Draftsman's Comment
Panel voting on SG preference			
Appeals Criteria	Describes the criteria for an appeal	Yes Probably requires clarification to allow an appeal if there is a non –implementation determination for a Self-Governance Modification Proposal with Alternatives	No change required. The Appeal Criteria relate to whether the appeal is legitimate and the appellant is, or is likely to be, unfairly prejudiced by the implementation or non-implementation of the relevant Self-Governance Modification Proposal. The criteria already apply equally to Self-Governance Modification Proposals whether they have alternatives or not.
9.3.9	Dis-applies some of the previous provisions in the case of Self-Governance modifications	Add 9.4.2 to this carve out	Agreed. Done.
New clause	Mirrors 9.4.2 but relates to process by which Panel Determines a Self-Governance preference (rather than a view on an Authority Determined proposal)	[Yes]	It is not necessary to introduce a new clause to enable the Panel to decide on a preference as to competing Self-Governance Modification Proposals. The equivalent to the Panel's recommendation under 9.4.2 for Self-Governance Modification Proposals is the decision at 9.3.10(a) as to whether or not to implement them. See below.
9.3.10(a)	Process by which panel makes an implementation	May need amending or deleting to work with the new clause	9.3.10(a) has been tweaked to indicate that where required to consider Self-Governance Modification Proposals alongside Self-

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	decision on Self-Governance Modifications	above	Governance alternatives, the Panel must, in addition to assessing them against the status quo, weigh each up against the other in deciding whether to implement them.
13	Appeals	No. No changes to the appeal process are proposed.	Agreed, no change required.
Mixed modifications			
6.6.1	Process for Panel to issue Self- Governance statement	Yes. Modified to say that Panel cannot issue a Self-Governance statement for alternatives to an Authority Decision Modification Proposal and that it should be treated as Authority Decision.	6.6.1 is made subject to a new 6.6.2 which provides that a Self-Governance Statement cannot be submitted in respect of a Modification Proposal which is an alternative to a Modification Proposal which isn't itself a Self-Governance Modification Proposal. 6.6.3 (now 6.6.4) and the definition of Self-Governance Modification Proposal have been amended to make it clear that in these circumstances the alternative Modification Proposal will not be a Self-Governance Modification Proposal (even though it may meet the Self-Governance Criteria itself).
7.2.3	Process for Panel to issue materiality statement where Self-Governance criteria are not satisfied	Yes. Needs to be modified in case where Panel has issued a Self-Governance statement for a Modification Proposal but an alternative proposal is raised that Panel believes should be Authority Decision. This would require the original proposal to be treated as Authority Decision.	The Panel may have already have made a determination that a Modification Proposal meets the Self-Governance Criteria, when an alternative is assessed under 7.2.3, so another process needs to be undertaken in order to change the status of the original Modification Proposal . Moreover the Self-Governance Criteria are defined in the gas transporter's licence and cannot be changed to so that they take into account the existence of alternative Modification Proposal which does not meet the criteria. Rather than change 7.2.3, a new process has been introduced at 6.6.6 so that the Self -Governance statement in respect of a Modification Proposal is withdrawn if an alternative Modification

Modification Rules para	Purpose	Amendment required?	Legal Draftsman's Comment
			<p>Proposal is made which does not meet the Self-Governance Criteria. The definition of Self-Governance Modification Proposal has been amended to make it clear that in these circumstances the original Modification Proposal ceases to be a Self-Governance Modification Proposal (even though in itself it meets the Self-Governance Criteria).</p> <p>6.6.5 (now 6.6.7) has been amended so that if Ofgem determines that a Modification Proposal that the Panel has determined not to be a Self-Governance Modification Proposal (either initially under paragraph 7.2.3(a)(i) or by means of withdrawing a Self-Governance Statement under 6.6.5 (as renumbered) is in fact a Self-Governance Modification Proposal, any other related Modification Proposal that had ceased to be a Self-Governance Modification Proposal by virtue of 6.6.6 will be reinstated as a Self-Governance Modification Proposal. The Code Administrator is required to resubmit the Self-Governance Statement as part of the reinstatement process so that the Modification Rules continue to meet the requirements of standard licence condition 9.12D.a.(i) of the gas transporter's licence:</p> <p>The network code modification procedures shall provide that modification proposals shall only be implemented without the Authority's approval pursuant to this paragraph 12D (the "self-governance route") where:</p> <p>a.(i) in the view of the panel, the modification proposal meets all of the self-governance criteria and the panel has submitted to the Authority in respect of the modification proposal and not withdrawn a self-governance statement;</p>