

UNC Final Modification Report		At what stage is this document in the process?
<h1>UNC 0656:</h1> <h2>Changes to Modification Panel arrangements</h2>		<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="border: 1px solid #008080; border-radius: 5px; padding: 5px; display: flex; align-items: center; gap: 5px;"> 01 Modification </div> <div style="border: 1px solid #008080; border-radius: 5px; padding: 5px; display: flex; align-items: center; gap: 5px;"> 02 Workgroup Report </div> <div style="border: 1px solid #800080; border-radius: 5px; padding: 5px; display: flex; align-items: center; gap: 5px;"> 03 Draft Modification Report </div> <div style="border: 1px solid #FF8C00; border-radius: 5px; padding: 5px; display: flex; align-items: center; gap: 5px;"> 04 Final Modification Report </div> </div>
<p>Purpose of Modification:</p> <p>The purpose of the Modification is to make a number of changes to the panel arrangements. Firstly, concerning Panel Members and how they represent a constituency, arrangements in relation to Alternates, duration of tenure and attendance at meetings.</p>		
	The Panel determined that this Authority Direction modification be recommended for implementation.	
	High Impact: NA	
	Medium Impact: All Code Parties	
	Low Impact: NA	

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Timetable			
Modification timetable:			
Initial consideration by Workgroup	04 June 2018		
Amended Modification considered by Workgroup	11 September 2018		
Workgroup Report presented to Panel	20 September 2018		
Draft Modification Report issued for consultation	20 September 2018		
Consultation Close-out for representations	11 October 2018		
Final Modification Report available for Panel	15 October 2018		
Modification Panel decision	18 October 2018 (at short notice)		

1 Summary

The purpose of the Modification is to make a number of changes to the panel arrangements. These relate to Voting Panel Members and how they represent a constituency, arrangements in relation to Alternates, duration of tenure and attendance at meetings

Conflicting Appointment

Firstly, the purpose of the proposal is to put in place arrangements to avoid a conflict of interest arising in relation to Panel Members. The Proposal seeks to ensure that a Panel Member representing a particular constituency cannot, whilst acting as a Panel Member for that constituency, be employed by, work for or otherwise act for a party who are part of another constituency e.g. a Transporter Panel representative cannot be employed by, work for or otherwise act for a Shipper and vice versa.

Alternate arrangements

Secondly, this Modification also proposes that a Panel Member may appoint an Alternate for meeting attendance and that any such appointed Alternate will have the same powers as the Panel Member which for the avoidance of doubt includes the right to appoint another Alternate.

What

Conflict of Interest

Historically voting Panel Members have been nominated to represent a specific constituency which has been related to their employment by a consistency company/organisation e.g.

Transporters directly nominate Transporter Members (AiGT nominate a Member);

Shippers nominate into a Shipper elections process;

Citizens Advice nominate a domestic Consumer Representative;

Ofgem nominate an I&C Consumer Representative.

In the event of a change in Members arrangements they have resigned from their position as a Panel Member and either a new nominee takes over the role of Panel Member or a new election is undertaken to put in place a suitable candidate.

Alternate arrangements

A Panel Member should always try and attend meetings in person but where this is not possible they may appoint an Alternate representative, and any Alternate should have the same powers as the Member, including the right to appoint another alternate should this be required.

Why

Conflict of Interest

Historically Panel Members have been nominated by the companies they work for to represent the relevant constituency and in the event of a material change in circumstances e.g. change in employment the assumption is they would resign from their position as a Panel Member.

Conflict of Interest (continued)

The current rules, therefore, do not adequately address a potential risk of conflict if a Panel Member is representing a particular constituency but may be employed by, work for or otherwise act for a party who are part of another constituency on a day to day or adhoc basis.

Alternate arrangements

Currently a Panel Member may delegate authority to an Alternate, however that Alternate does not currently have the powers to appoint another Alternate should this be required, for example in the case of unforeseen circumstances such as sickness.

How

Conflict of Interest

The Proposal seeks to clarify that a Panel Member representing a particular constituency cannot, whilst acting as a Panel representative for a particular constituency, be employed by, work for or otherwise act for a party who are part of another constituency.

Example: A Transporter Panel Member cannot be employed by, work for or otherwise act for a Shipper etc.

In the event of such a conflict being identified the relevant Panel Member shall forthwith cease to be a relevant Panel Member and either the nominated Alternate, so long as they are not conflicted, will be appointed the relevant Panel Member or else an Urgent Election will be undertaken to replace the relevant Panel Member.

Conflict of Interest Business Rules

1. As part of the Election process all nominee's must warrant that in seeking to become the Panel Member for a relevant constituency they are not and will not whilst acting as a Panel Member be employed by, work for or otherwise act for a party who are part of another constituency
2. Panel Members will be required to notify the Chair via the Code Administrator of any changes in their arrangements forthwith and if so conflicted will forthwith cease to be a relevant Panel Member and either the nominated Alternate, so long as they are not conflicted, will be appointed the relevant Panel Member or else an Urgent Election will be undertaken to replace the relevant Panel Member

Any potential conflicts of interest may be raised with the Panel Chair via the Joint Office of Gas Transporters. The Panel Chair will investigate any claim and determine if in their reasonable opinion a conflict of interest exists. For the avoidance of doubt the Panel Chair may utilise a suitably skilled independent third party to undertake the investigation. If a conflict is identified the Panel Member will forthwith cease to be a relevant Panel Member and either the nominated Alternate, so long as they are not conflicted, will be appointed the relevant Panel Member or else an Urgent Election will be undertaken to replace the relevant Panel Member.

Alternate arrangements

Further to the above, a Panel Member may delegate authority to an Alternate and that Alternate should have the powers to appoint another Alternate should this be required, for example in the case of unforeseen circumstances such as sickness.

Alternates Business Rules

1. A Panel Member may delegate by appointing an Alternate, and any Alternate will have the same powers as a Panel Member including the right to appoint another Alternate.

2 Governance

Justification for Self-Governance, Authority Direction or Urgency

The Modification determined that this modification is a material change to the Modification Rules concerning Panel Membership and the use of Alternates, Panel Chair, the Code Administrator and Membership nominations and therefore requires Authority Direction.

Requested Next Steps

This Modification should:

- be considered a material change and not subject to self-governance
- proceed to consultation.

3 Why Change?

Conflict of Interest

Historically Panel Members have been nominated by the companies they work for to represent the relevant constituency and in the event of a material change in circumstances e.g. change in employment the assumption is they would resign from their position as a Panel Member.

The current rules, therefore, do not adequately address a potential risk of conflict if a Panel Member is representing a particular constituency but may be employed by, work for or otherwise act for a party who are part of another constituency on a day to day or adhoc basis.

Alternate arrangements

Currently a Panel Member may delegate authority to an Alternate, however that alternate does not currently have the powers to appoint another Alternate should this be required, for example in the case of unforeseen circumstances such as sickness.

4 Code Specific Matters

Reference Documents

UNC General Modification Rules.

Joint Office UNC Election Process.

Knowledge/Skills

None specific.

5 Solution

This Solution deals with four areas:-

For the avoidance of doubt the issues addressed in this proposal are independent and do not rely on each other.

A. Conflicting Appointment

This Proposal seeks to clarify that a Voting Panel Member representing a particular constituency cannot, whilst acting as a Voting Panel Member for a particular constituency, be employed by, work for or otherwise act for a party who are part of another constituency.

Example: A Transporter Panel Member cannot be employed by, work for or otherwise act for a Shipper etc.

In the event of such a conflict being identified the relevant Voting Panel Member shall forthwith cease to be a relevant Voting Panel Member and either the nominated alternate, so long as they are not conflicted, will be appointed the relevant Voting Panel Member or else an Urgent Election will be undertaken to replace the relevant Panel Member.

Conflicting Appointment Business Rules:

1. As part of the Election process all nominees must warrant that in seeking to become the Voting Panel Member for a relevant constituency they are not and will not whilst acting as a Voting Panel Member be employed by, work for or otherwise act for a party who are part of another constituency;
2. In the event that a Voting Panel Member is not a signatory to the warrant then they must be party to the warrant before attending their first Panel Meeting as a Voting Panel Member;
3. Voting Panel Members will be required to notify the Panel Chair via the Code Administrator of any changes in their arrangements forthwith and if so conflicted will forthwith cease to be a relevant Voting Panel Member and either the nominated Alternate, so long as they are not conflicted, will be appointed the relevant Voting Panel Member or else an Urgent Election will be undertaken to replace the relevant Panel Member;
4. Any potential conflicts of interest may be raised with the Panel Chair via the Code Administrator. The Panel Chair will investigate any claim and determine if in their reasonable opinion a conflict of interest exists. For the avoidance of doubt the Panel Chair may utilise a suitably skilled independent third party which may include the Code Administrator to undertake the investigation. If a conflict is identified the Voting Panel Member will forthwith cease to be a relevant Voting Panel Member and either the nominated Alternate, so long as they are not conflicted, will be appointed the relevant Voting Panel Member or else an Urgent Election will be undertaken to replace the relevant Voting Panel Member from which that Voting Panel Member will be excluded.

B. Alternate arrangements

Further to the above, a Voting Panel Member will be required to nominate 2 Alternates.

Alternates Business Rules:

1. A Voting Panel Member must nominate 2 Alternates.

C. Voting Panel Member Attendance

An elected Voting Panel Member is reasonably expected by the constituents they represent to regularly participate in the scheduled Panel meetings. As such if the Voting Panel Member fails to participate in three (3) consecutive meetings of the UNC Modification Panel that have been duly convened the Voting Panel Member shall cease to be a Voting Panel Member and an Urgent Election will be undertaken to replace the relevant Voting Panel Member.

Voting Panel Member Attendance Business Rules:

1. A Voting Panel Member shall cease to be a Voting Panel Member if the Member fails to participate in three (3) consecutive meetings of the UNC Modification Panel that have been duly convened.

D. Increase from 1-year to 2-year Panel tenure

The current Panel Membership is renewed every year. This proposal seeks to extend the tenure for Panel Members from one year to two years ahead of the 2019 Panel Elections.

Increase from 1-year to 2-year Panel tenure business rules:

1. Elections will take place every 2 years from the 2019 Panel Elections.

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

None identified

Cross Code Impacts

There may be an indirect impact on the AIGT selection/nomination process.

EU Code Impacts

None identified

Central Systems Impacts

None identified

Workgroup Impact Assessment

The Modification was amended to reflect various issues and points of clarification raised by the Workgroup.

Legal Text

The workgroup reviewed the draft Legal Text and was satisfied it met the intent of the Modification.

7 Relevant Objectives

Impact of the modification on the 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

This Modification Proposal better facilitates relevant objective (f) as it puts in place appropriate assurances to avoid any risk of a conflict of interest in relation to the transparent operation of Panel, as well as clarifying the arrangements for Alternates to ensure appropriate representation at meetings and maintaining the effectiveness of Panel.

8 Implementation

No implementation timescales are proposed. However, this Modification could be implemented immediately following direction from the Authority.

9 Legal Text

Text Commentary

Provided as a separate document.

Text

Provided as two separate documents.

10 Consultation

Panel invited representations from interested parties on 20 September 2018. The summaries in the following table are provided for reference on a reasonable endeavours basis only. The Joint Office of Gas Transporters recommends that all representations are read in full when considering this Report. Representations are published alongside this Final Modification Report.

Of the 6 representations received 5 supported implementation and 1 offered mixed support, opposition and comments against various aspects of the proposals.

Representations were received from the following parties:

Organisation	Response	Relevant Objectives	Key Points
Cadent Gas	Support	f - positive	<ul style="list-style-type: none"> Agrees the modification effectively addresses two issues, member conflicting appointment and attendance at Panel either by the Panel Member or an Alternate. Supportive that Relevant Objective (f) is met through greater Panel transparency and clarifying arrangements for Alternates. Agrees that there is a material change requiring Authority Direction. Supports immediate implementation following Authority direction.
Gazprom Energy	Support	f - positive	<ul style="list-style-type: none"> Supports this modification. Raised this modification to address a number of governance issues in relation to the UNC Modification Panel arrangements. Considers this modification has a positive impact on

			<p>Relevant Objective (f) as it will put in place appropriate assurances to avoid any risk of a conflict appointment in relation to the transparent operation of Panel, as well as clarifying the arrangements for Alternates to ensure appropriate representation at meetings and maintaining the effectiveness of Panel.</p> <ul style="list-style-type: none"> • Supports implementation as soon as reasonably practicable.
NPower	Support	f - positive	<ul style="list-style-type: none"> • Believes that this modification will serve to enhance the clarity and transparency of the arrangements for representation on the Modification Panel. As such, it will be beneficial to the efficient and smooth operation of the Panel election process and regular Panel meetings. • Supports implementation as soon as reasonably practicable.
Scottish Power	See text right or representation for response	f- impacted	<ul style="list-style-type: none"> • Supports the extension of the Panel Member Term of Office • Opposes the arrangements for Panel Member Alternates • Comments regarding Conflict of Interest Rules and Panel Member participation • Considers that each proposal within the modification should be separately assessed against the Relevant Objectives. • 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 Modification Report appear disjointed with some proposals appearing within the Summary but not the Solution and vice versa. • There appears to be some inconsistencies between the Draft Modification Report Solution and the Legal Text and this would merit further review. <p>In terms of the Relevant Objectives</p> <ul style="list-style-type: none"> • Positive regarding Panel Member Term of Office • Negative regarding arrangements for Panel Member Alternates <p>Specific Comments</p> <p><u>Conflict of Interest</u></p> <ul style="list-style-type: none"> • Whilst not opposed, are not convinced on the need for conflict of interest rules. Would like to see Panel Members independence provisions for impartiality enshrined in the UNC in the same way as in the BSC and CUSC.

			<ul style="list-style-type: none"> • Believes that an election should be held in the event of a Panel Member being identified as “conflicted”. • Considers that when a Panel Member ceases to be a Member, for whatever reason, then any Alternate appointment should also cease. • Considers that there should be some form of appeal mechanism from the decision of the Panel Chair. <p><u>Alternates</u></p> <ul style="list-style-type: none"> • Believes 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. In addition, this proposed power is not referenced in the Legal Text. • Considers that there is no rationale or justification given for the requirement to appoint two Alternates. Believes that having two Alternates will create the potential for confusion and/or conflict. • It is also not clear what happens in the event of a Panel Member failing to appoint two Alternates. <p><u>Panel Member Participation</u></p> <ul style="list-style-type: none"> • Considers the participation in three consecutive meetings to be unclear in terms of what would be regarded as the “monthly meeting”. • Suggests that participation by teleconference requires more clarification. • Suggests that the cessation of office provision would benefit from a “without good cause” qualification to allow for exceptional circumstances, rather than automatic cessation of office. <p><u>Panel Member Term of Office</u></p> <ul style="list-style-type: none"> • Considers that it would be beneficial to include proposed extension of the term of office as 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. • Supports implementation immediately following Authority Direction.
<p>Scotland Gas Networks and Southern Gas Networks</p>	<p>Support</p>	<p>f - positive</p>	<ul style="list-style-type: none"> • Supports modification because it will help ensure the robust, transparent and efficient running of the UNC Modification Panel. In addition, considers that this modification positively underpins the arrangements for ‘alternates’ at meetings,

			<p>which in turn ensures the on-going effectiveness of the Panel.</p> <ul style="list-style-type: none"> • Supports implementation as soon as reasonably practicable.
Wales & West Utilities Ltd	Support	f - positive	<ul style="list-style-type: none"> • Supports the proposal because it provides improvements to the Modification Rules in three areas - conflicts of interest, attendance at the planned monthly Panel meetings and Panel elections. • Less supportive of the change requiring a Voting Panel Member to nominate 2 Alternates. Understand the rationale but would have preferred an obligation to appoint one with an option to appoint a second Alternate. • Suggests that this modification is implemented the day after the monthly Panel meeting following the Authority Direction to implement. • Likely to incur additional ongoing costs in the situation where the Panel Chair may need to instigate an investigation into an alleged conflict of interest.

Please note that late submitted representations will not be included or referred to in this Final Modification Report. However, all representations received in response to this consultation (including late submissions) are published in full alongside this Report, and will be taken into account when the UNC Modification Panel makes its assessment and recommendation.

11 Panel Discussions

Discussion

Panel Members noted that Modification 0656 would make changes to Modification Panel arrangements.

Panel Members considered the representations received, noting that of the 6 representations received, 5 supported implementation and 1 offered mixed support, opposition and comments against various aspects of the proposals.

Some Panel Members highlighted the respondent who offered a mixture of opposition and support and suggested that the Modification Proposal is too complex, noting that the arrangements in the BSC are relatively simplistic. Under CUSC, CMP285 is offering an alternative model.

Other Panel Members did not agree.

Other Panel Members noted that the three codes have very different models which may or may not be relevant.

Panel Members noted that the attendance at the Workgroup was somewhat smaller than it could have been despite the Modification being brought first to Panel in May 2018. No alternative proposals were received.

One Panel Member noted that the legal text assumes 3 consecutive meetings are the monthly scheduled meetings whereas the solution does not specify this. Panel Members agreed that this is the correct interpretation.

Consideration of the Relevant Objectives

One Panel Member considered that the arrangements were more complex and therefore less efficient than the *status quo*.

Another Panel Member felt the arrangements proposed are an improvement on the baseline but that they are more complex than they needed to be.

Remaining Panel Members considered that the FMR adequately captured the impact on the relevant objectives.

Determinations

Panel Members determined by majority that no new issues were raised within the consultation.

12 Recommendations

Panel Recommendation

Members recommended that Modification 0656 should be implemented

12 votes for.