

---

## Market Arrangements Code Change Proposal – Ref CPM006

<b>Modification proposal</b>	CPM006 – Introducing a process for Urgent Change Proposals
<b>Decision</b>	The Authority has determined that it cannot properly form an opinion on the approval of the Change Proposal and requests that the Panel revise and resubmit a Final Report
<b>Publication date</b>	23 September 2019

### Background

The change processes for modifications to both the Market Arrangements Code (MAC) and Wholesale Retail Code (WRC) are set out in sections 6 and 7 of the MAC respectively. Currently sections 6.2.1(d) and 7.1.2(d) of the MAC provide that where a change (WRC or MAC, respectively) is proposed to be urgent, the Proposer (in the Change Proposal form) should provide a statement of fact and the date by which they consider that the decision should be implemented. A full justification of the suggested implementation date is also required.

### The issue

Whilst the MAC currently includes provisions relating to urgent changes, there is no formal process for progressing such changes. This can be an issue as there is no separate way to ensure that these Change Proposals progress in a timely manner, which could be particularly important because of their urgent nature.

### The modification proposal<sup>1</sup>

It is proposed that the MAC is amended to introduce a process for Urgent Change Proposals<sup>2</sup> to either the WRC or MAC. The process enables the Panel to set a constrained timetable for assessing and progressing Urgent Change Proposals. The Proposer will need to indicate in the Change Proposal form whether they consider

---

<sup>1</sup> The proposal and accompanying documentation is available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

<sup>2</sup> To be defined as: “A Change Proposal, Charging Change Proposal or Market Arrangements Code Change Proposal that has been given urgent status by the Panel or Authority”.

that the change should be treated as an Urgent Change Proposal and provide the rationale and supporting evidence for this.

Within three Business Days of the Change Proposal being received, the Panel Chairman will direct the Panel Secretary to convene an Urgent Panel Meeting, at which the Panel will discuss the Urgent Change Proposal.

The Panel will determine whether the Change Proposal should be considered as an Urgent Change Proposal, using the Urgent Change Proposal Criteria. The Urgent Change Criteria is a guidance document produced, maintained and referred to by the Panel in determining whether a Change Proposal should be classified as an Urgent Change Proposal. If the Panel do not consider that the Change Proposal should be treated as an Urgent Change Proposal, and the Proposer does not agree with the decision, the Panel will refer the Change Proposal and supporting evidence to the Authority within three Business Days of its decision. In such cases, the Authority will determine whether the Change Proposal shall be considered as an Urgent Change Proposal.

After the decision about the urgency has been made, the Panel will set the timetable/process for the Urgent Change Proposal. This will include the date that any assessment work should be considered by the Panel at a meeting and the date by which the Panel Secretary shall provide the Final Report to the Authority. Where the Authority has made the decision regarding urgency, the timetable/process will be set based on feedback from the Authority.

### **Arrangements for Urgent Panel Meetings**

It is proposed that an Urgent Panel Meeting shall be defined as “A meeting of the Panel to discuss an Urgent Change Proposal”. An Urgent Panel Meeting will be convened by the Panel Secretary where a Proposer has indicated that the Change Proposal should be treated as an Urgent Change Proposal, or where the Panel Secretary, with the agreement of the Panel Chairman, is of the reasonable opinion that an Urgent Panel Meeting is required.

When seeking to convene an Urgent Panel Meeting within the time available, if it is apparent that a quorum will not be present, or it transpires that the meeting is not quorate but it will not be possible to rearrange in the available time, the Panel Chairman shall endeavour to contact each Panel Member individually to obtain their vote.

Any matter to be decided at an Urgent Panel Meeting shall be by a simple majority, plus one of those Panel Members who cast a vote. Where the Panel Chairman is unable to contact at least six Panel Members within the time available, the Panel

Chairman, in consultation with those Panel Members (if any) which the Panel Chairman managed to contact, may decide the matter. The measures to be undertaken by the Panel Chairman described above, shall be undertaken by an Independent Director of the Market Operator in the absence of the Panel Chairman. In the absence of both of them, a Panel Member can be nominated for this purpose by the Panel Chairman, after consultation with the Authority.

## **Industry consultation and assessment**

The Panel sub-group decided unanimously that the wider industry consultation was not required for this Change Proposal. The rationale for this included that:

- The proposal will only impact the timeframe for progression of urgent Change Proposals rather than the decision making process or outcome;
- Urgent Change is already a concept in the MAC, this modification is seeking to add structure around the existing process;
- The change will have minimal impacts on Market Operator costs; and
- It was not clear what benefits or evidence that an industry consultation would provide.

## **Panel recommendation**

The Panel considered this Change Proposal at its meeting on 23 July 2019. It recommended, by unanimous decision, that the Authority approve this proposal. This recommendation has been made on the basis of improving the principles of efficiency and transparency. The recommended date of implementation is 30 September 2019.

## **Our decision**

We have considered the issues raised by the modification proposal and the supporting documentation provided in the Panel's Final Report. We are unable to properly form an opinion on CPM006 and as such, we are returning this to the Panel for it to revise and resubmit a Final Report.

## **Reasons for our decision**

We support the principle of this Change Proposal which seeks to provide clarity around the arrangements for progressing modifications that are considered to be urgent. It has the potential to deliver benefits for customers by ensuring that Urgent Change Proposals are decided in a timely and efficient way. If a consolidated timetable is applied during the change process this could result in Urgent Change Proposals being implemented, and the benefits being realised, earlier than they may

be currently. Whilst we have identified some benefits of the principle of this proposal, we cannot properly form an opinion based on the information provided in the Final Report (inclusive of the legal drafting).

### **Rationale for deviation from Quorum**

The Panel should further consider, and provide a detailed rationale, of the proposed amendments to the voting majority for Urgent Change Proposals. It has been recommended that in circumstances where no Panel Members can be contacted to make a decision in respect of an Urgent Change Proposal, the Panel Chairman, Independent Director of the Market Operator or a sole Panel Member nominated by the Panel Chairman would be able to make the decision. Given the nature of such decisions, we expect to be provided with a strong rationale regarding this deviation from the quorum. Consideration could be given to amending the proposal to ensure that such decisions will always be made by more than one person.

### **Use of Urgent Change Criteria**

The legal drafting and the Final Report do not make clear whether a Proposer would be required to use the Urgent Change Criteria when providing its justification for the assertion that a Change Proposal is an Urgent Change Proposal. In addition, whilst a Panel decision that a Change Proposal is not urgent can be challenged to the Authority, it is not clear from the legal drafting whether the Authority is also expected to consider the Urgent Change Criteria in making any decision as to the appropriateness of the urgency status.

### **Urgent Panel Meetings**

It is not evident from the information provided how the proposed solution to convene an Urgent Panel Meeting for every Change Proposal that is marked as an Urgent Change Proposal on the Change Proposal Form will work in practice. Interpretation of 'urgency' as a concept is subjective and without the Urgent Change Criteria also being applicable to Proposers when they are considering if a proposal is an Urgent Change Proposal, it is not clear how this assessment should be made. This could result in the requirement for Urgent Panel Meetings to be convened more frequently than may be anticipated. Further, the scope for disagreement as to the urgent status of a Change Proposal is wider if the applicability of the Urgent Change Criteria is not clear, which could result in the Proposer having to appeal to Ofwat, and therefore result in a delay in the Change Proposal being considered by the Panel.

It is proposed that where it will not be possible to rearrange the Urgent Panel Meeting in the available time, the Panel Chairman shall endeavour to contact each Panel Member individually to obtain their vote. It is not apparent how each Panel

Member's vote will be independently verified. We would also welcome clarity around what 'endeavour to contact' would mean in practice.

### **Urgent Change Proposals Process**

The proposed drafting would enable the Panel to set both the timetable and process for Urgent Change Proposals. This does not appear to align with the statement in the Final Report. The sub-group agreed not to consult on this Change Proposal on the basis that the change did not impact on the Panel decision making process or outcome, only the timescales in which an Urgent Change Proposal would be processed. This statement and the legal drafting are inconsistent and we suggest the Panel review the policy intent and provide clarity in the legal drafting. Furthermore, we understand the recommendation that the Panel should be able to set the timetable for the Urgent Change Proposal as it will be best placed to establish this based on the particular circumstances of the Urgent Change Proposal. However the rationale for why the Panel would need to deviate from the process for Change Proposals is already set out in the MAC, and therefore, we do not understand why the Panel would need to set a process for Urgent Change Proposals.

In addition to the above, the Panel's Final Report highlights the sub-group's view that there should be a prescribed timeline for the decision on urgency. This has not been reflected in the legal drafting, and we suggest the Panel includes the timetable for Ofwat to make a decision on Urgent Change Proposals in the code drafting.

### **Legal Drafting**

Further consideration needs to be given to the legal drafting of the proposal, including as outlined below.

The definitions of Urgent Panel Meeting and Urgent Change Proposal require reconsideration. Urgent Change Proposal is defined as:

“A Change Proposal, Charging Change Proposal or Market Arrangements Code Change Proposal that has been given urgent status by the Panel or Authority”

Urgent Panel Meeting is defined as:

“A meeting of the Panel to discuss an Urgent Change Proposal”

To provide an example of an identified issue regarding these definitions: Section 6.3.1(c)(ii) states that an Urgent Panel Meeting will be convened where a Proposer has indicated on the Change Proposal Form that the modification should be treated

as an Urgent Change Proposal. Because the change will not have been given the status of an Urgent Change Proposal (as per the definition) until after the meeting to decide whether it should be treated as an Urgent Change Proposal, the initial meeting to discuss an Urgent Change Proposal (as per the definition of Urgent Panel Meeting) would not be an Urgent Panel Meeting. The sections affected by this issue are: Schedule 1- section 2.5, sections 6.3.1(c)(ii)&(iii) and 7.2.1(c)(ii) &(iii).

In addition to the above, the legal drafting implies that after a decision has been made for a proposal to be given the status of an Urgent Change Proposal, a further Urgent Panel Meeting can be convened to discuss the assessment work. However, consideration should be given as to whether this could be expressed more clearly to ensure that the process is completely transparent.

The drafting states at section 5.8.2(b) that an Urgent Panel Meeting can be convened where “the Panel Secretary with the agreement of the Panel Chairman is of the reasonable opinion that an Urgent Panel Meeting is required to consider any Change Proposal, Charging Change Proposal or Market Arrangements Code Proposal”. It is not apparent why an Urgent Panel Meeting, which is defined as being for discussion of an Urgent Change Proposal, would also be convened for the other types of proposals that are listed.

Further, the definition of Urgent Panel Meeting indicates that the meeting is to ‘discuss’ Urgent Change Proposals. This definition could be refined to ensure it is clear that Panel Members can vote and make decisions on recommendations to Ofwat at Urgent Panel Meetings.

Although not part of our rationale for returning the Change Proposal to the Panel for it to revise and resubmit a Final Report, we also consider that amendments are required to section 5.10.2 and the definition of “Qualifying Majority” (Schedule 1, section 2.6) following implementation of CPW016, Panel Voting Majorities.

## **Decision notice**

In accordance with paragraph 7.2.7 of the Market Arrangements Code, the Authority is returning this Change Proposal to the Panel and requests that it revise and resubmits a Final Report.

**Georgina Mills**  
**Director, Business Retail Market**