
Market Arrangements Code Change Proposal – Ref CPM006

Modification proposal	Market Arrangements Code Change Proposal – CPM006 – Process for Urgent Change Proposals
Decision	The Authority has decided to approve this Change Proposal
Publication date	6 April 2020
Implementation date	8 April 2020

Background

The change processes for Change Proposals 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 (to the 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, for example to reflect unforeseen circumstances, such as the Covid-19 pandemic, which results in urgent changes being required to ensure that the market can continue to operate effectively.

In July 2019, the Panel recommended CPM006 to Ofwat with a recommendation to approve the implementation of a process for Urgent Change Proposals. In September 2019, [Ofwat sent the Change Proposal back to the Panel](#) on the grounds of a number of clarification points required to the legal drafting, as well as supporting rationale in the Panel's Final Recommendation Report.

The Change Proposal¹

This Change Proposal amends section 5, 6, 7 and Schedule 1 of the MAC. It introduces a new process that allows the Panel, or the Authority, to determine whether a Change Proposal should be considered an Urgent Change Proposal. If the Panel does not determine the Change Proposal should be considered an Urgent Change Proposal and the Proposer does not agree with this decision, the Change Proposal will be submitted to the Authority to determine whether it is an Urgent Change Proposal.

The Change Proposal also introduces provisions for an Urgent Panel Meeting to be convened to consider an Urgent Change Proposal, if required.

In the event a quorum of the Panel cannot be reached, decision making for the Urgent Change Proposal will be by simple majority plus one. In addition, if efforts have been made to convene an Urgent Panel Meeting and quorum cannot be reached, provision for the Panel Chairman to make a decision, with those Panel Members that have been able to be contacted, have been included. Where the Panel Chairman is unavailable, provisions for an Independent Director of the Market Operator, and in the absence of both of them, a Panel Member nominated after consultation with the Authority have also been included. Whilst a situation where a Panel Chairman is not able to achieve quorum is not expected, provisions are needed to ensure a decision regarding urgency can be made, especially where such decisions are required at short notice.

As set out in section 3 of the Panel's Final Recommendation Report, the process for considering Urgent Change Proposals is summarised as:

1. The Proposer submits a Change Proposal to the Panel Secretariat and states in the Change Proposal form that it should be considered as urgent, including rationale and evidence to support it. Within three (3) business days of the Change Proposal being received:
 - a. The Panel Chairman shall direct the Panel Secretary to convene an Urgent Panel Meeting, unless a Panel meeting is already scheduled to take place within the next three (3) business days, in which case the Change Proposal will be added to the agenda for that Panel meeting, which for the avoidance of doubt, will be treated as an Urgent Panel Meeting for the purpose of that Change Proposal.

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

- b. Where the Panel Chairman is unable to reach quorum within the time available, the Panel Chairman, in consultation with as many Panel Members as they are able to contact (with a minimum of two and one of which must be an industry nominated Panel Member), may decide the matter (provided that the Panel Chairman shall include details in the relevant Final Report of the steps taken to contact other Panel Members).
 - c. Where the Panel Chairman is unavailable, this role would be filled by an Independent Director of the Market Operator, and in the absence of both, by a Panel Member nominated for the purpose (where the Panel Chairman is not available) by the Panel Secretary after consultation with the Authority.
 - d. At the Urgent Panel Meeting, the Panel will determine whether the Change Proposal should be treated as urgent based on any rationale or evidence provided by the Proposer. If they agree the criteria for urgency has been met, they will provide a timetable and/or process for the Urgent Change Proposal to the Panel Secretary. This will include the date by which any assessment work should be considered at a Panel meeting (or Urgent Panel Meeting) and the date by which the Panel Secretary should provide a Final Report in relation to the Urgent Change Proposal.
 - e. For the avoidance of doubt, at the Urgent Panel Meeting a recommendation to the Authority can be made at the same time the urgency status is decided.
 2. If the Panel decides the proposal does not meet the criteria for urgency, and the Proposer disagrees with the decision, then the Proposer has two (2) Business Days from the Panel decision to notify the Panel Secretary they want to appeal the decision and provide any supporting evidence. The Panel Secretary then, within one (1) Business Day of notification from the Proposer, will send the Change Proposal and any evidence to support it being treated as urgent to the Authority.
 3. If the Panel decides that the criteria for Urgency has not been met and the Authority, having regard to the Urgent Change Proposal Criteria, disagrees with this decision then, based on feedback from the Authority, the Panel shall provide a timetable and/or process for the Urgent Change Proposal to the Panel Secretary. This will include the date by which any assessment work should be considered at a Panel meeting (or Urgent Panel Meeting) and the date by which the Panel Secretary should provide a Final Report in relation to the Urgent Change Proposal.
 4. Further Urgent Panel Meetings may then be convened to allow Panel Members to discuss, vote or make a recommendation to the Authority.
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Industry consultation and assessment

The Panel sub-group decided unanimously that 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 change 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.

Ofwat's observations in the send back decision

CPM006 was returned by Ofwat on 23 September 2019 raising some observations with the proposed solution. The Panel agreed to refer this change back to sub-group to address these points. Section 8 of the Panel's Final Report sets out the areas addressed by the sub-group, which has been summarised below.

Rationale for deviation from Quorum

In Ofwat's decision document, a point was raised for the Panel to consider and provide detailed rationale for amending the voting majority for Urgent Change Proposals. Specifically, it was suggested that consideration could be given to amending the proposal to ensure that such decisions will always be made by more than one person.

The majority of the sub-group agreed that in the event that quorum cannot be achieved, then the matter should be decided by a minimum of two Panel Members plus the Panel Chairman, or the relevant alternative where the Panel Chairman is not available.

Two of the sub-group members did not agree with the above approach and felt that given the nature of decisions, the only way to ensure a clear and judicious process is to match the voting and quorum rules for the Panel within the urgent change process. The underlying principle was that changes should be designed that can hold the confidence of market participants, even if this means convening a meeting later than that dictated by the urgent change rules if that is the first opportunity to achieve quorum. However, if there was a worst-case scenario where no quorum of Panel Members is able to attend an Urgent Panel meeting and a decision needed to be made, then the Panel Chairman, or relevant alternate, should be able to make a

decision on their own. Their rationale was that if there is a situation where the state of the market is at risk, then a decision should be able to be made.

However, all sub-group members agreed that it would be very unlikely that a situation would arise where quorum was not available for an Urgent Panel meeting, but a contingency should be available if it were to occur.

Use of Urgent Change Criteria

Ofwat highlighted that the legal drafting and the Final Recommendation Report did not make it clear whether a Proposer would be required to use the Urgent Change Criteria when providing its justification that a proposal is an Urgent Change Proposal. In addition, it was also stated that the legal drafting was not clear whether the Authority is expected to consider the Urgent Change Criteria in making any decision as to the appropriateness of the urgency status.

To address this feedback, the MAC and WRC Change Proposal forms have been updated to require the Proposer to provide rationale against the relevant criteria in the Change Proposal form. In addition, the legal drafting has been updated in sections 6.2.1(d) and 7.1.2(d) of the MAC to make it clear that the Proposer is to use the Urgency Change Proposal criteria. Furthermore, whilst obligations cannot be placed on the Ofwat within the MAC, sections 6.3.1(d) and 7.2.1(d) has been updated to reference that the Authority would be expected to have regard to the criteria.

Urgent Panel Meetings

In Ofwat's decision document it was noted that it was 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 would work in practice. In addition, it was also stated that it was not apparent how each Panel Member's vote will be independently verified when the Panel Chairman endeavours to contact each Panel Member individually to obtain their vote.

The Panel sub-group clarified that when a Change Proposal is received that is market as urgent, MOSL would work with the proposer in identifying if any of the Urgent Change Proposal Criteria have been met, before an Urgent Panel Meeting is convened. This would assist in ensuring that an Urgent Panel Meeting is not held to discuss Change Proposals that clearly do not meet any of the Urgent Change Proposal criteria. However, given the interpretation of urgency is subjective, MOSL would not stop a Change Proposal progressing to an Urgent Panel Meeting if requested to do so by the Proposer.

The Panel sub-group agreed that the additions made to the MAC to address the areas discussed under the 'Use of Urgent Change Criteria' section should resolve Ofwat's concerns over the applicability of the Urgent Change Proposal Criteria and the potential for disagreement on urgency status.

To address Ofwat's point in relation to clarifying how the Panel Chairman would endeavour to contact each Panel Member individually, MOSL and the Panel sub-group have developed a supporting Panel guidance document. This document details the methods to be followed as described in section 5.8.4 of the MAC, which direct the Panel Chairman, or alternate, to follow the methods prescribed. This document has been provided in Attachment 6 of the Panel Final Recommendation Report.

Legal Drafting

In Ofwat's decision document a number of areas in the legal drafting were requested to be clarified. The first amendment made to the legal text was made to the definition of an Urgent Panel Meeting. This has been updated to clarify that an Urgent Panel Meeting can be called to discuss whether a change should be granted urgent status, or to allow Panel Members to discuss, vote or recommend a change that has already been given urgent status.

Clarity has also been added to the process in section 3.1(e) in the Panel's Final Recommendation Report, allowing for a recommendation to the Authority to be made at the same time the urgency status is decided. This has not been added into the MAC on the basis of legal advice obtained from MOSL, to not overly prescribe the process within the MAC. Specifically, the current drafting allows for flexibility in the process to allow decisions to be taken at the first meeting, while allowing subsequent Urgent Panel Meetings to take place if necessary.

Panel recommendation

The Panel considered this Change Proposal at its meeting on 28 January 2020. The Authority notes that although no rationale has been provided by the Panel on its recommendation, it nonetheless recommended, by unanimous decision, that the Authority approve this proposal. The Final Recommendation Report confirms that the Panel agreed with the Proposer's views that this recommendation will improve the principles of efficiency and transparency. The recommended date of implementation is 15 May 2020. The Panel noted that the recommended implementation dates was included so as to align with existing code release dates and that there may be benefit in implementing this change earlier.

The Panel also approved the following documents associated with CPM006, if implemented, which are included as attachments to the Panel's Final Recommendation Report:

- Urgent Change Proposal Criteria
- Urgent Panel Meeting Contact Guidance
- MAC Change Proposal Template
- WRC Change Proposal Template.

Our decision

We have considered the issues raised by the Change Proposal and the supporting documentation provided in the Panel's Final Recommendation Report and have decided to approve this Change Proposal, subject to amendments to the legal drafting as set out in Appendix 1 of this document. We would request, however, that in future all Final Recommendation Reports include the rationale for the Panel's decision, including details of why each Panel Member chose to agree, or otherwise, with the Change Proposal. We have concluded that the implementation of CPM006 will better facilitate the principles of the MAC detailed in Schedule 1 MAC, Principles and Definitions, and is consistent with our statutory duties.

Reasons for our decision

We support the principle of this Change Proposal which seeks to provide clarity around the arrangements for progressing changes that are considered to be urgent. The outbreak of the Covid-19 pandemic could give rise to more Urgent Change Proposals being required, and this process allows for trading parties, and other stakeholders, to raise Change Proposals on an expedited basis. We also support the amendments made to the original CPM006 solution to address the concerns we set out in our previous decision document, including the additions made to the supporting guidance documents, which we consider adequately address our original concerns. However, we have made some further amendments to the legal drafting which are outlined in Appendix 1. Amendments have been made to the proposed drafting of:

- Section 10.1.1, 10.1.2 and the definition of "Qualifying Majority" to take account of amendments that were made to the MAC following implementation of CPM016 – Panel Voting Majorities;
- The definitions of Urgent Change Proposal Criteria and Urgent Panel Meeting Contact Guidance to confirm that any changes to the criteria or guidance must be approved by the Authority; and
- The other amendments are to address typographical errors.

We consider that the Change Proposal addresses the issues that were identified in the Final Report as the urgency criteria provides a level of certainty for proposers regarding when a proposal will be considered to be urgent and will also assist the Panel's decision making with regard to urgency. Further, we believe the proposed solution 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. As such, we see merit in this process being implemented earlier than the date recommended by the Panel. We are approving implementation of CPM006 on 8 April 2020.

We have set out below our views on which of the code principles are better facilitated by the change proposal.

Efficiency

We agree with the view provided by the Proposer and Panel sub-group that CPM006 introduces a process for considering Urgent Change Proposals, so that they can be progressed in an expedited manner. These changes will enable efficient decision making and management of Urgent Change Proposals by allowing the Panel to set constrained timetables for the assessment and progression of Urgent Change Proposals.

Transparency

We believe that the introduction of Urgent Change Proposal Criteria will provide clarity to Trading Parties and Panel Members on whether changes should be treated as urgent as well as the timetable for their progression and decision.

Decision notice

In accordance with paragraph 7.2.8 of the Market Arrangements Code, the Authority approves this Change Proposal.

Georgina Mills
Director, Business Retail Market

Appendix 1: Amendments to legal drafting

Definitions in Schedule 1:

“Qualifying Majority” such number of Panel Members as indicated in Section 5.10.2 ~~(subject to the provisions of paragraph 5.8.4 in relation to Urgent Panel Meetings);~~

“Urgent Change Proposal Criteria” The guidance documentation to be produced, maintained ~~by the Panel, but subject always to the Authority’s approval. This guidance documentation shall be~~ and referred to by the Panel in determining whether a Change Proposal, Charging Change Proposal or Market Arrangements Code Change Proposal should be classified as an Urgent Change Proposal.

“Urgent Panel Meeting Contact Guidance” The guidance documentation to be produced and maintained by the Panel, ~~but subject always to the Authority’s approval.~~ It sets out the process the Panel Chairman (or relevant alternative under 5.8.5) should follow when contacting Panel Members to convene an Urgent Panel Meeting.

5.10.1 At any meeting of the Panel any matter to be decided shall be put to a vote of Panel Members upon the request of any Panel Member. Where any matter (save for those matters considered under Sections ~~5.8.4 and~~ 5.10.2) is put to a vote of Panel Members, such a vote shall be decided by a simple majority plus one vote of those votes cast at the meeting by Panel Members (and an abstention shall not be counted as a cast vote).

5.10.2 Determinations to remove a Panel Member under Section 5.6.12(b) shall be decided by:
(a) a unanimous vote of those votes cast at the meeting by Panel Members (and an abstention shall not be counted as a cast vote); or
(b) being voted for by a Qualifying Majority.

For the purposes of this Section 5.10.2 a "Qualifying Majority" shall be not less than ten of the Panel Members ~~(subject to the provisions of paragraph 5.8.4 in relations to Urgent Panel Meetings).~~

6.3.1 (c) If it is a Change Proposal or Charging Change Proposal which the Proposer has stated should be treated as an Urgent Change Proposal, then all of the following steps must be completed within three (3) ~~Business Days~~ of receipt of the Change Proposal or Charging Change Proposal:

- (i) the Panel Secretary will send the Change Proposal or Charging Change Proposal and any evidence to support it to the Panel Chairman.

- (ii) the Panel Chairman shall direct the Panel Secretary to convene an Urgent Panel Meeting, unless a Panel meeting is already scheduled to take place within the next three (3) ~~Business Days~~, in which case the Change Proposal or Charging Change Proposal will be added to the agenda for that Panel meeting, which for the avoidance of doubt, will be treated as an Urgent Panel Meeting for the purpose of that Change Proposal or Charging Change Proposal.
- (iii) at the Urgent Panel Meeting, the Panel will decide if the Change Proposal or Charging Change Proposal is an Urgent Change Proposal (using the Urgent Change Proposal Criteria).
- (iv) if the Panel decide at the Urgent Panel Meeting that the Change Proposal or Charging Change Proposal is an Urgent Change ~~Proposal~~, it will provide a timetable and/or process for the Urgent Change Proposal to the Panel Secretary, including the date by which any assessment work should be considered at a Panel meeting (or Urgent Panel Meeting) and the date by which the Panel Secretary should provide a Final Report in relation to the Urgent Change Proposal.
- (v) if the Panel decide at the Urgent Panel Meeting that the Change Proposal or Charging Change Proposal is not an Urgent Change Proposal, and the Proposer agrees with this decision, then the Change Proposal will proceed as per 6.3.1(a).

6.3.1(d) If the Panel decides the Change Proposal or Charging Change Proposal should not be treated as an Urgent Change Proposal and the Proposer notifies the Panel within two (2) ~~Business Days~~ of that decision that it disagrees with the decision, then the Panel Secretary shall have a further one (1) ~~Business Day~~ to send the Change Proposal or Charging Change Proposal and any evidence to support it to the Authority. If the Authority decides, having regard to the Urgent Change Proposal Criteria, that the Change Proposal or Charging Change Proposal should be treated as an Urgent Change Proposal then the Panel, based on feedback from the Authority, shall provide a timetable and/or process for the Urgent Change Proposal to the Panel Secretary. This will include the date by which any assessment work should be considered at a Panel meeting (or Urgent Panel Meeting) and the date by which the Panel Secretary should provide a Final Report in relation to the Urgent Change Proposal.

7.2.1(c) If it is a Market Arrangements Code Change Proposal which the Proposer has stated should be treated as an Urgent Change Proposal, then all of the following steps must be completed within three (3) ~~Business Days~~ of receipt of the Change Proposal or Charging Change Proposal:

- (i) the Panel Secretary will send the Market Arrangements Code Change Proposal and any evidence to support it to the Panel Chairman.
- (ii) the Panel Chairman shall direct the Panel Secretary to convene an Urgent Panel Meeting, unless a Panel meeting is already scheduled to take place within the next three (3) ~~Business~~ ~~Days~~, in which case the Change Proposal or Charging Change Proposal will be added to the agenda for that Panel meeting, which for the avoidance of doubt, will be treated as an Urgent Panel Meeting for the purpose of that Change Proposal or Charging Change Proposal.
- (iii) at the Urgent Panel Meeting, the Panel will decide if the Market Arrangements Code Change Proposal is an Urgent Change Proposal (using the Urgent Change Proposal Criteria).
- (iv) if the Panel decide at the Urgent Panel Meeting that the Change Proposal or Charging Change Proposal is an Urgent Change ~~Proposal~~ it will provide a timetable and/or process for the Urgent Change Proposal to the Panel Secretary, including the date by which any assessment work should be considered at a Panel meeting (or Urgent Panel Meeting) and the date by which the Panel Secretary should provide a Final Report in relation to the Urgent Change Proposal.

7.2.1(d) If the Panel decides the Market Arrangements Code Change Proposal should not be treated as an Urgent Change Proposal and the Proposer notifies the Panel within two (2) ~~Business~~ ~~Days~~ of that decision that it disagrees with the decision, then the Panel Secretary shall have a further one (1) ~~Business~~ ~~Day~~ to send the Market Arrangements Code Change Proposal and any evidence to support it to the Authority. If the Authority decides, having regard to the Urgent Change Proposal Criteria, that the Market Arrangements Code Change Proposal should be treated as an Urgent Change Proposal then the Panel, based on feedback from the Authority, shall provide a timetable and/or process for the Urgent Change Proposal to the Panel Secretary. This will include the date by which any assessment work should be considered at a Panel meeting (or Urgent Panel Meeting) and the date by which the Panel Secretary should provide a Final Report in relation to the Urgent Change Proposal.