
Market Arrangements Code Change Proposal – Ref CPM045 & CPW127

Modification proposal	Market Arrangements Code Change Proposal – CPM045 & CPW127 – Extending the right of the Market Operator to raise change proposals
Decision	The Authority has decided to approve this Change Proposal
Publication date	8 December 2021
Implementation date	14 January 2022

Background

Wholesale Retail Code (WRC) Change Proposals¹ are made to the Panel and are developed and progressed as per section 6 of the Market Arrangements Code (MAC). Section 6.1.1 states that:

A Change Proposal may be made to the Panel Secretary in respect of the Wholesale-Retail Code by:

- a) any Trading Party;
- b) any Panel Member; or
- c) the Authority.

6.1.2 states that a Change Proposal may be made to the Panel Secretary by the Market Operator in respect of Parts 4 and/or 5 (and in respect of Part 1 as necessary to give effect to a Change Proposal in respect of Parts 4 and/or 5) of Schedule 1 of the Wholesale Contract.

¹ Unless otherwise specified, the terms used in this document are those defined in the Market Arrangements Code and Wholesale Retail Code

To effect changes to other parts of the WRC where the Market Operator (MOSL) has identified an issue, defect or area for improvement, it must find another proposer to sponsor and take forward the change.

The issue

The Market Operator is currently unable to propose and submit Change Proposals that impact Parts 2 (Business Terms) and 3 (Operational Terms) of Schedule 1 to the Wholesale Contract and is limited in raising Change Proposals to Schedule 1 Part 1 (Objectives, Principles and Definitions).

The Final Recommendation Report (FRR) sets out that by excluding MOSL from having the ability to raise Change Proposals to all parts of the WRC there are a number of associated impacts:

Bilateral Hub & Operational Terms

It is the Proposer's view that the current restrictions on the Market Operator create inefficiency in the change process, particularly in the context of the Bilateral Hub and the Operational Terms once CPW070 / CPM043 is closed. The implementation of the Bilateral Hub through CPW070/CPM043 adds to the Market Operator's responsibility in identifying changes to the Operational Terms and therefore provides the potential for Market Operator led Change Proposals. The Market Operator has worked closely with Trading Parties and the Authority to propose amendments to the Operational Terms to reflect the ongoing development of the Bilateral Hub via an Authority Timetabled Change Proposal whilst CPW070/CPM043 remains open, however it cannot include changes to the Operational Terms that are outside the scope of CPW070/CPM043, regardless of the improvement opportunity and case for change. Following the anticipated closure of CPW070/CPM043 in November 2022, the Market Operator will return to requiring a Trading Party, Panel Member or Authority sponsor to progress Change Proposals with respect to the Operational Terms and therefore it is considered that there is a risk that making changes to the Bilateral Hub may not be managed as effectively as possible on an enduring basis.

Housekeeping

It is the Proposer's view that inefficiency in the Change Proposal process extends to progressing non-material changes to areas outside of the Bilateral Hub and Operational Terms. The Market Operator maintains a log of non-material drafting errors, which includes mistakes with spelling, grammar, and referencing. However, where there are errors concerning the Operational Terms or Business Terms (or concern the Objectives, Principles and Definitions without impacting the Market Terms), a Proposer must be sought, and an associated timeline set accordingly.

Proactive Review

The Final Report details a number of Change Proposals that have been driven by events or queries that relate to specific sections of the WRC. It is stated that this has resulted in the identification of a number of areas where clarification of the existing provisions would be of advantage.

It is argued that these important clarifications are less likely to gain sponsorship or be implemented where immediate benefits for Trading Parties may not be apparent. These types of changes may be less likely to gain sponsorship and therefore would benefit from the Market Operator being able to put these changes forward.

The Change Proposal²

CPM045 & CPW127 seek to permit the Market Operator to raise Change Proposals pertaining to any part of the WRC.

Such Change Proposals will continue to be subject to the current governance and assessment phases overseen by the Panel and Ofwat.

Industry consultation and assessment

CPM045 & CPW127 was consulted upon from 13 September to 4 October 2021 and received comments from 16 respondents including seven Wholesalers, six Retailers and CCW. Two confidential responses were also received, both from Wholesalers. There were five questions posed in the consultation and the responses are summarised below (Full responses can be found at the [Change Proposal page](#) on the MOSL website).

Question 1: Do you agree that the Market Operator should be able to propose changes to the Objectives, Principles and Definitions? Please explain your answer.

Of the respondents 15 agreed (nine Wholesalers, five Retailers and CCW). One Retailer disagreed.

The reasons cited for agreement included:

- increasing efficiency in the change process;

² The proposal and accompanying documentation is available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

- removal of an unnecessary/invalid barrier by removing inefficiency in the change process;
- ensuring better alignment with the operations of the market by proposing changes that bring consistency, clarity, and improved outcomes for Trading Parties.

One Wholesaler stated that whilst they agreed with the question, they had concerns that the Change Proposal could lead to multiple Market Operator proposed changes to the Objectives, Principles and Definitions. The response noted the importance for stability in these core overarching aspects of the market codes. Another Wholesaler also considered there to be less clear need for MOSL- led changes to the Objectives, Principles and Definitions beyond ‘non-material drafting errors’, but stated this would not be detrimental to the market provided that appropriate governance and assessment phases continue to apply as proposed.

One Retailer disagreed on the basis that there should not be an open season for MOSL to raise changes unilaterally, notwithstanding the need for the normal code change process. The response stated that CPM045 is non-essential and suggested that the current barrier only requires MOSL to convince a single market participant to sponsor a relevant proposal in order to see it raised. They viewed CPM045 as unnecessary. In relation to the Objectives, Principles and Definitions, the response noted that CPM045 could enable the Market Operator to seek to amend its own duties and relationship with Trading Parties by amending the relevant objectives.

Question 2: Do you agree that the Market Operator should be able to propose changes to the Business Terms? Please explain your answer.

Of the respondents 15 agreed (nine Wholesalers, five Retailers and CCW). One Retailer disagreed. Of the responses that agreed, a number cited their response to question 1, the other reasons cited included:

- CPM045 will better align practices to the revised governance process introduced via CPM039/CPW124 (Revisions to Panel composition), which included a streamlined change process for non-substantive changes;
- because of MOSL’s unique position, a greater opportunity to propose changes would greatly benefit the market.

One Retailer disagreed with the rationale put forward in the consultation and stated that it would be inappropriate for the Market Operator to propose changes to the Business Terms, as this code document establishes the rights and obligations of the parties to a Wholesale Contract.

Question 3: Do you agree that the Market Operator should be able to propose changes to the Operational Terms? Please explain your answer.

Of the respondents 15 agreed (nine Wholesalers, five Retailers and CCW). One Retailer disagreed.

The majority of respondents agreed with the rationale set out in the consultation.

Respondents also set out that the removal of restrictions will ensure the efficient introduction of the Bilateral Hub and enable improvements to be expediated, therefore meeting the 'Primary Principle' and the 'Development and Sustainment of an effective market' principle of the MAC.

One response stated that the market will greatly benefit from the efficient capture and resolution of potential frictions and inefficiencies in the Bilateral Hub.

Many responses recognised the importance of the safeguard provided by robust governance and assessment around such Change Proposals. One response also noted that the consultation process will allow Trading Parties the opportunity to feedback on proposed changes where they may have a clearer understanding of delivering operational work in practice.

The response that disagreed with the question, did so on the basis that the need for Ofwat or Trading Party sponsorship of an Operational Terms change proposal would ensure the exploration of alternative options should they exist. The response also suggested that the Market Operator should maintain the Bilateral Hub only in accordance with the Operational Terms, rather than keep the Operational Terms aligned with any changes to the Bilateral Hub. The codes should drive the development of the Bilateral Hub, unlike the practice permitted by CPW070/CPM043. It stated that Trading Parties are best placed to propose changes, which if approved, must be delivered by the Market Operator in the Bilateral Hub.

Question 4: Do you agree with the rationale provided where this change proposal is considered to impact the Market Arrangement Code Principles? Please explain your answer.

Of the respondents 15 agreed (nine Wholesalers, five Retailers and CCW). One Retailer disagreed.

Some of the reasons cited by those who agreed with the question included:

- CPM045 will create a more efficient, effective, and flexible code change process, which will in turn improve the efficiency of development in key aspects of market operation;

- MOSL have a unique view of requirements for improving the market;
- it seemed appropriate to consider the sound rationale that applies between CMOS and the Code Subsidiary Documents to apply between the Bilateral Hub and Operational Terms/Operational Subsidiary Documents.

One respondent agreed with the majority of the rationale provided to support the Primary and Supporting Principles of the MAC but disagreed in respect of the Market Led principle on the basis that given the principle applies to market participants, which they considered not to include the Market Operator. The respondent did not agree with the assertion that extending the right of the Market Operator would significantly contribute to the fact that the MAC should enable and promote market participants to drive innovation and change that will create value for existing and future Non-Household Customers

The one response that disagreed did so for the same reasons they outlined in question 1.

Question 5: Do you have any additional comments on this change proposal? Please provide comments here.

Six respondents provided additional comments, (four Wholesalers and two Retailers). Ten did not provide further comments.

The additional comments provided included:

- the Market Operator should be aware of conflicts of interest when putting forward a Change Proposal, noting that the Market Operator has unrivalled access to data and market insight, but may influence outcomes via its role in the Strategic Panel and Code Change Committee nomination process;
- CPM045 could increase the volume of change proposals for Trading Parties to review and stated that MOSL will need to be mindful of Trading Party resources and timelines for other market initiatives;
- the consultation process should be reviewed in order to consider the impact on Trading Parties should the volume and frequency of consultations increase. The response suggested the process could be streamlined through the introduction of voting which only required those who disagreed with the proposal to share rationale;
- future consultation documents and the MOSL website should distinctly call out where a change is being proposed by the Market Operator; and
- the rights and restrictions established in Sections 6.1.1 and 6.1.2 of the MAC exist for good reason, and given the lack of rationale for the necessity of CPM045 and therefore the lack of justification for the extension of privileges afforded by

CPW070/CPM043, the Change Proposal should be rejected without any further time wasted.

Panel recommendation

CPM045 & CPW127 was presented to the Panel on 26 October 2021 and recommended for implementation with unanimous support from all 13 Panel Members, including the Panel Chair. The recommended implementation dates are 14 January 2022, if Ofwat approval is received by 7 January 2022, or within 5 Business Days of Ofwat approval if received after 7 January 2022.

Panel members discussed the draft recommendation report agreeing that CPM045 & CPW127 would enable the knowledge, expertise and experience of the Market Operator to be more efficiently applied to improve outcomes for customers and Trading Parties. In turn, this would allow market participants to focus on market priorities rather than being asked to assist in areas that are the responsibility of the Market Operator.

The Competition and Markets Authority recommendations in relation to the energy sector were discussed, particularly in relation to the parallels of code administrators being able to propose changes. A Panel Member noted that enabling the Market Operator to propose changes would provide a further vehicle for the delivery of strategic change.

It was noted that this change extends the scope of the Market Operator's role as established by the MAC and that this warranted further discussion separate to the conversation on CPM045 & CPW127. A conversation also took place around the original intentions for the restriction of Change Proposals on the Market Operator and it was noted that there were some concerns ahead of market opening around extending the role of the Market Operator at that time, which were now outdated. The risk remained that the Market Operator could propose changes that would consume resource to assess, but the existing checks and balances in the change process should mitigate this risk.

If approved by Ofwat by 7 January 2022, the Panel has recommended that the solution be implemented into the MAC on 14 January 2022.

Our decision and reasons for our decision

We have considered the issues raised by the Change Proposal, the consultation responses and the supporting documentation provided in the Panel's Final Report and we have decided to approve this Change Proposal.

We have concluded that the implementation of CPM045 & CPW127 will better facilitate the principles and objectives of the WRC and MAC (detailed in Schedule 1 Part 1: Objectives, Principles and Definitions of the WRC and Schedule 1 of the MAC, Principles and Definitions), and is consistent with our statutory duties.

The **primary principle** confirms that the Market Arrangements Code shall be maintained, operated and developed in a manner that best seeks to protect and promote the interests of, and participation by, existing and future Non-Household Customers³. We agree with the Proposer's view and the Panel's view that this change will remove restrictions currently in place on the Market Operator that inhibit the efficiency of the change process and limit the avenues through which positive changes may be initiated. It will enable the Market Operator to use its unique position to improve outcomes for (and therefore promote the interests of) existing and future Non-Household Customers.

We note that one consultation response stated that Trading Parties are best positioned to suggest changes to the Operational and Business Terms. However, we do not consider that this is a sufficient justification in and of itself to prohibit the Market Operator from also being able to propose changes. It remains the position that Trading Parties will continue to be able to raise changes, but that this Change Proposal will allow Trading Parties more time to consider changes where they have expert knowledge (including those directly related to the promotion of Non-Household Customers interests) and where better insight and knowledge has been developed. This will allow the Market Operator to raise and progress those changes that they are best placed to propose, including more routine administrative amendments. In this respect we consider that the supporting principles of **market led**, **efficiency** and **proportionality** are met.

Further, for the market to create value for current and future Non-Household Customers, we think that this change will facilitate the more effective use of Change Proposals which could be used as a key lever for positive change. Allowing the Market

³ Equivalent Primary Principle in the WRC is: The Wholesale Retail Code and arrangements established by or under the Wholesale Contract shall be maintained, operated and developed in a manner that best seeks to protect and promote the interests of, and participation by, existing and future Non-Household Customers.

Operator to raise Change Proposals increases the prospect of changes which will materially benefit customers and support the principle of **continued development and sustainment of an effective market.**

In response to the views raised that disagreed with the proposal, we consider the existing checks and balances included within the governance processes are sufficient to ensure that the change process operates effectively and will prevent the risk that the Market Operator proposes changes unilaterally that would not promote the interests of customers. We agree with the position set out in the Final Report that this Change Proposal will not affect the already robust governance processes that are in place, which ensure Change Proposals are given an appropriate level of scrutiny.

We have considered the point that the Change Proposal is unnecessary given that the Market Operator needs only secure the sponsorship of one Trading Party to see a Change Proposal raised in relation to the Operational and Business Terms. Whilst this is currently the case, evidence to date suggests that some Trading Parties (in particular smaller Trading Parties) have not raised Change Proposals due to resource constraints. Equally, changes where an immediate benefit to Trading Parties is not apparent are less likely to gain sponsorship. As a result, we think that extending the scope of the Market Operator's role to allow it to raise Change Proposals to all areas of the WRC is appropriate and will further advance the **transparency and clarity** and the **simple cost effective and secure** supporting principles as the Market Operator is arguably more likely to submit Change Proposals, for example clarifying ambiguous terminology, which could avoid disputes over them at a later date.

We note that there has been reference made that suggests approval of this Change Proposal could lead to a high volume of unnecessary Change Proposals being submitted which would be an administrative burden on the Trading Parties. Whilst the administrative burden in processing Change Proposals is something to be mindful of, no evidence has been presented that the approval of CPM045 & CPW127 would lead to an onrush of unnecessary changes being introduced.

Procedurally it is correct that the Market Operator must maintain the Bilateral Hub only in accordance with the Operational Terms, rather than keep the Operational Terms aligned with any changes to the Bilateral Hub. However, it is not accepted that the Market Operator should be stifled in proposing positive changes to the Operational Terms given that the usual governance process still applies, and that Market Operator led proposals could lead to innovation, beneficial to Non-Household Customers and Trading Parties. On balance it is considered that now that the Market Operator is maintaining the Bilateral Hub and is well placed to identify cost effective improvement opportunities, there is an increased likelihood that they would need to raise a change in relation to the Operational Terms to maintain and improve hub functionality. It is therefore considered that allowing the Market Operator to further contribute to

solutions is a positive change consistent with the supporting principle **seamless Non-Household Customer experience** by providing the maximum opportunity for the Bilateral Hub to reach its full potential within the market.

One of the suggestions in the consultation responses was to conduct a post implementation review to determine whether the benefits of this Change Proposal have been realised. We support this recommendation and suggest that 12 Months would be a reasonable timeframe.

Decision notice

In accordance with paragraph 7.2.9 of the Market Arrangements Code, the Authority approves this Change Proposal.

Georgina Mills
Director, Markets and Enforcement