

Dear Dora,

A brief response to your open letter on code modification urgency criteria. This submission is entirely non-confidential.

We think that clarifying these criteria, and making it clear that a common approach will be applied across all codes, is a sensible and appropriate step for the Authority to be taking.

We share your view that urgent treatment should be a rare event. Urgent treatment, by necessity, reduces the scope for meaningful consultation and for industry processes to fully bottom-out all aspects of a proposal before it is sent to the Authority/Ofgem for decision. In rare cases such shortcuts are the lesser of two evils, but we would like to see urgent treatment continue to be applied only in exceptional cases rather than becoming a common event.

We are broadly comfortable with the guidance; we only wish to offer two comments on it, both minor.

Firstly, we think the fourth criteria, relating to the need to respond to imminent legal requirements that could not have reasonably been foreseen by the proposer, may not be needed. This is because we think that modifications necessitated by legal change are likely to invariably also have commercial consequences (i.e. that failing to comply with legislation could be argued to be commercially significant; increasing the risk of legal action, making it harder to enforce contracts, and so on). As a consequence we think it is likely that a modification that met this criteria could also be argued to have met the commercial significance criteria. For the avoidance of doubt, we do not think the inclusion of this criteria is harmful – we simply question whether it may be superfluous in practice.

Secondly, it may be worth clarifying that references to the Authority also include Ofgem, acting under delegated permission from the Authority. I personally would regard this as already implicit, but past experience on contentious modifications suggests that some industry participants may interpret any reference to the Authority very literally, i.e. that the guidance is saying that any decision on urgency must be made by the Authority itself (when in practice I suspect that in most cases urgency decisions will – quite necessarily – be made at SMT level or department head level within Ofgem).

We hope these comments help. Please feel free to get in contact if you would like to discuss further.

Rich

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