

UNC Modification	At what stage is this document in the process?
<h1>UNC 0743:</h1> <h2>Revisions to User Termination Provisions</h2>	<div style="display: flex; flex-direction: column; gap: 5px;"> <div style="border: 2px solid green; border-radius: 10px; padding: 5px; display: flex; align-items: center; justify-content: center;"> 01 Modification </div> <div style="border: 2px solid blue; border-radius: 10px; padding: 5px; display: flex; align-items: center; justify-content: center;"> 02 Workgroup Report </div> <div style="border: 2px solid purple; border-radius: 10px; padding: 5px; display: flex; align-items: center; justify-content: center;"> 03 Draft Modification Report </div> <div style="border: 2px solid orange; border-radius: 10px; padding: 5px; display: flex; align-items: center; justify-content: center;"> 04 Final Modification Report </div> </div>
<p>Purpose of Modification:</p> <p>Changes are required to the Uniform Network Code (UNC) following the implementation of the Corporate Insolvency and Governance Act 2020 ('CIGA'). Whilst CIGA does not directly <i>mandate</i> change to the UNC, it has the effect of limiting the circumstances in which a Termination Notice can be issued to a User. Therefore it is appropriate to acknowledge these limitations in the UNC.</p>	
	<p>The Proposer recommends that this Modification should be:</p> <ul style="list-style-type: none"> subject to self-governance assessed by a Workgroup <p>This Modification will be presented by the Proposer to the Panel on 19 November 2020. The Panel will consider the Proposer's recommendation and determine the appropriate route.</p>
	<p>High Impact: None</p>
	<p>Medium Impact: None</p>
	<p>Low Impact: Shipper Users, Distribution Network Operators and National Grid NTS</p>

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Timetable		
The Proposer recommends the following timetable:		
Initial consideration by Workgroup	26 November 2020	
Workgroup Report presented to Panel	18 February 2021	
Draft Modification Report issued for consultation	19 February 2021	
Consultation Close-out for representations	11 March 2021	
Final Modification Report available for Panel	12 March 2021	
Modification Panel decision	18 March 2021	
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1 Summary

What

The UNC TPD Section V4.3.3 enables a Transporter to issue a Termination Notice to a User where a User Default has occurred. The events that constitute a User Default are listed in Section V4.3.1, and include where:

- a voluntary arrangement (under Section I of the Insolvency Act 1986) is proposed in respect of a User,
- an administrative receiver (as defined in Section 29 of the Insolvency Act 1986) is appointed in respect of the User's assets or undertaking, or
- an administration order (under Section 8 of the Insolvency Act 1986) is made in respect of the User.

With effect from 25 June 2020 a Transporter is not able to issue a Termination Notice where the User Default is triggered by the occurrence of one or more of the three events listed above.

Why

The CIGA was implemented with effect from 25 June 2020. Section 14 of this Act provides that a provision in a contract for the supply of goods and services that would terminate the contract or supply, or provide the supplier with the entitlement to do so, ceases to have effect where the relevant company becomes subject to a 'relevant insolvency procedure'.

A 'relevant insolvency procedure' includes where

- a voluntary arrangement takes effect in respect of the company;
- an administrative receiver of the company is appointed; and
- the company enters administration.

How

It is proposed that the relevant triggers for User Default and the consequential rights for Transporters to issue a Termination Notice are revised to reflect that these triggers and rights are subject to the relevant provisions of the CIGA.

2 Governance

Justification for Self-Governance

Application of Self-Governance procedures is sought because the changes proposed are unlikely to have a material effect on competition in the shipping, transportation or supply of gas conveyed through pipes or any commercial activities connected with the shipping, transportation or supply of gas conveyed through pipes. This is because the nature of the change is to align the UNC to current 'live' legislation as CIGA overrides the provisions of the UNC to the extent the UNC conflicts with CIGA. There is no consequential change to the actions Transporters are able, or not able, to take in respect of User Default and Termination Notices post implementation but the UNC will be in alignment with the new legislation.

Requested Next Steps

This Modification should:

- be considered a non-material change and subject to self-governance
- be assessed by a Workgroup

It is recommended that this Proposal is assessed by a Workgroup for a period of 3 months prior to formal consultation. A pre-modification discussion took place at the UNC Transmission Workgroup on 05 November 2020.

3 Why Change?

Existing UNC User Default and Termination Notice Provisions

UNC TPD Section V4.3.3 enables a Transporter to issue a Termination Notice to a User where a User Default has occurred. The events that constitute a '*User Default*' are listed in Section V4.3.1, this includes where:

- a voluntary arrangement (under Section I of the Insolvency Act 1986) is proposed in respect of a User as per V4.3.1(e)(i),
- an administrative receiver (as defined in Section 29 of the Insolvency Act 1986) is appointed in respect of the User's assets or undertaking as per V4.3.1(e)(ii), or
- an administration order (under Section 8 of the Insolvency Act 1986) is made in respect of the User as per V4.3.1(e)(iii).

Impacts of the New Legislation

The CIGA was implemented with effect from 25 June 2020. Section 14 of this Act inserts a new section into the Insolvency Act 1986, this being section 233B '*Protection of goods and Services*'. Paragraph (3) of this section states that a provision in a contract for the supply of goods and services that would terminate the contract or supply, or provides the supplier with the entitlement to do so, ceases to have effect where the relevant company becomes subject to a relevant insolvency procedure.

Paragraph (2) of Section 233B lists those circumstances that constitute a '*relevant insolvency procedure*' and these circumstances include where:

- a voluntary arrangement takes effect in respect of the company (paragraph (2)(d) of Section 233B);
- an administrative receiver of the company is appointed (paragraph (2)(c) of Section 233B); and
- the company enters administration (paragraph 2(b) of Section 233B).

It is worthy of note that the making of an 'administration order' constitutes entering into administration (see Schedule B1 of the Insolvency Act 1986).

Where the relevant contractual provision ceases to have effect under paragraph (3), paragraph (5) the provider of the goods or service (the Transporter in this case) may still terminate the contract if:

- the company or the office holder consents to the termination (paragraphs (5)(a) and (b) of Section 233B); or

- a court is satisfied that continuation would cause the provider hardship (paragraph (5)(c) of section 233B)

Where the relevant contractual provision ceases to have effect under paragraph (3), paragraph (6) affords the provider with the entitlement to terminate the contract if the company becomes subject to a further relevant insolvency procedure.

Implications

This change impacts both Transporters (as providers of services) and Users (as recipients of services). In this context 'Users' includes both Shippers and DNO Users (as per TPD section V4.1.6).

The CIGA limits the ability of Transporters to issue a Termination Notice where the User in question is subject to a relevant insolvency procedure. To enhance consistency of the UNC with the new legislation it is desirable for the UNC to acknowledge this limitation.

If the UNC is not modified as proposed, there will be an inconsistency between the new legislation and the UNC in terms of the latter currently providing an unconditional right for the Transporter to issue a Termination Notice to a User where a User Default has occurred. Regardless of whether the UNC is modified, due to the prevalence of the provisions of primary legislation over the terms of contracts, this right is not enforceable where the User is subject to a relevant insolvency procedure, including the three instances listed in the prevailing terms of the UNC.

Minor changes are also required to the Energy Balancing Credit Rules to align to the new legislation. These changes will be enacted via approval by the Energy Balancing Credit Committee pursuant to TPD Section X2.1.4 at the appropriate point.

4 Code Specific Matters

Reference Documents

[Insolvency Act 1986](#)

[Corporate Insolvency and Governance Act 2020](#)

[UNC TPD V](#)

[UNC TPD X](#)

[Energy Balancing Credit Rules](#)

Knowledge/Skills

Knowledge of User Termination provisions in the UNC (TPD V4.3) any associated provisions would be beneficial.

5 Solution

It is proposed that the following provisions relating to User Termination (TPD V4.3) are amended to reflect that they are subject to section 233B of the Insolvency Act 1986:

- V4.3.1(e) – events or circumstances constituting a User Default, specifically including those that are relevant insolvency procedures under section 233B of the Insolvency Act 1986 (as amended by CIGA);

- V4.3.3 – entitlement for a Transporter to issue a Termination Notice to a User;
- V4.3.5(b) – issue of Termination Notice for Users where a foreign insolvency practitioner (i.e. outside England and Wales) is appointed

6 Impacts & Other Considerations

Does this modification impact a Significant Code Review (SCR) or other significant industry change projects, if so, how?

This Modification does not impact and SCR nor a significant industry change

Consumer Impacts

This Modification is not expected to impact consumers

Cross Code Impacts

There may be impacts on any equivalent User Termination provisions detailed in Section G7 of the IGT UNC.

EU Code Impacts

This Modification does not impact EU Codes

Central Systems Impacts

There are not expected to be any impacts on Central Systems. However, processes associated with management of the Energy Balancing arrangements (provided by the CDSP on behalf of National Grid NTS) will need to take account of the limitations introduced by the new legislation.

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	None

(iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers.	
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 better facilitates the following Relevant Objective:

f), by removing the conflict between legislation and the unconditional entitlement in the UNC for a Transporter to issue a Termination Notice where a User Default has occurred.

8 Implementation

As self-governance procedures are proposed, implementation could be sixteen business days after a Modification Panel decision to implement, subject to no Appeal being raised.

As noted above, regardless of the timing of implementation, due to the prevalence of the provisions of primary legislation where in conflict with the terms of contracts, from 25 June 2020 the entitlement for a Transporter to issue a Termination Notice is not enforceable where the User is subject to a relevant insolvency procedure, including the three instances listed in the prevailing terms of the UNC.

9 Legal Text

Suggested Text Commentary

The changes to paragraph:

- V4.3.1(e) means that the events or circumstances constituting a User Default, specifically including those that are relevant insolvency procedures, are subject to the provisions inserted into the Insolvency Act 1986 by the CIGA;
- V4.3.3 means that entitlement for a Transporter to issue a Termination Notice to a User is subject to the provisions inserted into the Insolvency Act 1986 by the CIGA;
- V4.3.5(b) means that the issue of Termination Notice for Users where a foreign insolvency practitioner (i.e. outside England and Wales) is appointed is subject to the provisions inserted into the Insolvency Act 1986 by the CIGA.

Suggested Text

Transportation Principal Document

Section V – General

4.3 Termination

Amend paragraph V4.3.1(e) as follows:

“(e) **save if and to the extent the provisions of section 233B of the Insolvency Act 1986 apply**, where:

Amend paragraph V4.3.3 as follows:

“Upon the occurrence of a User Default, and at any time after such occurrence at which the User Default is continuing the Transporter may **(subject to the provisions of section 233B of the Insolvency Act 1986)** give notice (“Termination Notice”) to the Defaulting User to the effect that the User shall cease to be a User of or in relation to its System(s) with effect from the date (which may be any date on or after the date on which the notice is given) specified in the notice.”

Amend paragraph V4.3.5(b) as follows:

“(b) **(subject to the provisions of section 233B of the Insolvency Act 1986)** the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate) fails to provide adequate assurances to National Grid NTS in compliance with the principles established in Section X and the Energy Balancing Credit Rules (such assurances not to exceed a legal and binding commitment by the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate), to pay to National Grid NTS all Energy Balancing Debt accruing from (and including) the date of appointment of the receiver, administrator, trustee-in-bankruptcy or foreign insolvency practitioner (as appropriate), as soon as reasonably practicable after being appointed (but for the avoidance of doubt not within two Business Days of its appointment).”

10 Recommendations

Proposer’s Recommendation to Panel

Panel is asked to:

- Agree that self-governance procedures should apply
- Refer this proposal to a Workgroup for assessment.