

Legal Text Guidance Document

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Document

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Introduction

This document is the Legal Text Guidance Document referenced in the Uniform Network Code (UNC) Modification Rules. It may be modified by Panel Majority, as provided for in paragraph 9.6.6 of the Modification Rules.

Background

UNC modifications are ultimately defined by the legal text that supports them. The development of the legal text is therefore critical to any modification and this guidance document provides a framework for the preparation of legal text. This framework seeks to set out best practice, providing transparency to the existing process, clarity to parties involved in the process and consistent expectations. The Guidance has been written to be consistent with the requirements of both the UNC and the Code Administration Code of Practice.

Principle 9 of the Code Administration Code of Practice is that “Legal text will be produced and consulted upon prior to a Modification being recommended for approval” The Code of Practice sets out that:

“To allow users to fully understand and assess the impact of a Modification, the default position will be that legal drafting will always be developed in time to allow for consultation. To achieve this principle:

- The Code Administrators will seek to ensure legal text is produced in time to be issued for consultation;
- Code panels may, by exception, agree that legal text may not be produced in certain circumstances, including where the proposer has produced suggested text as part of the Modification;
- Code panels can agree to minor corrections to legal text at the time of making its final recommendation;
- If the Panel determines that changes to the legal text are appropriate, but considers that they cannot reasonably be considered to be minor, they may instruct the Code Administrator to carry out a further consultation on that revised text;
- Code Administrators will seek to ensure that legal text is produced in a consistent style and that the legal text accurately implements the intent of the Modification.”

Further, Principle 6 of the Code Administration Code of Practice provides that “Before it is consulted on, the proposer will have a right to discuss the legal text of a Modification with those producing the text”.

The UNC Modification Rules provide that the Transporters are responsible for the provision of legal text in support of all modifications. Proposers are free to provide Suggested Text as part of any modification proposal, but the Transporters remain responsible for the text and, while expected to take any Suggested Text into account, may choose to adopt a different approach to that set out in any Suggested Text.

The Modification Rules provide for the Modification Panel to request that legal text is provided for a modification. Unless the Modification Panel specifies a different timescale, the Transporters are obliged to provide text within 15 business days of a request. If the Transporters consider the modification is not sufficiently clear or complete to enable the preparation of text, they are required to provide a written report setting out the reasons for this.

In addition, the Transporters are required to provide legal text for a modification when this is requested by the Authority.

Having provided legal text in response to a request, the Transporters may subsequently amend the text until the time at which the Modification Panel determines whether or not to recommend implementation of a modification, or whether or not to implement a self-governance modification. Subsequent to a final modification report being submitted to the Authority for a decision as to whether or not a modification should be implemented, any change to the text within the final modification report results in that report being referred back to the

Modification Panel, and the Panel may determine that, given the change to the proposed legal text, further consultation should occur.

Legal Representative

The Transporters are to identify and secure the legal resources they consider are appropriate to produce legal text in support of a modification.

The Transporters shall identify a named legal representative in respect of each modification.

The legal representative for a modification should not normally be changed, although it is recognised that there may be circumstances in which it is appropriate for the legal representative to be changed.

Where possible, the legal representative for any alternative modification should be the same as for the original modification. In addition to formal alternatives, if modifications are closely related the Transporters should seek to ensure that the same legal representative is appointed. In addition to the proposer of the original modification, references to the proposer in the remainder of this document should be taken as referring to the proposer(s) of any alternative or closely related modification(s) for which the same legal representative is used.

If requested, the legal representative's name and contact details are to be provided to the proposer. For the avoidance of doubt, however, all contact between the proposer and legal representative is expected to be carried out through the relevant Transporter representative (as named in documents relating to the modification) who will facilitate any required communication. Whenever requested, the Transporter representative will arrange meetings or teleconferences between the proposer and legal representative in order to facilitate effective legal text production.

The legal representative may either produce the text themselves or be supported by others as necessary. However the Transporters remain responsible for the timely delivery of text which would implement the Solution set out in the relevant Modification.

The legal representative will not provide specific legal advice in relation to the commercial aspects of the modification and its impact upon the proposer's business and any legal view provided by the legal representative will not be a substitute for the proposer obtaining its own legal advice.

Development of Text

Subject to the modification proposer agreeing to incorporate suggested changes, modification Workgroups are required to fully develop an unambiguous plain English Solution in a modification in sufficient detail to enable legal text to be prepared. For the avoidance of doubt, it is the proposer's responsibility to ensure that the Solution is fully developed and sufficiently clear to support the preparation of legal text.

Workgroups may recommend to the Panel that legal text for a modification be requested.

At any point during the assessment of a modification, if there are any particular issues that the legal representative believes should be addressed in developing the Solution, these should be advised to the relevant Transporter representative, who should advise the proposer and Code Administrator. The Code Administrator shall ensure that the Workgroup is made aware of any issues raised by the legal representative, and the Workgroup shall seek to address the issues raised in order to facilitate the subsequent production of legal text.

The Workgroup may request a legal view from the legal representative in relation to the modification during the assessment process provided that such advice can be provided objectively, relates only to the subject matter of the modification and consequential impacts of the modification upon UNC generally.

If the legal representative wishes to clarify any points in the Solution, contact should initially be made with the proposer of the modification via the relevant transporter representative.

In support of the legal text provided, the legal representative shall provide a plain English explanatory note setting out the approach taken to converting the Solution into legal text, illustrating how the legal text delivers the intent of the Solution.

The Workgroup shall assess whether the legal text meets the intent of the Solution and the relevant Transporter representative shall advise the legal representative of any areas of the text that are believed to be unclear, in error, or otherwise inappropriate.

If requested by the Workgroup, the legal representative shall seek to attend (either in person or by remote access) a Workgroup meeting at which the text is to be discussed, and shall present and explain the text that has been provided and discuss any issues that are raised by Workgroup attendees. In the event that the Workgroup does request a meeting with the legal representative, the Transporter UNC Representative shall normally provide the legal representative with an agenda/list of matters which the Workgroup wishes to be discussed no fewer than 5 Working Days in advance of the proposed meeting. For the avoidance of doubt, it is not expected that the legal representative will attend Workgroup meetings as a matter of course but only where this is considered an economic and efficient means of addressing outstanding issues.

Irrespective of any Workgroup request, the legal representative may attend (either in person or by remote access) any Workgroup meeting in order to understand the modification and provide advice and guidance to the Workgroup regarding any areas that would benefit from amendment in order to support the production of legal text.

The Workgroup should satisfy itself that the legal text is expected to deliver the intent of the Solution, and the Workgroup Report to the Panel should confirm whether or not the Workgroup is satisfied in this respect.

Modification Panel

Prior to a modification being issued to consultation, Panel Members should satisfy themselves that the legal text has been scrutinised and, if implemented, can reasonably be expected to implement the Solution as contained in the Modification.

Modification Panel Members may request that the legal representative be available to advise Members regarding the legal text, and to present the text when requested to do so by the Modification Panel at meetings where the modification concerned is on the agenda.

Any UNC party that has concerns regarding the quality or timeliness of legal text and supporting advice being provided in respect of a particular modification may make representations to the Modification Panel seeking agreement to an alternative legal representative being appointed for that modification.

If any representations are received that propose an alternative legal representative should be appointed, the Modification Panel shall consider those representations and determine whether to request that the Transporters appoint an alternative legal representative.

If the Modification Panel determine to request that an alternative legal representative be appointed, the Transporters shall either inform the Code Administrator of the name of the alternative legal representative or provide a written explanation to the Modification Panel setting out why the Transporters have declined to agree to the Modification Panel's request.

Review

To identify any improvements in the process that can reasonably be introduced, the Code Administrator shall ensure that review of this guidance document and the associated process of legal text production is included on at least one Modification Panel Agenda in each calendar year. All users of this guidance are encouraged to send the Code Administrator suggested changes that they believe would improve this guidance document and the process for producing legal text. If any suggested change is received, the Code Administrator shall put that suggested change on the agenda of the next appropriate Modification Panel meeting.