














| UNC Final Modification Report | | At what stage is this document in the process? |
|---|---|---|
| <h1>UNC 0743S:</h1> <h2>Revisions to User Termination Provisions</h2> | | <div>01 Modification</div> <div>02 Workgroup Report</div> <div>03 Draft Modification Report</div> <div>04 Final Modification Report</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> | | |
|  | Panel consideration is due on 18 February 2021 (<i>at short notice by prior agreement</i>) | |
|  | High Impact: None | |
|  | Medium Impact: None | |
|  | Low Impact: Shipper Users, Distribution Network Operators and National Grid NTS | |

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| Timetable | |  Any questions? |
| Modification timetable: | | Contact: Joint Office of Gas Transporters |
| Initial consideration by Workgroup | 26 November 2020 |  enquiries@gasgovernance.co.uk |
| Workgroup Report presented to Panel | 21 January 2021 |  0121 288 2107 |
| Draft Modification Report issued for consultation | 21 January 2021 | Proposer: Phil Lucas National Grid NTS |
| Consultation Close-out for representations | 11 February 2021 |  phil.lucas@nationalgrid.com |
| Final Modification Report available for Panel | 15 February 2021 |  07825 592518 |
| Modification Panel decision | 18 February 2021 (<i>short notice</i>) | Transporter: National Grid NTS |
| | |  email address |
| | |  telephone |
| | | Systems Provider: Xoserve |
| | |  UKLink@xoserve.com |

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.

Workgroup discussed the Self Governance criteria identifying that UNC Modification Panel's expectation was that Workgroup discussions would be concluded early as the proposed change is merely bringing UNC into line with new legislation that is already in place.

Requested Next Steps

This Modification should:

- be considered a non-material change and subject to self-governance
- proceed to consultation on the basis that Workgroup Participants have concluded their impact assessment.

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 an SCR nor a significant industry change.

Consumer Impacts

The Proposer's view is that this Modification is not expected to have any direct impact to consumers as primary legislation is already in place and this change is merely to bring the UNC in line. Further details can be found in the Implementation section of this report.

Workgroup participants assisted in filling out the following table.

| Consumer Impact Assessment | |
|---|--|
| Criteria | Extent of Impact |
| Which Consumer groups are affected? | <ul style="list-style-type: none"> Domestic Consumers Small non-domestic Consumers Large non-domestic Consumers Very Large Consumers |
| What costs or benefits will pass through to them? | Has no comparable impact pre- or post-implementation |
| When will these costs/benefits impact upon consumers? | Has no comparable impact pre- or post-implementation |
| Are there any other Consumer Impacts? | Non-Identified. |

Cross Code Impacts

There may be impacts on any equivalent User Termination provisions detailed in Section G7 of the IGT UNC. The Joint Office of Gas Transporters has brought this to the attention of IGT. There appears to be a need for a related Modification to 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.

Workgroup Impact Assessment

Workgroup commenced discussion of this Modification in November 2020 with a suggested 3-month period of assessment. Initial discussions highlighted that the aim of this Modification is to bring UNC in line and up to date with current legislation and changes introduced by the Corporate Insolvency and Governance Act 2020 ('CIGA') which was enacted on 25 June 2020.

The proposer also advised Workgroup that whilst CIGA does not directly mandate changes to the UNC, it has the effect of limiting the circumstances in which a Termination Notice can be issued to a User, specifically where a User is subject to a 'relevant insolvency procedure'. The Workgroup participants were made aware of the impacted User Default and Termination Notice provisions covered under UNC TPD V4. Workgroup agreed that updating code, better facilitates relevant Objective (f) Promotion of efficiency in the implementation and administration of the Code.

The Workgroup was also made aware that discussions had also taken place at both the Energy Balancing Credit Committee (EBCC) and DSC Credit Committees in November 2020, noting that no concerns had been raised, and it was agreed that there is a requirement for a minor change to EBCC Credit Rules. Workgroup did not raise any additional concerns. The Proposer confirmed that this Modification's solution had been developed with input from all Gas Transporters.

Rough Order of Magnitude (ROM) Assessment

None as there are not expected to be any impacts on Central Systems.

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; | None |

| | |
|--|----------|
| (ii) between relevant suppliers; and/or (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.

Workgroup Participants agreed that updating code, better facilitates relevant Objective (f) Promotion of efficiency in the implementation and administration of the Code.

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

Workgroup Participants reviewed the legal text and agreed that it reflected the solution.

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.

Legal 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 Consultation

Panel invited representations from interested parties on 22 January 2021. The summaries in the following table are provided for reference on a reasonable endeavours' basis only. It is recommended that all representations are read in full when considering this Report. Representations are published alongside this Final Modification Report.

Implementation was unanimously supported in the 3 representations received.

Representations were received from the following parties:

| Organisation | Response | Relevant Objectives | Key Points |
|-------------------|----------|---------------------|--|
| National Grid NTS | Support | f) - positive | <ul style="list-style-type: none"> Supports the implementation of this Modification Proposal. The enactment of the Corporate Insolvency and Governance Act 2020 in June 2020 has added provisions to the Insolvency Act 1986 which introduce limitations on the ability of the providers of services to cease contracts for the provision of such services where the service recipient is in a 'relevant insolvency procedure'. This has implications for |

| | | | |
|-----------------------|---------|---------------|---|
| | | | <p>Gas Transporters (as the providers of gas transportation services under the UNC) in the application of the Termination provisions in TPD V4.3, and more specifically the ability to issue a Termination Notice.</p> <ul style="list-style-type: none"> • Implementation of the proposed changes will ensure the UNC appropriately caveats a Transporter's ability to issue a Termination Notice which will eliminate any potential conflict with the new legislation which would, in any event, prevail if these changes were not made. On this basis, removal of this potential conflict would promote efficiency in the implementation of the Code consistent with relevant objective (f). • Are of the opinion that application of Self-Governance procedures is appropriate as 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. • The nature of the change is to align the UNC to current 'live' legislation. Where there is at conflict between the two, the provisions of the legislation prevail. On this basis there is no consequential change to the actions Transporters are able, or not able, to take in respect of the Termination provision post implementation (as Transporters already have to comply with the legislation) however the UNC will be <i>in alignment</i> with this new legislation. • Does not require a lead time for implementation of this Modification hence implementation is sought as soon as practicable. Regardless of the timing of implementation, from 25 June 2020 the entitlement for a Transporter to issue a Termination Notice is subject to the new provisions incorporated into the Insolvency Act 1986 due to the prevalence of the provisions of primary legislation where they are in conflict with the terms of contracts. • Will not incur any specific additional costs as a consequence of the implementation of this Modification. • Are satisfied that the legal text delivers the intent of the solution identified in this Modification. |
| Northern Gas Networks | Support | f) - positive | <ul style="list-style-type: none"> • Supports this Modification as the changes proposed should ensure that the UNC remains accurate and relevant following the implementation of the Corporate Insolvency and Governance Act 2020 (CIGA) therefore, furthering |

| | | | |
|------------------------|---------|---------------|---|
| | | | <p>Relevant Objective f) promotion of efficiency in the implementation and administration of the Code.</p> <ul style="list-style-type: none"> • Agrees that this Modification should be subject to self-governance procedures as it is primarily seeking to update code to align with current legislation. • Believes this Modification could be implemented as soon as possible after UNC Panel approval, subject to no appeal being made. • Have not identified any potential costs or impacts as a result of this change. • Agrees that the legal text provided should deliver the solution set out in the modification. |
| Wales & West Utilities | Support | f) - positive | <ul style="list-style-type: none"> • Agrees with the proposer that this Modification brings UNC TPD Section V4 in line with the provisions of the Corporate Governance and Insolvency Act 2020. It therefore better facilitates relevant Objective (f) Promotion of efficiency in the implementation and administration of the Code. • Agree that this Modification satisfies the self-governance criteria. • 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. |

Please note that late submitted representations will not be included or referred to in this Final Modification Report. However, all representations received in response to this consultation (including late submissions) are published in full alongside this Report and will be taken into account when the UNC Modification Panel makes its assessment and recommendation.

11 Panel Discussions

12 Recommendations

Panel Recommendation

Panel Members recommended:

- that Modification 0743S should [not] be implemented.