

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.

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 legal representative in respect of each modification.

The relevant Transporter shall use reasonable endeavours to use the same legal representative throughout the modification, 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 shall use reasonable endeavours to ensure that the same legal representative is appointed.

The legal representative may either produce the text themselves or be supported by others as necessary. However the relevant Transporter shall be 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.

For the avoidance of doubt, all contact between the Proposer and Transporter will be carried out through the Transporter UNC representative who will facilitate any required communication.

Where appropriate, the Transporter UNC representative will arrange meetings or teleconferences between Proposer and Legal Representative to facilitate effective legal text production

Development of Text

Subject to the modification proposer agreeing to incorporate suggested changes, modification Workgroups are required to fully develop an unambiguous, clear and 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 with as few iterations as possible.

Once the modification is fully developed, and the majority of workgroup members agree that this is the case, the workgroup may request that legal text is to be produced in accordance with the process set out in the UNC modification rules.

Once a request for legal text is received from the Workgroup the relevant Transporter will endeavour to produce the legal text in accordance with the modification rules. If this cannot be fulfilled in the relevant timescale the Transporter shall communicate this to the proposer and the Code Administrator.

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 Proposer and copied to the 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 fully resolve the issues raised in order to facilitate the subsequent production of legal text.

EM94296 18/3/14 08:52

Comment [1]: It is not good practice to repeat principles here that are already contained in the Mod Rules – this is a guidance document and should not be amending or adding principles already contained in the UNC. We suggest therefore that this section be deleted

EM94296 18/3/14 08:25

Deleted: necessary

EM94296 18/3/14 08:49

Comment [2]: Removed due to data protection concerns and personal liability concerns.

Also, I'm struggling to see what value this would add.

EM94296 18/3/14 08:26

Deleted: named

EM94296 18/3/14 08:49

Comment [3]: Minor wording change

EM94296 18/3/14 08:27

Deleted: The named legal representative for a modification should not normally be changed,

EM94296 18/3/14 08:27

Deleted: T

EM94296 18/3/14 08:28

Deleted: named

EM94296 18/3/14 08:29

Deleted: should seek

EM94296 18/3/14 08:49

Comment [4]: We do not feel that it would be appropriate to publish the details of the legal representatives due to the current other demand on their time. Also, where we decide to use an external firm we would not support direct contact from a proposer as this could hugely inflate our costs without our knowledge.

EM94296 18/3/14 08:30

Deleted: The legal representative's name and contact details are to be included in all Workgroup and Modification Reports.

EM94296 18/3/14 08:30

Deleted: ... [1]

EM94296 18/3/14 08:31

Deleted: legal representative is

EM94296 18/3/14 08:49

Comment [5]: This arrangement works well currently and GDNs are more than happy to ... [2]

EM94296 18/3/14 08:33

Deleted:

EM94296 18/3/14 08:33

Deleted: S

EM94296 18/3/14 08:49

Comment [6]: This point is vital for us – s ... [3]

EM94296 18/3/14 08:49

Comment [7]: We suggest that this is del ... [5]

EM94296 18/3/14 08:34

Deleted: Workgroups may recommend ... [4]

EM94296 18/3/14 08:37

Deleted: address

For the avoidance of doubt, Issues requiring clarification within the solution of the proposal are down to the Proposer to resolve in order for legal text to be progressed and it should be noted that the relevant Transporter can only prepare legal text when the modification is sufficiently clear.

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 to aid legal text production, contact should initially be made with the Proposer of the modification via the Transporter UNC Representative. It should be noted that this may require a teleconference or meeting between proposer, Transporter UNC Representative and Transporter Legal Representative which will be facilitated where it is reasonably considered necessary.

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 and 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 advise the legal representative of any areas of the text that are believed to be unclear, in error, or otherwise not in accordance with the solution as set out in the Modification Proposal.

If reasonably requested by the Workgroup, the legal representative shall endeavour 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 Workgroup shall provide the legal representative with an agenda/list of matters which it 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 reviewed and, if implemented, can reasonably be expected to implement the Solution as contained in the Modification.

Any UNC party that has concerns regarding the quality or timeliness of legal text and supporting advice being provided by a relevant Transporter (in respect of a particular modification) shall in the first instance discuss this issue with the relevant Transporter. If the issue cannot be resolved then the Proposer may make representations to the Modification Panel.

If any representations are received in regards to the above point, the Modification Panel shall consider those representations and agree an appropriate outcome.

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

EM94296 18/3/14 08:49

Comment [8]: It is vital that the Proposer remains in control of the modification and that legal text isn't used in order to form the solution

EM94296 18/3/14 08:49

Comment [9]: Legally we cannot have out in-house legal teams treat any other party as the client so this was deleted

This would put the Solicitor of the GT in breach of the solicitor code of conduct rules as in house Solicitors can only act for and on behalf of their employer

EM94296 18/3/14 08:39

Deleted: (i.e. the Proposer should be regarded as the client).

EM94296 18/3/14 08:39

Deleted: -

EM94296 18/3/14 08:49

Comment [10]: With a fully developed solution no assumptions should be required

EM94296 18/3/14 08:41

Deleted: , highlighting any assumptions that were made

EM94296 18/3/14 08:42

Deleted: otherwise inappropriate. -

EM94296 18/3/14 08:44

Deleted: seek

EM94296 18/3/14 08:49

Comment [11]: GDNs do acknowledge that in some circumstances it may be beneficial to g ... [6]

EM94296 18/3/14 08:46

Deleted:

EM94296 18/3/14 08:46

Deleted: scrutinised

EM94296 18/3/14 08:49

Comment [12]: We have suggested delet ... [8]

EM94296 18/3/14 08:47

Deleted: Modification Panel Members n ... [7]

EM94296 18/3/14 08:47

Deleted: -

EM94296 18/3/14 08:47

Deleted: legal representative

EM94296 18/3/14 08:48

Deleted: seeking agreement to an alter ... [9]

EM94296 18/3/14 08:48

Deleted: that propose an alternative leg ... [10]

EM94296 18/3/14 08:49

Deleted: determine whether to request ... [11]

EM94296 18/3/14 08:50

Comment [13]: Most GDNs do not have ... [13]

EM94296 18/3/14 08:49

Deleted: If the Modification Panel deter ... [12]

EM94296 18/3/14 08:49

Deleted: -

EM94296 18/3/14 08:50

Deleted:

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.

