

UNC Request	At what stage is this document in the process?
<b>UNC 0706R <u>V2.0:</u></b>  <u>Operational arrangements when a Shipper terminates a Shipping agreement with a Supplier</u> <u>Instances where Shippers can exit commercial agreements with an independent supplier</u>	<div style="display: flex; justify-content: space-around; align-items: center;"> <span>01</span> <span>Request</span> </div> <div style="display: flex; justify-content: space-around; align-items: center; margin-top: 10px;"> <span>02</span> <span>Workgroup Report</span> </div> <div style="display: flex; justify-content: space-around; align-items: center; margin-top: 10px;"> <span>03</span> <span>Final Modification Report</span> </div>
<b>Purpose of Request:</b>	
<p>A review of the processes and obligations within the UNC <u>to identify and enable a clear route for the Shipper to cease shipping gas for specific supply points linked to premises supplied by a specific supplier following the termination of a contractual relationship between a shipper and that supplier</u> and Supply Licence conditions to identify and enable a clear route for the gas Shipper to exit a commercial relationship with a supplier.</p>	
	<p>The Proposer recommends that this request should be assessed by a Workgroup This request will be presented by the Proposer to the Panel on <u>21-19 November December</u> 2019.</p>
	<p>High Impact: Shippers Suppliers <u>CDSP</u> <u>Gas Transporters</u></p>
	<p>Medium Impact: <u>None</u><u>CDSP</u></p>
	<p>Low Impact: <u>None</u><u>Gas Transporters</u></p>

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2 Impacts and Costs	6	 <a href="mailto:enquiries@gasgovernance.co.uk">enquiries@gasgovernance.co.uk</a>
3 Terms of Reference	109	 0121 288 2107
4 Recommendation	1110	Proposer: <b>Chris Hooper</b> <u>Contract Natural Gas</u>
<b>About this document:</b>		
This document is a Request, which will be presented by the Proposer to the panel on <u>21 November</u> <u>19 December</u> 2019.		
The Panel will consider the Proposer's recommendation and agree whether this Request should be referred to a Workgroup for review.		
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## 1 Request

### Why is the Request being made?

At present there may be are instances where a Shipper provides wholesale gas shipping services on behalf of an independent supplier via a contractual and commercial agreement. ~~This places the obligations~~All of the within the UNC on the Shipper party as presently suppliers are not required to accede to the UNC. Whilst a lot of legislation is aimed at and led by suppliers, as a result of the above, UNC obligations are placed with the Shipper who, in the case of shipping for an independent supplier, passes these on to the supplier through a contractual agreement. The difficulty arises where suppliers are in breach of the contract because the UNC as it is currently drafted, effectively makes it impossible for the Shipper to take any action.

Presently the legal text within the UNC sets out a limited set of circumstances for a Shipper to cease being responsible for specific Supply Points. In the case where a Shipper seeks to exit a commercial agreement should the supplier party be found in breach of the same, the Shipper's obligations persist.

Whilst there is not an explicit provision that advises Shippers have no option but to ship gas regardless of whether there is an active contract in place with a supplier, we believe the following sections have the provisions, which when taken together, have that effect:

- **Section C - Nominations** - Section 1.5 - NG NTS creates the aggregated daily demand for all registered supply points for a shipper (demand is calculated as set out in section H). This leads into the operational obligations for supplying gas into the network and for balancing in Sections D, E and F.
- **Section G - Supply Points** - has the rules for registering a supply point to a User. In particular, paragraph 1.2 places responsibility for the offtake of gas at each registered supply point, whether or not authorised by the User.
- **Part 3 of section G** sets out the rules for withdrawing or isolating a supply point - in effect a user's responsibility only stops when another User takes over responsibility for the supply point or the supply point is isolated.

Supply Licence Condition 18. *Undertakings to Relevant Gas Transporters* requires all suppliers to agree an undertaking with the Relevant Gas Transporter should arrangements between the transporter and a Gas Shipper to convey gas to any premises supplied by the licensee come to an end.

Whilst SLC 18 can address commercial elements of a Shipper terminating an agreement with a supplier, there is no provision within the UNC for the operational shipping requirements in these instances – and the incumbent Shipper is currently unable to cease providing the operational shipping requirements. Therefore, the UNC is currently unable to manage a legitimate commercial situation between Shippers and suppliers.

It is our understanding that the only existing scenarios whereby arrangements between a transporter and a Gas Shipper to convey gas to any premises supplied by the licensee come to an end are:

- When the arrangements are transferred to another Gas Shipper e.g. under Supplier of Last Resort (SoLR); or;
- The Gas Shipper is in financial failure and can no longer provide for the conveyance of gas to its entire portfolio

The UNC needs to recognise the commercial reality that shipping arrangements may be terminated between shippers and suppliers in instances other than SoLR and provide arrangements for handling these situations. At present it does not do this.

~~Generally, a contract is legally enforceable because it meets the requirements and approval of the law. In the event of breach of contract, the law awards the injured party access to legal remedies such as damages and termination.~~

~~There are also other instances whereby a party would be in a position to exit a commercial relationship, such as the point of contract renewal or end date.~~

~~However, within the Shipper / supplier relationship outlined above, the UNC and Supply Licence Conditions add extra layers of complexity beyond Contract Law. Presently there is no process for a Shipper to exit a commercial agreement should the supplier party be found in breach of the commercial contract. This is largely due to the requirement to continue to supply gas to the Supply Points.~~

~~This Request is for the establishment of a Workgroup to:~~

- ~~Identify and define a clear process for a Shipper to exit a contractual agreement with a supplier without impacting the supply of gas to consumers; and~~
- ~~Agree instances when the process can be initiated.~~

## **Scope**

Limited to the impacts of the UNC on the termination of a bilateral contractual relationship between a Shipper and an 'Independent Supplier'.

## **Impacts & Costs**

To be identified by the Workgroup

## **Recommendations**

The Legal Text within the UNC needs to set out the arrangements that apply when a Shipper terminates a contractual agreement with a Supplier and alternative Shipping arrangements are not automatically put in place by the Supplier. It is recommended that this Request Proposal be sent to the appropriate Workgroup for consideration.

## **Additional Information**

Included below are some case studies and examples of impacts of this issue on industry parties:

### **1. Example of contractual negotiations**

There are several points throughout the commercial contract where it may be deemed necessary to revisit or renegotiate the commercial contract:

#### **a) End of Contract Term**

Generally, a commercial contract will be in place for a set period of time. Once the term of the contract has expired, both parties have the option to either extend or end the contract. The supplier is free to contract with another Shipper or apply for its own gas Shipper licence. However, if the Supplier does not contract with another party, the Shipper is presently unable to end the contract due to the obligations within the UNC to continue to supply gas to the Supply Points.

**b) Breach of Contract**

Commercial contracts will usually have certain terms and rules in place for each party to follow. These may be related to; financial payments, standards of performance, data & reporting etc. Termination would usually be an option in the result of a material breach of contract. At this point suppliers are again free to contract with another Shipper or apply for its own gas Shipper licence. However, Shippers are unable to exit the contract due to the obligations within the UNC to continue to supply gas to the Supply Points.

**c) Other Trigger Points**

There may be other clauses within the contractual agreement that may trigger the need for a contract to be renegotiated or terminated, ~~for example, the supplier increasing in volume beyond the Shipper's risk appetite. As per the points outlined above, when this happens at present, without the agreement of both parties, it is impossible for the Shipper to exit the contract unless the supplier voluntarily contracts with a different Shipper.~~

**2. Example of reporting / data related issues:**

- a) ~~Based on its obligations within the UNC, there are certain reports that a Shipper is required to submit to the CDSP under the Performance Assurance Framework Document for the (Gas) Energy Settlement Performance Assurance Scheme. Whilst a number of these reports rely on data being provided to a Shipper by a supplier, the obligations and incentives on these reports sit with the Shipper.~~

~~These reports are linked to a number of areas including but not limited to:~~

- ~~1. Meter Read Performance~~
- ~~2. Theft of Gas~~
- ~~3. Accuracy & Cleansing of address data~~
- ~~4. Meter Point Status & Meter Status~~

- b) ~~The supplier is contractually obliged to provide the relevant data sets to the Shipper in line with the reporting frequency, which enables the Shipper to remain compliant with its UNC obligations~~
- c) ~~If a supplier does not provide this information as agreed, the supplier would technically be in breach of the commercial contract and the Shipper can look to take steps to improve this situation through regular contact with the supplier.~~
- d) ~~However, in instances of repeat failure, there are few steps the Shipper can take other than flag with the Authority that the supplier is not fulfilling its contractual requirements~~
- e) ~~As a result, the Shipper remains non-compliant with regard to its reporting obligations and is unable to exit the contractual agreement with the supplier due to the obligations placed on Shippers by the UNC.~~

**3. Example of financial issues:**

- a) ~~Supplier X fails to fulfil its contractual payments to the Shipper. The Shipper advises Ofgem of what appears to be serious issues within the supplier's organisation however no action is taken~~

- b) The Shipper attempts to support Supplier X for a period of time but it becomes clear that that Supplier X is unable to trade out of its distressed position.
- c) Despite being unable to pay its invoices Supplier X does not accept that there is an issue and ultimately, Ofgem advises it is unable to take any action. This is despite Supplier X technically being in breach of its Supply Licence as per Schedule 2 'Revocation' Section 1. (f) (i) which relates to being unable to pay debts in line with the Insolvency Act 1986.
- d) As a result, the Shipper continues to be responsible for all costs and is unable to exit the contractual agreement due to the obligations placed on Shippers by the UNC.
- e) The Shipper applies for a statutory demand which is again not met by the supplier and Ofgem ultimately deems that there is insufficient evidence to take action, which may be due to Supplier X being unwilling to cooperate with their requests.
- f) The Shipper then commences proceedings for winding up of Supplier X. The winding up was not an attempt to recover losses but to prevent further exposure and the process to try and wind up the supplier takes approximately 6 months.
- g) Supplier X is progressed through the Supplier of Last Resort (SoLR) process approximately 9 months after issues were initially raised with Ofgem. The Shipper is unable to recover any debt from Supplier X that has been incurred in that time.

#### **4. Examples of new obligations being imposed on suppliers via the Supply Licence Conditions:**

There are precedents whereby the Authority has imposed specific obligations on suppliers, for example Smart Metering. This suggests a precedent to insert specific obligations or rules which can be imposed on suppliers rather than placing the requirements on the Shipper who has no direct control over the implementation. This ensures a supplier must comply directly with these obligations rather than placing the obligations on Shippers, offering an additional layer of protection to the Shipper.

A process whereby a Shipper can give notice to exit a contractual agreement would thereby require the supplier to take on a number of industry obligations to ensure no impact to consumers and other industry parties.

## **2 Impacts and Costs**

### **Consideration of Wider Industry Impacts**

#### **Impacts**

Impact on Central Systems and Process	
Central System/Process	Potential impact
UK Link	<ul style="list-style-type: none"><li>• The CDSP would be required to provide an overview of any impact on UK Link systems</li></ul>
Operational Processes	<ul style="list-style-type: none"><li>• Dependent on outcome of the review</li></ul>

#### **Impact on Users**

Impact on Users	
Area of Users' business	Potential impact
Administrative and operational	<ul style="list-style-type: none"> <li>Dependent on outcome of the review</li> </ul>
Development, capital, and operating costs	<ul style="list-style-type: none"> <li>Dependent on outcome of the review</li> </ul>
Contractual risks	<ul style="list-style-type: none"> <li>Dependent on outcome of the review</li> </ul>
Legislative, regulatory, and contractual obligations and relationships	<ul style="list-style-type: none"> <li>Highly likely - Dependent on outcome of the review</li> </ul>

Impact on Transporters	
Area of Transporters' business	Potential impact
System operation	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Development, capital, and operating costs	<ul style="list-style-type: none"> <li><u>Dependent on outcome of the review</u> No impact identified</li> </ul>
Recovery of costs	<ul style="list-style-type: none"> <li>Dependent on outcome of the review</li> </ul>
Price regulation	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Contractual risks	<ul style="list-style-type: none"> <li>Dependent on outcome of the review</li> </ul>
Legislative, regulatory, and contractual obligations and relationships	<ul style="list-style-type: none"> <li>Highly likely - Dependent on outcome of the review</li> </ul>
Standards of service	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Cross Code impact	<ul style="list-style-type: none"> <li>Potential impact on IGT UNC</li> </ul>

Impact on Code Administration	
Area of Code Administration	Potential impact
Modification Rules	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
UNC Committees	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
General administration	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
DSC Committees	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>

Impact on Code	
Code section	Potential impact
<u>Section S – Invoicing and Payment</u> <u>Multiple Sections</u>	<ul style="list-style-type: none"> <li>Dependent on outcome of the review</li> </ul>
<u>Section V – General</u>	<ul style="list-style-type: none"> <li><u>Dependent on outcome of the review</u></li> </ul>
<u>Shipper Licence Conditions</u>	<ul style="list-style-type: none"> <li><u>Dependent on outcome of the review</u></li> </ul>

Impact on Code	
Supplier Licence Conditions	<ul style="list-style-type: none"> <li>Dependent on outcome of the review</li> </ul>

Impact on UNC Related Documents and Other Referenced Documents	
Related Document	Potential impact
Network Entry Agreement (TPD I1.3)	<ul style="list-style-type: none"> <li>Dependent on outcome of the review</li> </ul>
General	Potential Impact
Legal Text Guidance Document	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
UNC Modification Proposals – Guidance for Proposers	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Self-Governance Guidance	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
TPD	Potential Impact
Network Code Operations Reporting Manual (TPD V12)	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
UNC Data Dictionary	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
AQ Validation Rules (TPD V12)	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
AUGE Framework Document	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Customer Settlement Error Claims Process	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Demand Estimation Methodology	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Energy Balancing Credit Rules (TPD X2.1)	<ul style="list-style-type: none"> <li>No impact identified</li> <li>Dependent on outcome of the review</li> </ul>
Energy Settlement Performance Assurance Regime	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Guidelines to optimise the use of AQ amendment system capacity	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Guidelines for Sub-Deduct Arrangements (Prime and Sub-deduct Meter Points)	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
LDZ Shrinkage Adjustment Methodology	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Performance Assurance Report Register	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Shares Supply Meter Points Guide and Procedures	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>
Shipper Communications in Incidents of CO Poisoning, Gas Fire/Explosions and	<ul style="list-style-type: none"> <li>No impact identified</li> </ul>

Impact on UNC Related Documents and Other Referenced Documents	
Local Gas Supply Emergency	
Standards of Service Query Management Operational Guidelines	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
Network Code Validation Rules	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
OAD	Potential Impact
Measurement Error Notification Guidelines (TPD V12)	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
EID	Potential Impact
Moffat Designated Arrangements	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
IGTAD	Potential Impact
	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
DSC / CDSP	Potential Impact
Change Management Procedures	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
Contract Management Procedures	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
Credit Policy	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
Credit Rules	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
UK Link Manual	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>

Impact on Core Industry Documents and other documents	
Document	Potential impact
Safety Case or other document under Gas Safety (Management) Regulations	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>
Gas Transporter Licence	<ul style="list-style-type: none"> <li>• No impact identified</li> </ul>

Other Impacts	
Item impacted	Potential impact
Security of Supply	<ul style="list-style-type: none"> <li>• Dependent on outcome of the review</li> </ul>
Operation of the Total System	<ul style="list-style-type: none"> <li>• Dependent on outcome of the review</li> </ul>
Industry fragmentation	<ul style="list-style-type: none"> <li>• Dependent on outcome of the review</li> </ul>
Terminal operators, consumers, connected system operators, suppliers, producers and	<ul style="list-style-type: none"> <li>• Potential impact on suppliers</li> <li>• Potential impact on SPAA</li> </ul>

### 3 Terms of Reference

#### Background

~~It is apparent that when the Uniform Network Code (UNC) and Supply Licence Conditions (SLCs) were initially drafted, there was an assumption that shipping and supply services would be undertaken by the same party. However, some Shippers now provide wholesale services to new entrants / independent suppliers via a commercial and contractual relationship.~~

~~In a situation whereby a Shipper is supporting independent suppliers, the way the UNC and SLCs place the obligations in a number of areas (i.e. financial, provision of date, guaranteed supply etc.) on the shipping party. The Shipper then takes on the lion's share of the responsibility of industry process, regardless of whether the supplier is fulfilling its contractual and industrial obligations.~~

~~Recently a number of independent suppliers have been proven unable to manage their business and customers appropriately and generally they have exited the market via the SoLR process. The steps to initiate a SoLR outcome can be lengthy (in some instances this can take 6 to 12 months) and a Shipper for an independent supplier has no opportunity during this time at any point to terminate their commercial contract due to the rules within the UNC relating to guaranteeing supply of gas to Supply Points.~~

~~When such instances arise, the Shipper may bring concerns to the attention of the Authority (Ofgem). However, the Shipper remains unable to exercise their contractual rights to terminate any agreement and generally are left to carry the financial burden / regulatory risk indefinitely.~~

~~To the contrary, should the Shipper be found in breach of contract, the supplier is in a position to exercise their contractual rights to exit the contract and transfer shipping services to another party, or commence the application process for their own Shipper licence.~~

#### Topics for Discussion

- Understanding the objective
- Assessment of alternative means to achieve objective
- Development of Solution (including business rules if appropriate)
- Assessment of potential impacts of the Request
- Assessment of implementation costs of any solution identified during the Request
- Assessment of legal text.

#### Workgroup 1 – information gathering

- ~~Review of common practices and nuances of wholesale Shipper / supplier relationships including existing UNC and Supply Licence obligations~~
- ~~Identification of the first cut of fundamental industry requirements for Shipper contract exit process~~

- Impact assessment of the Shipper of an independent Supplier exiting the agreement, leaving the independent Supplier to find another Shipper (or potentially leaving the Supplier without a Shipper)

#### **Workgroup 2 – agreeing the basic requirements and options analysis**

- Agreement on overall industry requirements
- Identification and development of preferred options / solutions
- Initial assessment of potential impacts of the identified solutions

#### **Workgroup 3 – finalising options and solutions**

- Agreement of preferred options / solutions
- Finalise assessment of implementation costs of any solutions

#### **Workgroup 4 – reporting**

- Completion of the Workgroup report

### **Outputs**

Produce a Workgroup Report for submission to the Modification Panel, containing the assessment and recommendations of the Workgroup including a draft modification where appropriate.

### **Composition of Workgroup**

The Workgroup is open to any party that wishes to attend or participate.

A Workgroup meeting will be quorate provided at least two Transporter and two User representatives are present. There may also be a requirement for Supplier representatives.

### **Meeting Arrangements**

Meetings will be administered by the Joint Office and conducted in accordance with the Code Administration Code of Practice.

## **4 Recommendations**

### **Proposer's Recommendation to Panel**

The Proposer invites the Panel to:

- DETERMINE that Request 0XXX-0706R V2.0 progress to Workgroup for review.