

Modification proposal:	Uniform Network Code (UNC) 760: Introducing the concept of a derogation framework into Uniform Network Code (UNC)		
Decision:	The Authority ¹ has decided to reject this modification ²		
Target audience:	UNC Panel, Parties to the UNC and other interested parties		
Date of publication:	21 January 2022	Implementation date:	n/a

Background

Currently, the UNC does not include the concept of derogation (relief from specific rules). However, the concept of derogation exists within some electricity industry codes already. For example, in Balancing & Settlement Code (BSC) and The Distribution Connection and Use of System Agreement (DCUSA).

The modification proposal

Modification proposal UNC760: Introducing the concept of a derogation framework into Uniform Network Code (UNC) was raised by Northern Gas Networks (NGN) (“the Proposer”) in March 2021. The Proposer states that, for a Net Zero innovation trial to commence, there either needs to be a Modification to amend the relevant part of the UNC for all users on a non-time limited basis, or the trial needs to be amended or have additional unnecessary parameters to allow it to proceed.

UNC760 is seeking to a) introduce the concept of derogation as a framework within the UNC and b) introduce the concept of Use Cases.

¹ References to the “Authority”, “Ofgem”, “we” and “our” are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

² This document is notice of the reasons for this decision as required by section 38A of the Gas Act 1986.

Use Cases, will be defined in the UNC with qualifying parameters, which will include the proposal being for 'non-commercial innovation projects' (ie, open Intellectual Property). Removal or addition of Use Cases needs to be requested via UNC standard modification process. Along with the concept of Use Cases, UNC760 will also introduce the first Use Case: "Net Zero Innovation".

The Proposer states that the Derogation framework will introduce application parameters, evidence required, restrictions, and decision making criteria, into the UNC.

The UNC760 Final Modification Report outlines Business Rules for the derogation framework describing the checks in place before a derogation is approved. The key steps are outlined below:

- Applications for derogations will only be deemed valid applications when made in accordance with the Derogation Guidance Document as implemented with this modification and published on the Joint Office of Gas Transporters' website.
- Requests will then be submitted to the Joint Office who will circulate them to all Transporters, Users, Independent Gas Transporters, Members, Third Party Participants and Non-Code Parties (if any), the Central Data Service Provider (CDSP), and the Authority. Panel members will discuss the request at the first available UNC Panel, following a period of at least ten days after submission of the request to the Joint Office.
- Initial Panel meeting approves, by majority, the derogation request to go to a 15 day industry consultation. Panel can request additional consultations if necessary.
- At the final Panel meeting, which will be following consultation, derogation requests require a unanimous Panel vote in support of implementation to be approved.
- The derogation will take effect from the agreed date (no earlier than 16 days from date of decision), unless overruled by the Authority, or subject to an active appeal to the Authority.

The Proposer believes that the modification will have a positive impact on UNC Relevant Code Objectives (c) and (f).

UNC Panel³ recommendation

At the UNC Panel meeting on 21 October 2021, the UNC Panel considered that UNC760 would better facilitate the UNC objectives and the Panel therefore recommended its approval unanimously. Among the Panel members representing consumers, both the domestic consumer voting member and the non-domestic consumer voting member recommended implementation.⁴

Our decision

We have considered the issues raised by the modification proposal and the Final Modification Report (FMR) dated 21 October 2021⁵ and after careful consideration decided to reject the modification with our reason set out below.^{6,7}

Reasons for our decision

We consider this modification proposal would not better facilitate UNC Relevant Code Objective (c) and has a neutral impact on Relevant Code Objectives (a), (b), (d), (e), (f) and (g).

(c) so far as is consistent with sub-paragraphs (a) and (b), the efficient discharge of the licensee's obligations under this licence

We consider that, overall, the proposal as it stands does not better facilitate UNC Relevant Code Objective (c).

The Proposer states that the modification's impact on the UNC Relevant Code Objective (c) would be positive. This is because UNC760 would mitigate the need for a new modification to

³ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules.

⁴ [Determinations Record 21 October 2021.pdf \(gasgovernance.co.uk\)](https://www.gasgovernance.co.uk/Content/Documents/Determinations%20Record%2021%20October%202021.pdf)

⁵ UNC modification proposals, modification reports and representations can be viewed on the Joint Office of Gas Transporters website at www.gasgovernance.co.uk

⁶ As set out in Standard Special Condition A11(1) of the Gas Transporters Licence, see: <https://epr.ofgem.gov.uk/Content/Documents/Standard%20Special%20Condition%20-%20PART%20A%20Consolidated%20-%20Current%20Version.pdf>

⁷ The Authority's statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Gas Act 1986

the UNC everytime a derogation is required, a process that takes a significant period of time. Additionally, several responses to the consultation also mentioned that the changes could support the use of Net Zero innovation funding provided under RIIO-2. We agree that UNC760 would allow licensees to more efficiently facilitate Net Zero Innovation trials under RIIO-2.

However, the Derogation Framework and Derogation Guidance Document proposed in UNC760 does not satisfy us that licencees' obligations with regards to safety will be fully considered within derogation proposals. Section 7 (Supporting Evidence) of the Derogation Guidance document states that "Whilst non UNC derogations do not have to have a decision in order for the UNC Modification Panel to reach a decision, any derogation granted by UNC Modification Panel that also requires additional derogations in either UNC or other standards will not be deemed to be valid unless these other derogations are also granted." In our view, a derogation to the UNC should not be approved by the Panel until derogations for all relevant non-UNC documents have also been granted. The way Section 7 is currently drafted leaves the opportunity for a UNC derogation to be approved for a trial that is awaiting a non-UNC derogation decision by another authority. This process leaves the risk of this associated non-UNC derogation not being considered and taken into account and the UNC derogation proceeding unlawfully.

Health and safety in particular is paramount for gas. The health and safety implications of a proposed derogation must, where relevant, be subject to a suitable and sufficient assessment prior to it being submitted to the UNC Panel for approval. The assessment must demonstrate that the derogation does not adversely impact on (1) the safe management of gas flow through a network; (2) the arrangements to minimise the risk of a gas supply emergency; (3) the arrangements for dealing with supply emergencies; and (4) the arrangements for dealing with reported gas escapes and gas incidents.

We therefore conclude that overall, the modification as it stands would have a negative impact on UNC Relevant Code Objective (c).

(d) so far as is consistent with sub-paragraphs (a) to (c) the securing of effective competition:

(i) between relevant shippers;

(ii) between relevant suppliers; and/or

(iii) between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers

We consider that the proposal has a neutral impact on UNC Relevant Code Objective (d).

The Proposer states that the modification's impact on the UNC Relevant Code Objectives (d) would be 'none'. However, some of the Panel members stated that the proposed modification would allow innovation trials to be deployed more efficiently which in turn may enable more effective competition where learning is shared and utilised across the industry, advancing competition.

We think that this is a potential benefit of a derogation framework. However, given that the Derogation Framework and Derogations Guidance document, as proposed in UNC760, does not satisfy us that licencees' obligations with regards to safety will be fully considered, we are not convinced innovations trials will be deployed more efficiently.

On balance, we consider that the proposal as it stands has a neutral impact on UNC Relevant Code Objective (d).

(f) so far as is consistent with sub-paragraphs (a) to (e), the promotion of efficiency in the implementation and administration of the network code and/or the uniform network code

The Proposer states that the modification's impact on the UNC Relevant Code Objectives (f) would be positive. The Proposer argues that the current inability to derogate within the framework of the UNC restricts innovation projects. They consider that the proposed derogation framework outlined in UNC760 will add transparency to the administration of derogations, positively impacting UNC Relevant Code Objective (f). A number of consultation responses agree with this statement. We agree in principle with this.

However, the derogation framework proposed may not promote efficiency in the implementation of the code as not all licencees' obligations with regards to safety will be considered as outlined in our response to UNC Relevant Objective (c).

Another positive impact on UNC Relevant Code Objective (f) noted by the Proposer in their response to the UNC760 consultation is that it enables the trailing of a potential code change that could impact all. The derogation would help create evidence and analysis to justify an enduring UNC code change. Again, while we agree with this in principle, we think that proper consideration of licencees' obligations with regards to safety at the appropriate stage is a necessary part of the process.

On balance, we consider that the proposal has a neutral impact on UNC Relevant Code Objective (f).

Our principal objective and statutory duties

The Authority's principal objective is to protect the interests of existing and future consumers in relation to gas conveyed through pipes and electricity conveyed by distribution or transmission systems. Those interests of existing and future consumers are their interests taken as a whole including their interests in the reduction of gas-supply emissions of targeted greenhouse gases.

We welcome the proposal to include a new section of the UNC that would allow derogation requests for Net Zero innovation project to be made. However, the significantly shortened time frames proposed, compared to a standard UNC modification process, in particular the 16-day overrule window, potentially impedes our ability to fully assess the impact of a derogation on the energy market. We do not think it is appropriate for us to be committed to approval in timeframes outside of our control.

Given the potential quantity of information and analysis we may need to assess, the 16-day overrule window may not in all cases allow us enough time in which we could assess the impacts of a derogation. An assessment of the impact on health and safety, consumers, security of supply, competition, efficiency of operation and impacts on other parties effected needs to be conducted. If we considered it necessary to consult further it would require the consultation to be open for a period of time, in line with our policy.⁸ Further, we note that the BSC and DCUSA sandboxes impose no time limit for Ofgem to consider a derogation. The

⁸ [Ofgem's consultation policy | Ofgem](#)

respective Panels of BSC and DCUSA only make recommendations with regards to granting a derogation with the power to grant remaining with us.

If UNC760 is approved as is, we would be in a position where our default would be to overrule derogation proposals if we were unable to fully assess them within 16 days. An overrule would be the only way to mitigate risk to consumers. A system like this would be very inefficient.

In addition, the Derogation Guidance Document for UNC760 does not satisfy us that licence obligations with regards to safety, especially gas quality and transportation will be fully considered. See UNC Relevant Objective (c) above.

UNC760 has the potential to undermine our ability to fully assess the impact of a derogation on the energy market including safety. Therefore, we could not ensure the interests of existing and future consumers are protected. For this reason, we consider that directing that the modification be made would not be consistent with our principal objective and statutory duties.

Decision notice

In accordance with Standard Special Condition A11 of the Gas Transporters Licence, the Authority has decided that modification proposal UNC 760: *'Introducing the concept of a derogation framework into UNC'* should not be made.

David O'Neill

Head of Gas Markets and Systems

Signed on behalf of the Authority and authorised for that purpose