

UNC Governance Workgroup Minutes

Monday 14 February 2022

via Microsoft Teams

Attendees		
Kate Elleman (Chair)	(KE)	Joint Office
Helen Bennett (Secretary)	(HB)	Joint Office
Andy Clasper	(AC)	Cadent
Clare Manning	(CM)	EON
Darren Lond	(DL)	National Grid
Ellie Rogers	(ER)	Xoserve
Harry Brazier	(HBr)	Ofgem
Heather Ward	(HW)	Energy Assets
Jaimee LeResche	(JLR)	Xoserve
James Doyle	(JD)	Out Fox the Market
Julie Cox	(JCx)	Energy Networks Association
Oorlagh Chapman	(OC)	British Gas
Richard Fairholme	(RF)	Uniper Energy
Sally Hardman	(SH)	SGN
Steve Mulinganie	(SM)	Gazprom Energy
Tracey Saunders	(TS)	Northern Gas Networks

Copies of all papers are available at: <https://www.gasgovernance.co.uk/gov/140222>

1. Introduction and Status Review

Kate Elleman (KE) welcomed everyone to the meeting.

1.1. Approval of Minutes

The minutes from 05 January 2022 were approved.

1.2. Approval of Late Papers

None to approve.

1.3. Review of outstanding Actions & Issues Log

Action 1104: Joint Office (PG) to review the use of pre-meeting briefs by Joint Office meeting Chairs.

Update: KE advised this topic will be covered in the Joint Office Annual Report which is due to be published in April 2022, it is currently in draft status and UNC Panel Chair, Wanda Goldwag, is onboard to review it. **Carried Forward.**

Action 0101: Joint Office (KE) to email the Workgroup requesting views on how the delay by Ofgem to make a decision on Modification 0687V had impacted their organisation with responses due back before 20 January 2022 UNC Modification Panel.

Update: KE confirmed this was discussed at the UNC Modification Panel in January and the Ofgem Decision Letter was published on 20 January 2022. **Closed**

1.4. Modification(s) with Ofgem

KE clarified that there are currently 5 Modifications awaiting a decision from Ofgem and confirmed these would be discussed at UNC Modification Panel (Panel) meeting on Thursday 17 February 2022 for Ofgem to comment. There is an option for Panel to officially write to Ofgem requesting a minded-to decision on each of the outstanding Modifications with Ofgem. The Modifications in question are as follows:

- *Modification 0791 (Urgent) - Contingency Gas Procurement Arrangements when a Supplier acts under a Deed of Undertaking*
- *Modification 0790 (Urgent) - Introduction of a Transmission Services Entry Flow Charge*
- *Modification 0785 - Application of UNC processes to an aggregated Bacton (exit) Interconnection Point*
- *Modification 0746 - Application of Clarificatory change to the AQ amendment process within TPD G2.3 from 1st April 2020*
- *Modification 0696V - Addressing inequities between Capacity booking under the UNC and arrangements set out in relevant NExAs*

Steve Mulinganie (SM) clarified that he has been asking Ofgem to determine against Modification 0746 for some time as the circumstances to which this Modification referred to, have now passed since CNG have now left the market.

1.5. Pre-Modification Discussions

1.5.1. Exceptional Circumstances Modification Process (Modification 0803)

Purpose of the Modification:

*During **Exceptional Circumstances** (the event) as declared by the Authority, all Modifications that seek to mitigate the impact of the event will be considered as Transitional, Self-Governance Modifications*

KE noted this Modification, has been published and will be presented to Panel on Thursday 17 February 2022.

Steve Mulinganie (SM) explained that this Modification will provide the flexibility to efficiently deliver timely changes without resorting to the use of Urgent procedures for situations where there is a need to expedite the standard process in exceptional circumstances such as what has been seen recently: COVID; Wholesale Energy Price volatility. When exceptional circumstances occur, as declared by the Authority, all Modifications that seek to mitigate the impact of the event will be considered as both Transitional and Self-Governance Modifications.

SM went on to explain that when the process is diverted to the Self-Governance route it will allow decisions to be made much quicker.

SM added that the Business Rules in Section 5 – Solution, are very limited at the moment but he expects them to be expanded during workgroup development.

Tracey Saunders (TS) agreed with the concept, noting that the Industry has gone through some very challenging times with COVID and the Energy crisis.

KE clarified that an event that was deemed an 'Exceptional Circumstance' would need to be defined by Ofgem. SM confirmed that Ofgem would have control of entry and exit to the event and will still have the power to challenge decisions made by Panel.

Timetable

The Modification currently has a 3-month timeline, SM advised he would like to go for the more pragmatic approach of having 6 Workgroups and report back to Panel early if possible.

SM suggested that the Modification is granted a 6-month timeline.

Post meeting note:

The Modification Timetable has been amended to incorporate a 6-month timeline.

Richard Fairholme (RF) asked how this Modification will interact with a Force Majeure, (see definition in Uniform Network Code – General Terms Section B 3.1), SM clarified that a Force Majeure is usually an act of God, the Exceptional Circumstances (which would be the trigger for utilisation of this Modification), will be as defined by the Authority.

SM clarified the main driver for raising the Modification is that during the unprecedented times over the last 18-months, some decisions made by Ofgem have been delayed due to their increased workload.

SM noted that Ofgem encouraged the Panel to take on more responsibility recently and asked Ofgem for a view.

Harry Brazier (HBr) advised he had no view but commented that the discussions have been very interesting, he will feed this in to Ofgem.

End of discussion.

1.5.2. Introducing the concept of a derogation framework into Uniform Network Code (UNC) (Modification 0800)

Purpose of the Modification:

This Modification seeks to introduce a framework for derogation as a concept in the Uniform Network Code (UNC), defining when and how these can be requested (Use Cases), as well as the process around consideration and approval or rejection of derogation requests. Also includes a Use Case for 'Net Zero Innovation' including the parameters, and evidence required. This includes changes from Modification 0760 in accordance with Ofgem's rejection letter.

TS advised Workgroup that she received several queries following Ofgem's rejection of Modification 0760 - Introducing the concept of a derogation framework into Uniform Network Code (UNC), and therefore wanted to explain the reasons behind Ofgem's decision. Ofgem have their own set of rules to follow and because the rejection was related to Approval; Appeals and Safety, this meant they could not utilise the Send-Back process, they had to reject the Modification.

TS clarified this new version of the Modification focusses only on the Ofgem rejection reasons.

Clare Manning (CM) advised that there was an action taken from the recent IGT Modification Workstream to understand the rules around why Ofgem did not use the Send-Back process.

Harry Brazier (HBr) highlighted that due to the specific criteria with Modification 0760, Ofgem sought Legal advice and it was determined that the Modification needed additional information and not just an expansion of what was already included in the Modification, hence, the Modification was rejected.

New Action 0102: Ofgem (HBr) to share the criteria that Ofgem use for initiating the Send Back process.

Sally Hardman (SH) referred to Modification 0799 - UNC arrangements for the H100 Fife project (100% hydrogen) and asked whether Modification 0800 was, therefore, needed. TS clarified Modification 0800 introduces the concept of derogation into Uniform Network Code (UNC) while at the same time introduces the Net Zero use case.

When SM sought confirmation that any safety derogations have to be approved TS confirmed that the Health and Safety Executive (HSE) have been in contact with Ofgem and asked HBr to provide an update.

HBr advised that Ofgem are in conversations with HSE to see how exactly they want this type of derogation to be phrased. The Panel would have to carry out their due diligence, but it will be up to the Proposer to show the health and safety requirements have been met.

TS advised that Panel will be shown the evidence from HSE.

TS noted she has changed the core framework in the Guidance Document that supports the Modification (and will be a formal document under the UNC), and the Application Form has been amended so that the Proposer has to state the areas of impact, if there are none they have to state why.

When Julie Cox (JCx) asked for further clarification of the beginning of the process, TS advised that Panel, at the first stage, make a decision if the derogation has met all criteria; then it is issued for Consultation; at the end of the Consultation period the Panel make their final recommendation to Ofgem.

TS advised that when Panel are first considering if the derogation meets the criteria, they could defer it until the HSE paperwork is available.

JCx asked if there is a part of the process where the derogation can be reconsulted on. TS advised that if there is a change that is needed to the derogation, then a new derogation would need to be put forward, a derogation cannot be varied. TS also clarified that there will be no consultation until the derogation is deemed to be a valid derogation request.

TS confirmed she will amend the wording of the Modification to ensure it stipulates that Panel will consult once the derogation is in place, currently it states that Panel makes a decision once the derogation is in place, it does not say the Panel will consult once the derogation is in place.

New Action 0202: Proposer (TS) to update the wording in the Modification to ensure it stipulates that Panel will consult once the derogation is in place.

SM asked if there is a question in the Application Form that relates to confirming if all relevant third party HSE & Safety related evidence has been obtained by the proposer, TS confirmed that is covered by Question 5 in the Application Form.

TS confirmed that there is an updated Guidance Document and Application Form and that she is in conversation with Ofgem with regards to the Legal Text.

Recommended next steps

TS advised this new Modification has a short timeline as she is very aware of the trials that are currently underway and suggested a unique approach is taken with Workgroup whilst considering the review. TS suggested that the Workgroup review only focusses on the red marked sections of the Modification, this is due to the unchanged areas of the Modification have been considered, at length, as part of the Modification 0760 Workgroup.

TS provided a detailed walkthrough of the changed areas in the Modification focussing only on the red text which has been used to highlight where there is change from Modification 0760. Where there was specific interaction regarding particular sections of the changes, this has been captured within the minutes.

Background

TS highlighted in this section it specifically mentions that an application of derogation that relate to HSE and other safety standards must have been approved before Panel can make a recommendation to Ofgem.

One of the main changes to this Modification is that Panel are required now to make a recommendation to the Authority and not a determination.

When SM challenged the wording 'without time constraint' which relates to the decision being made by Ofgem, TS advised the choice of words was requested by Ofgem.

HBr advised that Ofgem are unlikely to move away from that particular wording as this is consistent with other Codes and is clear in the Ofgem Decision Letter for Modification 0760. HBr reiterated that Ofgem always make their decisions as quickly as possible.

RF asked, on more of a principal level, what value is the Panel adding to the process by making a recommendation to Ofgem, that it seems more like an administrative type of role. Also, RF referred to the liability of Panel members, where Ofgem use words such as due diligence it needs to be clear that Panel members are comfortable that it is not part of their usual role.

TS explained that the process would be similar to a Self-Governance Modification where Panel do an initial review and then following consultation look more deeply at the derogation and form their opinion in a report which goes to Ofgem.

RF said that he understands the concept but suggested it should not be referred to as a parallel to a Self-Governance Modification; a Self-Governance Modification does not involve other parties such as HSE. RF said the concern is if Panel is equipped to assess this information and provide information as Ofgem like it to be given.

TS explained that the previous version of the Modification was that Panel made the ultimate decision, now, with Panel making the recommendation to Ofgem, this is a slightly more protected decision as it is only a recommendation.

RF questioned if a recommendation is actually needed and SM asked if Panel making the recommendation, is that it allow for a right to appeal?

HBr agreed to take an action to seek confirmation what value Panel add by making the recommendation to Ofgem.

SM noted that the Authority's response time is without constraints and therefore, the timing of the decision might be material to the derogation itself. SM asked how can the Panel effectively make the decision without certainty? HBr advised he will look into that.

KE summarised there are a number of things that HBr is going to clarify:

1. What is the value that Panel add?
2. Is there a right of Appeal?
3. 'Without constraint' phrase around the timeline.

New Action 0302: Ofgem (HBr) to clarify what value is added by Panel making recommendation in the process – what is the justification for Panel involvement.

JCx shared The Electricity and Gas Appeals (Designation and Exclusion) Order 2014 link with the workgroup and advised that the derogation requests will not specifically be considered a Modification. TS clarified they will be derogation reports. JCx said if that is the case it suggests there is no right of appeal.

Workgroup agreed it is important to understand what the Panel recommendation does and does not do.

RF asked what value Panel is adding in the process and asked what would happen if an Appeal were raised against an Ofgem decision, would it go to the goes to the Competition and Markets Authority (CMA), he said he is unsure if a derogation has ever been appealed under any other Energy Code.

It was mentioned that the Retail Energy Code (REC) has no Panel, therefore there is no role for Panel to make a recommendation, however, REC is a Code Manager therefore it would take the role as UNC Panel.

Clarification was provided that the role of Joint Office will be to critically friend the request, beyond that it is up to the Proposer.

Solution

Business Rule 6

TS will clarify that UNC Modification Rules 2.1 are correctly quoted.

New Action 0402: *Business Rule 6 - Proposer (TS) to clarify that UNC Modification Rules 2.1 are correctly quoted.*

New Business Rule 13

Where a derogation is approved for a stated length, with an unfixed start date, or is subject to only being applicable should derogations, also being granted, it is in the gift of the Authority to impose a backstop date. After the UNC derogation has been approved, the start date of the actual derogation within this period will be confirmed by the UNC Panel following consultation with the applicant and Code Administrator. This date will then be communicated to all relevant parties, including Ofgem, and published on the website no later than 16 working days before it is due to commence.

When SM asked if the wording is right for this Business Rule, TS agreed to re-read and make adjustments as necessary.

RF noted that Panel could make a recommendation while there are still some non-safety things outstanding, this makes it a conditional approval.

SM suggested 'everything other than Code has to be provided before Panel considers'.

New Action 0502: *Business Rule 13 – Proposer (TS) to reconsider the wording for this Business Rule in line with Workgroup comments.*

Business Rule 14

TS explained that sometimes when a derogation is applied for, but the start date is uncertain, a backstop date would be required.

SM noted there needs to be a way of closing a derogation down when a backstop date is being used. TS advised that the derogation would be no longer valid if the backstop date is passed.

TS noted that the backstop is used if there is no start date, so that there is a date where it will naturally fall away and confirmed that all derogations should be time limited.

Business Rule 19

TS advised a Business Rule was needed for Panel to inform Ofgem that the derogation needs to be revoked.

RF suggested this is bringing Panel into legal matters they do not need to be involved in. TS advised she will check if DCUSA and BSC have this in or not. RF stated that the User could inform Ofgem directly.

New Action 0602: *Proposer (TS) to check if DCUSA and/or BSC have a similar rule to Business Rule 19 (Back-Stop Date).*

Business Rule 20

It was agreed to remove this Business Rule with Ofgem notifying Panel if a derogation is revoked.

SM asked to include in the Business Rules, for avoidance of doubt, that Panel rely on the proposer providing the relevant information and documents, TS advised this is covered in the Guidance Document. SM suggested this should be in the body of the Code itself to be clear on what the expectations are and clear at the highest-level what Panel responsibilities are.

New Action 0702: *Additional Business Rule – Proposer (TS) to consider adding a further Business Rule around Panel responsibilities.*

Recommendations

TS said that the reader does need to read the Guidance Document in conjunction with the Modification as the two documents do work together.

TS thanked Ofgem for attending this Workgroup.

TS confirmed she will advise Panel there will be an amended Modification post-Panel.

2. BEIS/Ofgem Energy Codes Governance Review

Not discussed.

3. Workgroups

None.

4. Any Other Business

4.1. Modification Panel Voting Arrangements

KE suggested that to consider this thoroughly it may need to be a standalone Workgroup as Legal advice may need to be sought and more Panel members would need to be involved.

A discussion took place around the differences between Self-Governance and Authority Direction votes (i.e. determinations v recommendations) as well as the difference between when exercised votes should be recorded compared to the total number of exercisable votes.

KE referred to:

Uniform Network Code – Modification Rules

5.8 Voting

5.8.1 Subject to paragraph 5.9, the discharge of all of the functions within the competence of the Modification Panel and expressed to require a determination of the Modification Panel shall be determined by a vote conducted on a show of hands or, if the meeting takes place pursuant to paragraph 5.7.2, on a show of hands or such other demonstration of affirmation or consent as may be appropriate. On any vote each Voting Member present shall (subject to paragraphs 3.8, 4.5.2 and 4.5.4) be entitled to exercise one (1) vote.

5.8.2 The Panel Chairperson may exercise a Casting Vote, where on a vote conducted under paragraph 5.8.1, there is an equal number of votes in favour of and against making a determination.

TS noted her concern that Panel is currently treating Self-Governance and Authority Direction Modifications in the same way.

TS noted that, historically votes used to be cast as one of 3 votes, Yes; No and Abstain.

TS referred to:

Uniform Network Code – Modification Rules

2 Interpretation

2.1 Defined Terms

“Panel Majority”: in relation to

(a) a Modification Panel recommendation made pursuant to paragraph 9.2.1(b) or 9.3.3(a) to be determined at a quorate and duly convened meeting of the Modification Panel means:

a majority (in number) of the votes exercisable by the Voting Members present at that meeting and voting in favour of such matter; and

(b) any other Modification Panel determination to be determined at a quorate and duly convened meeting of the Modification Panel means:

(i) a majority (in number) of the votes exercised by the Voting Members present at that meeting and voting in favour of such matter; or

- (ii) *if there is an equal number of votes by the Voting Members present at that meeting in favour of and against such matter, where the Panel Chairperson has exercised a Casting Vote in favour of such matter;*

TS said that:

a) = majority of votes are exercisable for Authority Direction Modifications

b) = votes are exercised for Self-Governance Modifications

TS clarified she does not see any ambiguity in the rules as they are written.

KE added that it appeared clear under 5.8.2 that the Panel Chairperson could exercise a Casting Vote for a determination.

It was mentioned that it is possible that a Modification may be needed to make this section of the Modification Rules clearer.

When SM asked what is in the guidance and training provided to a new panel member, KE agreed to review the voting software that Joint Office previously used to see how the votes were structured.

KE advised she will try to turn the understanding/interpretation of voting into layman's terms and send it to some Panel members to review.

New Action 0802: *Modification Panel Voting Arrangements* – Joint Office (KE) to interpret voting rules in layman's terms and issue to some Panel members for review.

4.2. Expedited Modification Process

KE advised this has been talked about for a while now and should not be confused with the new *Modification 0803 - Exceptional Circumstances Modification process*, the expedited Modification process is not for Exceptional Circumstances.

KE reminded Workgroup that there have been a number of Urgent Modifications raised and treated as Urgent for their timescales rather than it being urgent to implement the changed process.

KE advised Workgroup that there is sufficient flexibility within the UNC to expedite a Modification through the process without needing a change. KE suggested that the Proposer should highlight to Panel if a Modification does require a different timeline to the normal process, then discussions with Joint Office can be had to work through the possibilities of a shorter timescale.

4.3. Modification Template / Guidance Document

KE highlighted to Panel in January 2022 that January is the month where a normal review of the Modification Proposal Guidelines Document (<https://www.gasgovernance.co.uk/unc/templates>) guidance for Proposers where it was agreed there would be no changes required as it was only updated in May 2021. During the update to Panel TS asked if the Modification templates could be reviewed to remove all of the guidance text and have the information published alongside (in this document) rather than within the templates.

TS raised her concern that when the UNC Modification Template was amended, there was further green italic text added to certain sections of the template which has resulted in Users not looking at the Modification Proposal Guidelines Document and there could be important updates that are being missed.

KE advised that the green italic text in the UNC Modification Template is an agreed format with the Code Administrators Code of Practice (CACoP).

TS suggested that CACoP could consider using a similar approach to that used for Government documents, where the template/form does not include any instructions but references the relevant section in an accompanying guidelines document.

New Action 0902: Joint Office (HB) to raise at the next CACoP meeting and ask if it is worth considering using the same approach Government uses for documents.

5. Diary Planning

KE offered Workgroup a number of March 2022 meeting dates to consider, Workgroup suggested 01 March is the most favourable:

01 March – clashes with NTSCMF but no impact

09 March – clashes with DSC Change Management Committee

10 March – clashes with IGT UNC meeting

14 March – Panel week and uses up Panel member preparation for the Panel meeting

Further details of planned meetings are available at: <https://www.gasgovernance.co.uk/events-calendar/month>

Time / Date	Venue	Workgroup Programme
10:00 – 16:00 Tuesday 01 March 2022	Via Microsoft Teams	<ul style="list-style-type: none"> Ofgem/BEIS Code Reform Consultation Outputs (if published) Any new Governance Modifications

Action Table (as of 14 February 2022)

Action Ref	Meeting Date	Minute Ref	Action	Owner	Status Update
1104	04/11/19	8.0	Joint Office (PG) to review the use of pre-meeting briefs by JO meeting Chairs (included as a Joint Office annual report point for consideration).	Joint Office (PG)	Carried Forward
0102	14/02/22	1.5.2	Modification 0800: Ofgem (HBr) to share the criteria that Ofgem use for initiating the Send Back process.	Ofgem (HBr)	Pending
0202	14/02/22	1.5.2	Modification 0800: Proposer (TS) to update the wording in the Modification to ensure it stipulates that Panel will consult once the derogation is in place.	Proposer (TS)	Pending
0302	14/02/22	1.5.2	Modification 0800: Ofgem (HBr) to clarify what value is added by Panel making recommendation in the process – what is the justification for Panel involvement.	Ofgem (HBr)	Pending
0402	14/02/22	1.5.2	Modification 0800: <i>Business Rule 6</i> - Proposer (TS) to clarify that UNC Modification Rules 2.1 are correctly quoted.	Proposer (TS)	Pending

0502	14/02/22	1.5.2	Modification 0800: <i>Business Rule 13</i> – Proposer (TS) to reconsider the wording for this Business Rule in line with Workgroup comments.	Proposer (TS)	Pending
0602	14/02/22	1.5.2	Modification 0800: Proposer (TS) to check if DCUSA and/or BSC have a similar rule to Business Rule 19 (Back-Stop Date).	Proposer (TS)	Pending
0702	14/02/22	1.5.2	Modification 0800: <i>Additional Business Rule</i> – Proposer (TS) to consider adding a further Business Rule around Panel responsibilities.	Proposer (TS)	Pending
0802	14/02/22	4.1	<i>Modification Panel Voting Arrangements</i> – Joint Office (KE) to interpret voting rules in layman’s terms and issue to some Panel members for review.	Joint Office (KE)	Pending
0902	14/02/22	4.3	Joint Office (HB) to raise at the next CACoP meeting and ask if it is worth considering using the same approach Government uses for documents .	Joint Office (HB)	Pending