

## UNIFORM NETWORK CODE

### MODIFICATION 0760

#### INTRODUCING CONCEPT OF A DEROGATION FRAMEWORK INTO UNIFORM NETWORK CODE ALONG WITH A USE CASE OF NET ZERO

[Proposed] legal text

#### TRANSPORTATION PRINCIPAL DOCUMENT

#### SECTION V – GENERAL

*Amend paragraph 12.1 as shown below:*

##### 12.1 Purpose

The purpose of this Section ...

...

- (g) the Performance Assurance Framework Document references in paragraph 16.1.1(d); ~~and~~
- (h) the Performance Assurance Reports Registers referred to in paragraph 16.5.1; ~~and~~
- (i) the Derogation Guidance Document referred to in GT Section B7.

#### GENERAL TERMS

#### SECTION B – GENERAL

*Add new paragraph 7 to read as follows:*

##### 7 DEROGATIONS

##### 7.1 UNC Derogations

7.1.1 Subject to paragraph 7.4.3, the Modification Panel may, in accordance with this paragraph 7, grant a Party a derogation from one or more provisions of the Code in which case paragraph 7.4 will apply ("**UNC Derogation**").

7.1.2 For the purposes of this paragraph 7:

- (a) "**Derogation Determination Date**" means, in relation to a UNC Derogation Application, the date on which the Modification Panel determines that UNC Derogation should be implemented;

- (b) **"Derogation Eligibility Criteria"** means the eligibility criteria set out in the Derogation Guidance Document;
- (c) **"Derogation Guidance Document"** is the document prepared and maintained by UNC Committee containing guidance in relation to UNC Derogation Applications;
- (d) **"Derogation Party"** means in respect of a UNC Derogation, each Party identified in the UNC Derogation as entitled to rely on such UNC Derogation;
- (e) **"Derogation Period"** means the period during which the UNC Derogation shall be in force;
- (f) **"Excluded Code Provision"** means:
  - (i) the provisions of GT Section B;
  - (ii) the Modification Rules;
  - (iii) any provision of the Code which is, at the date the application is submitted, within the scope of a Significant Code Review or the subject of a Significant Code Review Modification Proposal; and
  - (iv) any provision of the Code which facilitates a consumer changing supplier or shipper and which (in the opinion of the Modification Panel) could be adversely impacted by a proposed UNC Derogation;
- (g) **"Industry Code"** means a multilateral code or agreement created and maintained pursuant to a licence granted by the Authority under sections 7, 7ZA or 7A of the Gas Act 1986 or section 6 of the Electricity Act 1989, including the Independent Gas Transporter's Network Code, the Retail Energy Code and the Smart Energy Code ;
- (h) **"UNC Derogation Use Case"** means a use case specified in Annex B-1.

## 7.2 UNC Derogation Application

7.2.1 A Party may make a written application for a UNC Derogation to the Code Administrator ("**UNC Derogation Application**").

7.2.2 A UNC Derogation Application shall specify:

- (a) the identity of the Party making the application ("**applicant Party**");
- (b) the applicable UNC Derogation Use Case;
- (c) the Derogation Eligibility Criteria on which the UNC Derogation Application is based;
- (d) the provisions of the Code (and for the purposes of this paragraph 7 a reference to the Code shall be deemed to include a reference to each UNC Related Document) from which a UNC Derogation is required;
- (e) the proposed duration of the Derogation Period; and
- (f) such other matters as shall be required by the Derogation Guidance Document.

- 7.2.3 Following receipt of a UNC Derogation Application the Code Administrator shall:
- (a) by the end of the third Business Day following receipt, send a copy of the application to each Transporter, each User, each Independent Gas Transporter, each Member, each Third Party Participant and each Non-Code Party (if any), the CDSP and the Authority ;
  - (b) provide such guidance as the Modification Panel may request in relation to the applicable Derogation Use Case and satisfaction of the Derogation Eligibility Criteria;
  - (c) schedule consideration of the UNC Derogation Application at a meeting of the Modification Panel occurring not less than ten (10) Business Days after a copy of the application has been sent in accordance with 7.2.3 (a).
- 7.2.4 At the meeting referred to in paragraph 7.2.3(c) the Modification will either:
- (a) reject the UNC Derogation Application in accordance with paragraph 7.2.5; or
  - (b) make a determination in respect the UNC Derogation Application in accordance with paragraph 7.2.6.
- 7.2.5 The Modification Panel will reject the UNC Derogation Application where:
- (a) any of the requirements of paragraph 7.2.2 are not complied with;
  - (b) the Modification Panel is of the opinion the UNC Derogation Application is not in accordance with the applicable UNC Derogation Use Case;
  - (c) the application proposes the UNC Derogation apply in respect of an Excluded Provision;
  - (d) the UNC Derogation Application is not materially different from an earlier application which the Modification Panel determined, or (following an appeal) the Authority directed, should not to implemented.
- 7.2.6 In respect of a UNC Derogation Application which is not rejected in accordance with paragraph 7.2.5 the Modification Panel will make a determination under paragraph 7.2.7 having:
- (a) discussed the UNC Derogation Application and considered whether or not the application satisfies the UNC Derogation Eligibility Criteria;
  - (b) considered all the information submitted by the applicant Party in support of the UNC Derogation Application; and
  - (c) heard the representations of the applicant Party's representative and the responses to any questions raised by the Modification Panel relating to the UNC Derogation Proposal.
- 7.2.7 The Modification Panel may determine (by Panel Majority):
- (a) the UNC Derogation Application does not satisfy the UNC Derogation Eligibility Criteria, in which case the UNC Derogation Application shall lapse and have no further effect;

- (b) additional steps need to be undertaken, or additional analysis or information is required, before the UNC Derogation Application can proceed to consultation, in which case the applicant Party shall be invited to revise and re-submit the UNC Derogation Application;
- (c) the UNC Derogation Application should proceed to consultation, in which case the Code Administrator shall invite each Party to make representations in respect of the UNC Derogation Application to the Code Administrator within fifteen (15) Business Days of the Code Administrator's invitation;
- (d) consideration of the UNC Derogation Application should be deferred to a subsequent meeting of the Modification Panel.

7.2.8 Where the Modification Panel has determined the UNC Derogation Application should proceed to consultation:

- (a) the Code Administrator shall schedule consideration of the UNC Derogation Application and all representations received following consultation at the next relevant meeting of the Modification Panel following the end of the period referred to in paragraph 7.2.7(c);
- (b) at the meeting referred to in paragraph (a) the Modification Panel may determine:
  - (i) by a unanimous vote the UNC Derogation Application should be implemented, in which case paragraphs 7.3 and 7.4 will apply;
  - (ii) the UNC Derogation Application should not proceed to implementation, in which case the UNC Derogation Application shall lapse and have no further effect
  - (iii) a final determination in respect of the UNC Derogation Application should be made at a further meeting of the Modification Panel.
- (c) where the Modification Panel approves implementation of a UNC Derogation the Modification Panel will also determine:
  - (i) the duration of the Derogation Period;
  - (ii) subject to paragraph 7.2.10, the date on which the Derogation Period is to commence, the earliest date for which shall be (subject to paragraph 7.3.2) no earlier than sixteen (16) Business Days after the Derogation Determination Date; and
  - (iii) any such other matter as may be provided for in the Derogation Guidance Document.

7.2.9 Following the Modification Panel's determination under paragraph 7.2.8 in relation to a UNC Derogation Application, the Code Administrator shall promptly notify the applicant Party, all other Parties and the Authority of:

- (a) the Modification Panel's determination to approve or not approve the UNC Derogation Application;

- (b) where the Modification Panel approves implementation of the UNC Derogation Application:
  - (i) the scope and nature of the UNC Derogation, the Derogation Period, the Derogation Parties and the provisions of the Code which each Derogation Party shall not be required to comply with for the Derogation Period;
  - (ii) subject to paragraph 7.2.10, the date on which the Derogation Period is to commence;
  - (iii) the details of the Modification Panel's determination on the matters referred to in paragraph 7.2.8(c);
- (c) where the Modification Panel does not approve the UNC Derogation Application the reasons for its determination.

7.2.10 The Modification Panel may at the time of approving implementation of a UNC Derogation Application defer determination of the date on which the Derogation Period is to commence pending further consultation with the applicant Party [and the Code Administrator], in which case:

- (a) following such further consultation the Modification Panel shall determine the date on which the Derogation Period is to commence;
- (b) the Code Administrator shall promptly notify the applicant Party, all other Parties and the Authority of such date, which shall be no earlier than 16 Business Days following the Modification Panel's determination.

7.2.11 An applicant Party may withdraw an UNC Derogation Application by notice to the Code Administrator at any time prior to the UNC Derogation coming into force, in which case the UNC Derogation Application (or if already approved, the UNC Derogation) shall lapse and have no further effect.

7.2.12 A Party may submit a UNC Derogation Application notwithstanding any other UNC Derogation submitted by such Party remains under consideration by the Modification Panel (or following an appeal) the Authority.

7.2.13 Where a Party submits a UNC Derogation Application ("**second application**") which in the opinion of the Modification Panel is not materially different from an earlier application ("**first application**") submitted by the same Party:

- (a) where the Modification Panel has yet to make a determination under paragraph 7.2.8 in respect of the first application, the first application shall lapse and have no further effect;
- (b) where the Modification Panel has approved implementation of the first application, the first application shall lapse and have no further effect in the event the Modification Panel approves the second application, but not otherwise.

7.2.14 An applicant Party shall ensure a representative attends each meeting of the Modification Panel at which the applicant Party's UNC Derogation Application is considered.

7.2.15 Notwithstanding any provision of this paragraph 7, the Modification Panel may determine, in its absolute discretion, the priority and timetable for any steps proposed be undertaken by the Modification Panel in relation to a UNC Derogation Application.

### **7.3 UNC Derogation Appeal**

7.3.1 A Party ("**appellant Party**") may (subject to this paragraph 7.3) appeal to the Authority the Modification Panel's determination to approve or not to approve a UNC Derogation where it believes it will be unfairly prejudiced by the Modification Panel's determination.

7.3.2 A Party may not give notice of appeal in respect of a UNC Derogation more than fifteen (15) Business Days after the Derogation Determination Date, and where a notice of appeal is given within such period an approved UNC Derogation shall not come into force prior to the Authority's decision following the Authority's consideration of the appeal.

7.3.3 A Party shall give notice of appeal to the Authority, the Panel Secretary and the Code Administrator.

7.3.4 A notice of appeal shall:

- (a) identify the UNC Derogation in respect of which the appeal is made; and
- (b) set out the reasons for the appellant Party's view the UNC Derogation should be implemented or (as the case may be) not implemented.

7.3.5 The Code Administrator and the appellant Party shall provide the Authority with such further information as the Authority may request for the purposes of considering the appeal.

7.3.6 If more than one notice of appeal is received in relation to a UNC Derogation the Code Administrator shall invite the Authority to make a single or composite decision and direction in respect of all such appeals.

7.3.7 Following an appeal which is in accordance with paragraphs 7.3.2, 7.3.3, 7.3.4 and 7.3.5, the Authority may decide and direct the UNC Derogation:

- (a) should not be implemented, in which case the UNC Derogation shall lapse and have no further effect;
- (b) should be implemented, in which case the UNC Derogation shall be implemented, for which purposes the Derogation Period shall be such period as the Authority directs.

7.3.8 When an appeal is decided the Code Administrator shall notify the appellant Party, the Panel Secretary and each other Party of the Authority's decision.

7.3.9 The decision of the Authority in respect of an appeal shall be final and binding on all Parties.

### **7.4 Impact of UNC Derogation**

7.4.1 Subject to paragraph 7.2.10, any UNC Derogation Application that has been approved by the Modification Panel shall be a UNC Derogation and, subject to paragraph 7.5.2, such UNC Derogation shall remain in force for the Derogation Period.

7.4.2 Subject to paragraph 7.4.3, for the duration of the Derogation Period:

- (a) each Derogation Party shall be relieved of their obligation to comply with the Code to the extent permitted by the UNC Derogation;
- (b) no act or omission by a Derogation Party that would be a breach (or in the case of a User, a User Default) shall be deemed to be a breach (or User Default) of the Code to the extent only that such act or omission is permitted by a UNC Derogation.

**7.4.3 In respect of a UNC Derogation:**

- (a) a Derogation Party shall be required to comply with all provisions of the Code that are relevant to such Party and which are outside the scope of such UNC Derogation;
- (b) a Derogation Party shall be required to comply with any conditions included in such UNC Derogation;
- (c) such UNC Derogation shall have no effect to the extent that it purports to derogate from:
  - (i) any conditions of a gas transporters licence or a gas shippers licence;
  - (ii) any other Industry Code (but without prejudice to any other regulatory derogation arrangements);
  - (iii) any Legal Requirement; or
  - (iv) any provision of this paragraph 7,

and each Derogation Party acknowledges and agrees that it shall be responsible for its compliance with any such Code provision, licence condition or Legal Requirement.

**7.4.4** With effect from 05:00 on the day following the Derogation Period End Date, such UNC Derogation shall no longer be in force and each Derogation Party shall comply with the Code in full from such time and such date.

**7.4.5** The approval of a UNC Derogation in respect of any Derogation Party shall not relieve any other Party (not being a Derogation Party) of all or any of its obligations under the Code.

**7.4.6** Once approved by the Modification Panel no variation to a UNC Derogation shall be permitted.

**7.5 UNC Derogation Reporting and Cessation**

**7.5.1** A Derogation Party shall provide the Modification Panel with such reports as the Modification Panel may require.

**7.5.2** The Modification Panel may determine that a UNC Derogation cease to apply, as a result of being made aware:

- (a) where the UNC Derogation no longer meets the UNC Derogation Eligibility Criteria;
- (b) a Derogation Party is in breach of the UNC Derogation.

**7.5.3** Where the Modification Panel makes a determination in accordance with paragraph 7.5.2 the UNC Derogation shall cease to apply from the date specified by the Modification Panel.

*Insert new Annex B-1 into General Terms Section B to read as follows:*

## **ANNEX B-1**

### **UNC DEROGATIONS**

#### **1. UNC DEROGATION USE CASE(S)**

##### **1.1 Derogation Use Case A**

1.1.1 The UNC Derogation Application relates to a project which is consistent with:

- (a) a change in national government policy (including policy of the national devolved parliaments);
- (b) a change in local government policy;
- (c) the trialling of new technologies or the making of technological advances;
- (d) facilitating the uptake of low carbon technologies;
- (e) any requirement contained in a local area energy plan or equivalent arrangement

the purpose of which is to facilitate net zero and the achievement of a 100% reduction of greenhouse gas emissions (compared to 1990 levels) in the UK by 2050.