



Gas shippers and traders, transporters,
potential new entrants, consumer
groups and other interested parties

*Promoting choice and
value for all customers*

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Date: 12 July 2012

Dear colleagues,

“Minded to” consultation on Ofgem’s licensing policy for Gas Traders and consequential acceptance of the related Uniform Network Code (‘UNC’) modification proposal 338V

Having considered the responses to our open letter consultation on changes to Ofgem’s licensing policy for Gas Traders and the Final Modification Report for UNC338V ‘Remove the UNC requirement for a ‘gas trader’ User to hold a Gas Shipper Licence, we have decided to consult on our current “minded to” position. Our view is that certain persons who currently hold a gas shipper licence should not be required to obtain a gas shipper licence in future in order to carry out their activities, and that this change should be put into effect through the implementation of UNC338V.¹ This will affect those persons who are not involved in the physical conveyance of gas on the Great Britain (GB) network system, ie who only trade gas as a commodity at the National Balancing Point (NBP) (Gas Traders).

We welcome responses to this “minded to” position on or before 7 September 2012.

This letter summarises the responses to our open letter consultation published in January 2012 and sets out our views on the issues raised. We also ask some additional consultation questions in relation to the implementation date of both the policy change and UNC338V. In Annex 1, our “minded to” position to accept UNC338V is elaborated while in Annex 2 we consult on the changes which would be needed to our “Guidance for gas and electricity licence applications” in the event that we approved the modification.

In summary, our view is:

1. As Gas Traders’ activities do not fall within the prohibition of unlicensed activities contained in the Gas Act 1986 (the Gas Act), we wish to clarify that they should not be required to obtain a gas shipper licence, but should be able to continue to carry out their activities.
2. Requiring a Gas Trader to have a gas shipper licence represents an inappropriate barrier to entry, especially for small parties. Removing this barrier is consistent with our duty in respect of better regulation and the Government’s red tape challenge.
3. Clearly defining gas trading as a separate activity from gas shipping would make the status of industry parties more transparent.

¹ For the avoidance of doubt, all those parties intending to become involved in shipping activities, as defined in the Gas Act 1986, will continue to require a gas shipper licence.

Background

During 2010, we commenced a review of our licence application process. As part of this review, we analysed all gas shipper licences and noted a marked increase in gas shipper licence applications during 2009. To get a clearer picture, we asked Xoserve to provide us with details of parties that were using their systems for shipping and found that many applicants were not using the licence for the purpose of physically conveying gas. We attributed this result to the requirement to hold a gas shipper licence in order to access the UNC and the Gemini system.

In June 2010, we launched consultation 74/10 'Proposed changes to the current Application Regulations and Revocation Schedules of future licences'.² As part of this consultation we welcomed views on whether parties should no longer be required to hold a gas shipper licence in order to be able to carry out gas trades and sign up to the UNC. The majority of respondents agreed that it was not appropriate to require parties to obtain a gas shipper licence prior to being able to carry out gas trades.

In October 2010, National Grid Gas Transmission (National Grid) raised modification proposal UNC338 'Remove the UNC requirement for a 'gas trader' User to hold a Gas Shipper Licence'.³

In January 2012, we published our open letter consultation on changes to Ofgem's licensing policy for Gas Traders,⁴ asking the industry whether they agreed that traders who are not involved in the activities prescribed by the Gas Act should not be required to have a gas shipper licence.

Main issues raised by respondents and our views

We have received six responses to our January 2012 consultation: two in support, three against and one offering qualified support.⁵

Those respondents in support believe that the participation of non-physical traders in the gas market should not be dependent on the possession of a licence and that appropriate market entry requirements, security and other necessary commercial terms can be put in place through provisions in the industry codes and contracts instead of through a licence. As one respondent mentioned, this would be in line with the arrangements in the electricity market where non-physical traders are unlicensed but can access the relevant industry code, the Balancing and Settlement Code (BSC).

However, respondents who did not support the proposal, or offered qualified support, raised a number of issues that we have addressed below. In Annex 3 we summarise all responses received.

Inability to effectively enforce penalties or sanctions

Some respondents raised the issue that Ofgem would lose the power to investigate and take enforcement action against a Gas Trader in breach of their obligations. One respondent in particular, though in favour of the proposal to remove the requirement to hold a shipper licence, did not support the view that the appropriate obligations should be placed in and enforced through the UNC, as they did not believe that the UNC's enforcement provisions are sufficiently robust.

² Consultation 74/10 can be found at <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?file=App%20Regs%202010%20Consultation.pdf&refer=Licensing/Work>

³ This Modification Proposal can be found on the Joint Office website <http://gasgovernance.co.uk/0338>

⁴ Please see <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=196&refer=LICENSING/WORK>

⁵ All responses received were non-confidential and can be found on our website at <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=196&refer=LICENSING/WORK>

We note that most conditions in the gas shipper licence relate to physical aspects of the network and are therefore not relevant to Gas Traders. Furthermore, we have received no response indicating specifically what type of obligation currently contained in the licence may need to be maintained. Except in relation to the obligations which are discussed below (emergency co-operation and information provision), we do not consider that any other licence obligation(s) will be relevant to Gas Traders.

In relation to our own enforcement powers, our records indicate that we have not taken enforcement action against a gas shipper.⁶ Although one respondent did argue that the licence might act as a deterrent, there is no evidence of this.

As stated in our open letter consultation, Ofgem also has enforcement powers in cases of suspected market abuse under the Competition Act 1998, regardless of whether the abusing party is licensed or not. In addition to this, the Authority⁷ will be given further powers for monitoring and enforcement through the implementation of the EU Regulation on Wholesale Energy Market Integrity and Transparency (REMIT),⁸ which addresses insider trading and market manipulation in the energy sector.

As regards enforcement under the UNC, there are provisions which allow Transporters and National Grid to issue a termination notice whereby a User will cease to be a User of their systems – i.e. will no longer be able to undertake trades. These include Section TPD V4.3⁹ (Termination from the code due to User default) and Section X¹⁰ (Energy Balancing Credit Management).

Although we agree that the enforcement rules in the UNC could benefit from a review with a view to strengthening, we note that the lack of appropriate performance assurance in the UNC has been an ongoing issue which is wider than this policy change. We therefore encourage the industry to explore this issue further and raise the appropriate modification proposals in future. We do not think that it is proportionate to maintain a licensing obligation simply to augment the UNC provisions.

Impact on safety and security of supply

One respondent highlighted the issue of security of supply, which could be affected by the loss of the shipper licence. It is theoretically possible that the activities of a Gas Trader could have a consequential impact on network safety. As a Gas Trader would have no licence, Ofgem would have no powers to address the situation.

As stated in our January 2012 consultation, we have worked closely with National Grid during the development of UNC338V and we have liaised with the Health and Safety Executive (HSE), to make sure that the appropriate obligations in terms of network safety are imposed on traders through the UNC. In particular, the requirement not to act in a manner that would jeopardise the safe and efficient operation of the system and the duty to co-operate with the network operator and with the National Emergency Committee in an emergency will be inserted into the UNC by UNC338V.

Two respondents mentioned that this licensing change might run counter to Ofgem's Significant Code Review on Gas Security of Supply (Gas SCR). However, Gas Traders are

⁶ These records have been kept for the past ten years.

⁷ The Authority is designated as the regulatory authority for Great Britain under section 3A of the Utilities Act 2000.

⁸ Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:en:PDF>

⁹ Uniform Network Code – Transportation Principal Document Section V
http://www.gasgovernance.co.uk/sites/default/files/TPD%20Section%20V%20-%20General_15.pdf

¹⁰ Uniform Network Code – Transportation Principal Document Section X
http://www.gasgovernance.co.uk/sites/default/files/TPD%20Section%20X%20-%20Energy%20Balancing%20Credit_0.pdf

exposed to cash-out charges (and credit requirements) under the UNC and would continue to be exposed to such charges without a shipper licence. Therefore, Gas Traders would be exposed to the reforms proposed in the Gas SCR Draft Policy Decision irrespective of whether they hold a shipper licence.

Provision of information to the Authority

Two respondents are concerned that by not issuing a shipper licence to Gas Traders, Ofgem will lose its powers to formally request information from such traders, which they say could lead to Ofgem not being able to investigate inappropriate behaviour. In addition, one respondent is concerned that this will put an increased burden on licensed parties (as counterparties to contracts with Gas Traders) to provide information where Ofgem is not able to obtain this information from Gas Traders.

We are not aware of any formal information requests having been sent to a gas shipper licensee in relation to trading activities. As stated above, no enforcement action has been taken against a gas shipper licensee, therefore, no information has been requested for enforcement purposes.

The type of information we may be likely to request, for example in relation to a possible suspected market abuse, would include trade nominations, imbalance positions and cash-out volumes. This information would be available to National Grid from whom we could therefore obtain it, either informally or using our formal powers requiring National Grid to provide us with information.¹¹

In addition, in certain circumstances we would be able to launch an investigation under the Competition Act 1998, which would enable us to obtain any information required to investigate activities prohibited by Chapter I and Chapter II of that Act.

We will also have further monitoring and enforcement powers in relation to market abuse and insider trading, as well as further powers to request information and impose penalties, under the domestic legislation implementing REMIT. REMIT is still being implemented and the Authority will be given the necessary monitoring and enforcement powers next year. As REMIT is implemented in GB, we will continue to monitor the regulation of Gas Traders to ensure that no regulatory gaps or double regulation arise as a result.

Finally, one respondent suggested that an obligation could be placed in the UNC requiring parties to comply with any information request from Ofgem when this relates to matters of market security. Although we would of course consider any future modification proposals on the matter, we do not believe this to be an appropriate measure at this stage.

Loss of regulatory oversight

One respondent highlighted their concern on the loss of regulatory oversight of Gas Traders once the requirement to obtain a gas shipper licence is removed from them. No specific additional concerns were expressed.

We remain of the view that no gap in regulation would be created, as those activities subject to regulation under the Gas Act and other statutes will continue to be regulated. In addition, any Gas Traders who are no longer directly regulated will remain subject to the terms of the UNC, which itself is subject to regulatory oversight.

¹¹ Eg Standard Licence Condition 24 of the Gas Transporter Licence, 'Provision of Information to the Authority' <http://epr.ofgem.gov.uk/Pages/EPRInformation.aspx?doc=http%3a%2f%2fepr.ofgem.gov.uk%2fEPRFiles%2fGas+Transporter+Standard+Licence+Conditions+-+10-11-2011+-+Current+Version.pdf>

As we stated in our January 2012 consultation, there may be a change in regulation if any party who will no longer hold a licence thereby loses its exemption from regulation by the Financial Services Authority (FSA) under paragraph 42(3) of the Financial Services and Markets Act (Exemption) Order 2001. Any licensee affected by this change in policy would therefore need to determine for which of their activities, if any, they should obtain authorisation from the FSA.¹²

Reasons for our “minded to” position of introducing this licensing change

Under the Gas Act it is an offence to carry out certain activities without a licence or an exemption from the requirement to hold a licence. Section 7A(2) of the Gas Act states that *“the Authority may grant a licence authorising any person to arrange with any gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter, either generally or for purposes connected with the supply of gas to any premises specified in the licence”*. Therefore, the activity for which a shipper licence is required is arranging the physical conveyance of gas from one point to another (gas shipping).

As the Gas Act refers only to gas shipping and not trading activities, we do not think it is appropriate for Ofgem to continue to issue licences to Gas Traders. This is in line with our function in respect of granting licences and more broadly with our duty of ‘better regulation’, which requires us to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed (as well as other principles we consider represent best regulatory practice). For the avoidance of doubt, it is for each party to determine whether their activity is in fact a “prohibited activity”, as prescribed by the Gas Act, for which a licence is required.

In addition, we consider that although the fee for a shipper licence is only £350, requiring a non-physical trader to have a shipper licence represents an unnecessary and unjustified barrier to entry. It is an administrative burden, especially for small parties and parties who are based abroad. We do not consider the fact that there are also other steps industry parties need to take to become Gas Traders to be relevant to the principle of this issue. We note that, in a parallel context, this barrier does not exist in the electricity market where there is no requirement to hold a licence to trade.

We consider that there is merit in clarifying our licensing policy and where applicable making changes to industry contracts in order to differentiate between those parties who intend to trade gas as a commodity and those intending to physically ship gas: a shipper and a trader have different types of obligations and need to put in place different securities with the transporter. Clearly defining gas trading as a separate activity from gas shipping will provide greater transparency on the status of industry parties.

We reiterate at this point that parties should not rely on a licence in place of industry pre-contractual checks as a form of due diligence. In issuing a licence, we do not give any guarantee, warranty or endorsement of any applicant, their financial status, or business methods.

We also confirm our initial view, put forward in our January 2012 consultation, that individual parties are best placed to determine whether they require a licence. Therefore, we would primarily consider revoking licences where the licence holder applies to us to have their licence revoked. However, we will where appropriate consider exercising our powers to revoke licences in other circumstances, such as if a licence holder ceases to (or does not) carry out any business as a gas shipper.

¹² Details of FSA authorisation and contacts in the FSA are available at www.fsa.gov.uk

Implementation date

As mentioned in the Final Modification Report (FMR) on UNC338V, no material changes to systems or processes will be required by this change. Therefore, both the modification proposal and our licensing change could be implemented immediately following our final decision, if we decide to direct that the change be made. However, while we think that UNC338V can be implemented after the Authority decision, the industry might want some more lead time for our licensing change to come into effect. We therefore propose two alternatives: 1 October 2012, to coincide with the beginning of the Gas Year, or 1 January 2013, which would give the industry, and in particular future applicants, more time to understand the change and determine whether they would need a gas shipper licence to undertake their activities.

Next steps

Having considered all responses to both this policy consultation and the UNC338V consultation, we remain of the view that the issues identified in our open letter consultation and the further issues raised by respondents do not demonstrate any risk that could outweigh the considerations in favour of implementing this licensing change. However, we welcome any further views on the issues set out above and in Annex 1 and 2, and, to the extent that they are substantiated and relevant, we will take them into consideration before making our final decision.

We now seek views on the following questions:

- 1) Do you agree with our "minded to" position to accept UNC338V and with our assessment of the modification proposal against the relevant objectives, as discussed in Annex 1?**
- 2) Do you agree with the wording of the proposed changes to the Licensing Guidance, as described in Annex 2?**
- 3) Do you have a preference on when this licensing change should come into effect: 1 October 2012 or 1 January 2013?**

Responses to this "minded to" position should be submitted on or before 7 September 2012 to:

Dora Ianora
Industry Codes and Licensing Manager
Ofgem
9 Millbank
London
SW1P 3GE
Or by email to: industrycodes@ofgem.gov.uk

All non-confidential responses will be published on our website. Therefore, if respondents do not wish their response to be made public, they should clearly mark their response as "Confidential".

Yours faithfully,

Declan Tomany
Associate Partner Legal - Smarter Grids & Governance

ANNEX 1 – “Minded to” position on UNC338V

The modification proposal

The Uniform Network Code (UNC) currently requires a party wishing to become a signatory to the UNC and trade gas to hold a gas shipper licence and join as a Shipper User. However, some Shipper Users do not undertake activities that require a gas shipper licence to be held.

To address this issue, National Grid Gas Transmission (the Proposer) has raised modification proposal UNC338 (which has since become UNC338V). This modification proposes to introduce a new type of User, a Trader User,¹³ in order to distinguish between:

- 1) Users involved in the conveyance of gas, or arranging for the conveyance of gas, under the terms of the UNC (Shipper User); and,
- 2) Users not involved in the conveyance of gas, or arranging for the conveyance of gas under the terms of the UNC, but whose activities are directly related to the registration of Trade Nominations (Trader User).

The Trader User will be allowed to become a signatory to the UNC without holding a gas shipper licence. For the avoidance of doubt, Users who are involved in the physical conveyance of gas (Shipper Users) will not be allowed to sign up to the UNC without holding the relevant licence. Shippers will therefore continue to be responsible for ensuring that they hold the appropriate licence to undertake their activities, as prescribed by the Gas Act.

The modification proposes that the definition of ‘User’ within Section B of the General Terms shall incorporate the definition of Trader User (TU). Existing references to Users throughout the UNC shall therefore refer to TUs by default. In addition, the modification proposes that each UNC Section will be clearly identified as applying to a TU or not, by exception within those Sections. For example, Section B of the Transportation Principal Document (TPD)¹⁴ describes ‘Users’ as entities that book capacity, but a TU will not be able to gain access to that Section; a new paragraph within the same Section B will indicate this. This approach is repeated for each Section of the UNC.

Given the nature of this change, we do not list all the Sections of the UNC which will change as a result of this modification; however, we note a few important changes:

TPD D - Operational Balancing and Trading Arrangements: the modification proposes that TUs shall be able to post Non-Physical Market Transactions as the Originating Participant only and accept Non-Physical Market Transactions as the Accepting Participant. They will also be able to accept Physical Market Transactions as the Accepting Participant only, while they will not be allowed to post a Physical Market Transaction as an Originating Participant.

TPD F - System Clearing, Balancing Charges and Neutrality: as this Section describes the charges arising from any User incurring an imbalance, it will apply to TUs.

TPD Q - Emergencies: the modification proposes that TUs will be subject to this Section of the UNC, as any imbalance position they have built up could potentially contribute to an emergency. In particular, this modification will add paragraphs to ensure that TUs continue to be under an obligation to co-operate in emergency situations.

TPD V - General: this Section describes both the admission rules (Section V2) and the termination rules (Section V4), and these Sections will apply to TUs. This modification will

¹³ Currently there are only 3 types of Users under the UNC: restricted User, DNO User and Shipper User.

¹⁴ The TPD can be found on the Joint Office website at: <http://gasgovernance.co.uk/TPD>

also add paragraphs to ensure that TUs continue to be under an obligation not to act in a manner that jeopardises the efficient and safe operation of the system.

UNC Panel¹⁵ recommendation and representations

At the Modification Panel meeting held on 19 April 2012, eight members voted against implementation and only one member voted in favour. Therefore the Panel did not recommend implementation.

We have had regard to a late representation to the Joint Office consultation, which is available on its website, but not reflected within the FMR. Including this late submission, there were ten responses to the Joint Office consultation: six not in support, two in support (one of which offered qualified support) and two providing comments.

The Authority's provisional thinking and 'minded to' position

We have considered all the responses to the Joint Office consultation and have assessed the proposed modification against the UNC Relevant Objectives. We consider this proposal would further objective d) and would be neutral with regard to the other Relevant Objectives.

Standard Special Condition A11.1 (d): the securing of effective competition between relevant Shippers, between relevant Suppliers, and between Distribution Network Operators and relevant Shippers

The Proposer and another respondent¹⁶ believe that allowing a TU to accede to the UNC, without holding a gas shipper licence, would remove a potential barrier to entry and encourage additional parties to participate in the gas market. This would be consistent with facilitating effective competition.

On the other hand, some of the respondents are concerned that removing the requirement to hold a shipper licence could reduce regulatory oversight of some participants in the market and distort competition. Some respondents also doubt whether removing this requirement actually reduces the administrative burden on Gas Traders, as some of these will likely need to comply with Financial Services Authority (FSA) regulation instead. One respondent believes that TUs would need to identify which parts of the UNC are relevant and which are not, and this would create an additional barrier to entry.

Some of the respondents have raised concerns that the modification proposal might have unintended consequences on security and safety of supply: in particular they are concerned that this proposal might create discrimination in the context of the Significant Code Review on Gas Security of Supply (Gas SCR) that Ofgem has undertaken.

As detailed in the main body of this letter, we do not believe that Gas Traders who are not engaging in activities that are otherwise prohibited by the Gas Act should be required to obtain a shipper licence. It is therefore inappropriate for this to be stipulated in the UNC or elsewhere. We consider that this requirement represents an unnecessary barrier to entry.

In relation to the concerns on gas safety and security of supply, we note that we have worked with the Proposer to ensure that the relevant obligations, in terms of co-operation in case of an emergency and safety of the system, were inserted into the legal text. We also note that the HSE have written a response to the UNC338 consultation expressly stating that: "*The strength of the legal text wording in section Q gives confidence that the*

¹⁵ The UNC Panel is established and constituted from time to time pursuant to and in accordance with the UNC Modification Rules

¹⁶ This respondent did not support the proposal, but did agree that it would further Relevant Objective (d).

necessary cooperation by Gas Traders with the NEC [Network Emergency Coordinator] and SO [System Operator] will be achieved if and when required, via the necessary incentives”.

In relation to the Gas SCR, we note that Gas Traders are exposed to cash-out charges (and credit requirements) under the UNC and would continue to be exposed to such charges even without a shipper licence.

We finally note that Ofgem has enforcement powers in cases of suspected market abuse under the Competition Act 1998, regardless of whether the abusing party is licensed or not. In addition to this, the Authority will be given further powers for monitoring and enforcement through the implementation of the EU Regulation on Wholesale Energy Market Integrity and Transparency (REMIT).¹⁷

Therefore, we consider that the policy change facilitated by UNC338V would not create additional burdens and would not lead to a gap in regulation. Instead, it would remove a burden from Gas Traders, namely the need to obtain a shipper licence. This should facilitate entry to the market, particularly for smaller parties, and this should have a positive, albeit marginal, impact upon competition.

We are also concerned that there may be a prevailing perception that the granting of a licence to an applicant may of itself give future counterparties some assurance as to their bona fide nature. Our licence application process should not replace the need for normal due diligence and ‘know your customer’ checks. We consider that a more thorough application of such checks will give greater – and better founded – confidence to market participants and again provide a marginal improvement to competition.

We therefore consider that the implementation of this proposal will better facilitate Relevant Objective (d).

Standard Special Condition A11.1 (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.

Some of the respondents argued that allowing non-licensed parties to make modifications to the UNC that have no direct impact on themselves, but impact the contractual relationship and obligations of other parties, is not consistent with the promotion of efficiency in the administration of the code.

We do not consider that this is a new issue as certain sections of the UNC already apply to only a sub-set of parties, without their ability to raise modifications being in any way restricted. We consider it unlikely that such parties would raise modification proposals to anything other than provisions which have a direct relevance to their interests. All proposed modifications will in any case be assessed against, and must be shown to further, the Relevant Objectives of the UNC in order to be approved and implemented. We therefore disagree that UNC338V will be detrimental to the UNC modification procedure or the efficient administration of the UNC more generally.

Some respondents also considered that it would be inefficient to implement this modification proposal now, as European developments may introduce an EU-wide energy wholesale trading passport. However, the proposals referred to are part of a consultation document from the European Regulator's group CEER (Council of European Energy Regulators), not proposed legislation. We are not aware of any immediate plans to create a trading passport regime for energy wholesale market trading. Furthermore, the CEER

¹⁷ Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:en:PDF>

proposals are aimed at financial traders only. We do not consider these proposals to have any impact on this proposed modification.

For the above reasons, we consider this modification proposal would be neutral in relation to Relevant Objective (f).

Conclusion

While we are minded to accept UNC338V and to amend our licensing procedures to reflect this (see Annex 2), we would welcome any further views on our assessment of this modification proposal against the relevant objectives.

ANNEX 2 – Proposed wording to be inserted in our “Guidance for gas and electricity licence applications”

Ofgem publishes on its website the “Guidance for gas and electricity licence applications”¹⁸ (the Guidance).

This document sets out our guidance on licensable activities and how to apply for licences, or for extensions, restrictions, modifications of areas and transfers of existing licences. It also explains the process that follows a proposal by us not to grant a licence.

Every time we change our licensing guidance, the industry is consulted on this change. We are therefore consulting with the industry on proposed wording to insert in paragraph 1.12 of the Guidance, in the definition of shipper. The new definition would be:

“Allows the licensee to arrange with a GT for gas to be introduced into, conveyed through, or taken out of a pipeline system operated by that GT. In all instances, the purpose of the gas movement should be general or for purposes connected with the supply of gas to premises. Persons not involved in the physical conveyance of gas on the GB network system, but who trade gas as a commodity at the National Balancing Point (NBP), are not included in the definition of Gas Shipper and are therefore not required to obtain a Gas Shipper Licence”.

For the avoidance of doubt, we are not changing the Gas (Applications for Licences and Extensions and Restrictions of Licences) Regulations,¹⁹ as this change is merely a clarification of when a person requires a gas shipper licence and does not, therefore, affect those Regulations.

¹⁸ The Guidance can be found at <http://www.ofgem.gov.uk/Licensing/Work/Documents1/SupplementaryAppendix2-Guidanceforgasandelectricityapplications.pdf>

¹⁹ These can be found at http://www.legislation.gov.uk/uksi/2010/2155/pdfs/uksi_20102155_en.pdf

ANNEX 3 – Summary of consultation responses

Issues raised by respondents	Ofgem View
The introduction of a new type of User may open the floodgates to other new types of User	We do not think this is a likely consequence and think the potential increase in complexity is minimal. We do consider that the UNC is overly complex and this does not add clarity, however, the UNC's complexity problems should not prevent change.
The amendments to the UNC will add complexity and reduce transparency	There are many factors which add to the complexity of the UNC but ultimately the removal of a requirement that is not laid out in legislation is in line with our objective of better regulation. Reducing the overall complexity of the code more generally is an issue to keep in mind for future modifications.
Attention should instead be focused on streamlining the licence application process	This is a valid issue but would be an additional way to reduce a barrier to entry, rather than an alternative to removing the unnecessary licence requirement.
Industry credit arrangements will need to be reviewed as parties wrongly rely on the licence as a guarantee	The licence is no guarantee of a party's ongoing creditworthiness. We agree with the respondent that the industry credit arrangements may benefit from being reviewed, however, this would be the case even if Gas Traders were to remain licensed.
The Gas Act could be amended to include non-physical gas trading as a licensable activity	We consider this to be a disproportionate measure.
The gas shipper licence cannot credibly be considered a barrier to entry	The minimal licence fee itself is not the main issue; the licence requirement is not in line with current legislation and therefore removing the obsolete requirement fulfils our objective of better regulation and removes an ongoing undue burden on trader parties.
If it is considered appropriate for gas trader obligations to be moved from a regulatory licensing regime to a commercial contract, it should be appropriate for the same to be removed from all shipper Users' licenses in order to avoid discrimination	The Gas Act prescribes shipping as a prohibited activity so shippers would still need to hold a licence. The shipper licence mainly refers to physical types of obligations that are not relevant to traders. The situations of gas shippers and Gas Traders are therefore not directly comparable in this regard.
Given the loss of licence requirement to comply with the UNC, industry will have to rely on contractual arrangements rather than a licence obligation resulting in a lower level of safeguard	Please refer to the main body of the letter.
Concerns raised regarding unintended consequences eg. inability to effectively enforce legitimate penalties or sanctions	Please refer to the main body of the letter.
Could increase the likelihood, severity or duration of a network emergency	Please refer to the main body of the letter.
Reliance on informal information requests is considered inappropriate and could place an unnecessary burden on other licensed parties	Please refer to the main body of the letter.
Runs directly counter to the Gas SCR	Please refer to the main body of the letter.