

UNC Workgroup 0760 Minutes

Introducing the concept of derogation for Net Zero innovation into Uniform Network Code (UNC)

Wednesday 06 July 2021

Via Teleconference

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Tracey Saunders	(TS)	Northern Gas Networks

Copies of all papers are available at: <http://www.gasgovernance.co.uk/0760/060721>

1. Introduction and Status Review

Kate Elleman (KE) welcomed all to the meeting.

1.1. Approval of Minutes

The amended Minutes from 02 June 2021 were approved.

1.2. Review of outstanding Actions

Action 0601: Workgroup to consider if parts of the UNC referring to ancillary documents regarding TPIs, such as NeXAs, should be exempt from derogations.

Update: It was confirmed that the Network Exit operator Agreement (NExA) are excluded from derogations. **Closed**

Action 0602: Joint Office to review how the process flow and timeline proposed under the Guidance Document would be aligned to current Joint Office processes.

Update: This is an ongoing action and Joint Office are looking at aligning to current process as much as possible. **Carried Forward**

Action 0603: Joint Office to liaise with Xoserve (Dave Addison/ Ellie Rogers) with a view of Xoserve attending the Workgroup meetings.

Update: KE advised she has contacted Xoserve and will chase for a response. **Carried Forward**

2. Amended Modification and Innovation Derogation Guidance Document

Tracey Saunders (TS) advised Workgroup that the Modification and the UNC Derogations Guidance Document have been revised following the previous Workgroup.

Amended Modification

TS presented the amended Modification and carried out a walkthrough of the amendments with the Workgroup which included:

Section 5. Solution

Business Rule 1 now refers to General Terms A1.1.2(b).

New Business Rule 15 has been added to accommodate derogations that do not have a start date. The date start date will be confirmed by UNC Panel and will be notified to all concerned parties by the Code Administrator.

Net Zero Innovation Use Case

This amendment clarifies, as suggested by Ofgem, that a derogation request may only be submitted where it is related to net zero, as defined in the Gas Transporters Licence Special Condition 1.1.

When KE asked if that prevents a Shipper being able to raise a derogation, TS clarified that would not be the case.

This concluded the amendments made to the Modification and TS clarified that the Modification is now stable.

Derogations Guidance Document

TS presented the change marked version of the Derogations Guidance Document and carried out a walkthrough of the amendments with the Workgroup which included:

Clarification the document should be read in conjunction with General Terms B7 which covers derogations and General Terms Annex B-1.

Most of Workgroup discussion centred around the minimum requirements of the derogation request, discussions were captured as follows:

SM asked if a party must be fully licenced before they can put forward a request and the Workgroup discussed the merits of allowing non-UNC Parties to raise derogations. TS advised the User must be a valid licensed party conceded fully to the Uniform Network Code. TS added that normally, anything to do with net zero derogation would be to do with the pipelines, therefore affecting only transporters. TS suggested that later, there may be a need to change it to allow non-UNC Parties to request derogations. TS is satisfied this is currently the more robust route and can be changed, if needed, once the process is fully embedded.

To further clarify understanding, TS added that a derogation should only be a temporary arrangement and there could be a scenario whereby the new User might not ultimately enter the market, but their derogation may lead to a fundamental change at a later point.

KE advised she will make sure the discussion goes into the Workgroup Report, which will refer to how do you keep control around operating the network and at the same time allowing innovation.

KE asked Ofgem where they might stand on restricting or opening up to any party, Joshua Oyinlola (JO) confirmed Ofgem would prefer a narrow scope for the moment but would consider broadening in the future.

Review of Derogation Guidance Document pages 5-8

Section 6 – Minimum requirements of the request

TS provided clarification of the minimum requirements for a derogation. Discussion points are captured as follows:

It was confirmed that when Panel are considering a new derogation, they would be looking for positive impacts against the following criteria:

- *Consumers*
 - *Including, where relevant, details as to how the end consumer will be compensated*
- *Competition*
- *Other parties affected by the non-compliance, including where relevant, but not limited to:*
 - *Central Data Systems Provider (CDSP)*
 - *Including, where relevant, a statement from CDSP of their ability to facilitate any required system changes.*
 - *Distribution Network Operators (including Independent Gas Transporters (IGT)*
 - *Transmission Operator(s)*
 - *Gas Shippers*
 - *Any other parties affected by the non-compliance*

TS clarified that a derogation should not be the first option when considering how to support innovation projects and that other options should always be considered first. TS confirmed the Guidance Document draws this out in the description of what a derogation is.

Section 7 – Supporting evidence

Referring to the list where ‘UNC Modification Panel is more likely to consider that a derogation request is justified if’, SM commented that those are not factors that will impact UNC Panel decision.

TS confirmed there is some re-wording required to satisfy the comments made by SM relating to the UNC Panel decision not being dependent on a list of justification.

Section 8 – UNC Modification Panel Assessment

TS highlighted the reference to net zero in the first paragraph needs to be removed.

Considering the feedback given, TS clarified where it says in this section ‘UNC Modification Panel **will** consider the impact on the relevant Distribution Network or National Transmission Systems to effectively and efficiently operate its system if a derogation were granted’, she will change this to **may** consider.

Heather Ward (HW) asked if there is any real value in future proofing the document and suggested this document should really apply to the current circumstances.

KE suggested that the assessment criteria could be expanded to include some of the current relevant objection criteria.

TS confirmed that anything that could impact the ability of the system to operate, she would like to keep in the Guidance Document, she will consider the wording of this section.

SM questioned whether someone other than the Proposer could represent the derogation. The Workgroup discussed how the process works with Modifications and agreed that the Proposer should always been the main point of contact. . KE confirmed, from Joint Office point of view, would always include the Proposer.

Review concluded.

New Action 0701: Workgroup to read the revised UNC Derogation Guidance Document and refer any comments to Tracey Saunders (trsaunders@northerngas.co.uk) and Joint Office (enquiries@gasgovernance.co.uk).

3. Review Legal Text

TS provided a detailed walkthrough of the Legal Text changes which were shown in mark-up. The key changes were to the following sections of the Transportation Principal Document:

Section V - General

TS explained that UNC Panel would now have the powers to grant derogations and defines how the derogation is made.

When SM sought confirmation that this would be by unanimous decision, TS confirmed, adding that if a unanimous decision is not reached then the derogation ceases at that point, however, there is a route of appeal to Ofgem. TS explained she is looking to discuss this further with Ofgem to see if they would like power of veto, which is unusual, now it is power of appeal.

TS confirmed Ofgem are notified of the derogation at the point of initial submission.

TS noted there will be a 16-day window for appeal, in effect the decision of UNC Panel would not be enforced until the appeal window is finalised.

When SM asked what test would be applied for UNC Panel to reach a decision, TS clarified that UNC Panel discussions would centre around the derogation itself, Joint Office would have a Final Derogation Report (FDR). TS also noted that the Guidance Document lists what UNC Panel will consider, each derogation will be different.

Each derogation should have a corresponding Use Case and must be a valid request. There will be a tick box exercise and if each constituency under UNC Panel (panel considerations in the guidance document).

SM sought clarification that the Impact vs Benefit is what will be considered based on a test of one against the other and that overall it delivers a positive business case, TS confirmed this is correct.

HW said it would be helpful if the consultation form has the questions that UNC Panel will be asked to decide on.

TS confirmed that the Use Case would include the specific criteria the derogation needs to meet.

TS pointed out that Page 8 on the UNC Derogations Guidance Document lists what UNC Panel will consider:

In its assessment, the UNC Modification Panel will consider amongst other things the impact on:

- *Consumers*
 - *Including, where relevant, details as to how the end consumer will be compensated*
- *Competition*
- *Other parties affected by the non-compliance, including where relevant, but not limited to:*
 - *Central Data Systems Provider (CDS)*

- *Including, where relevant, a statement from CDSP of their ability to facilitate any required system changes.*
- *Distribution Network Operators (including Independent Gas Transporters (IGT))*
- *Transmission Operator(s)*
- *Gas Shippers*
- *Any other parties affected by the non-compliance*

TS asked SM to review this section in the UNC Derogations Guidance Document, SM agreed this is a good checklist but questioned as a UNC Panel member how does he consider consumer impacts v other parties v competition when there is a conflict. He added there will always be UNC Panel members that will not vote unanimously and urged the need to make it as easy as possible for UNC Panel to come to a decision. From Ofgem's point of view, they will want most decisions to be made by UNC Panel, therefore, UNC Panel need clear guidance.

TS clarified that the paragraphs on pages 5-8 of the UNC Derogations Guidance Document is the criteria that will need to be met for each Use Case.

Legal Text

Referring back up the Legal Text, TS highlighted the following section:

7.2 UNC Derogation Application

This section sets the eligibility criteria/what section of code/dates/caveat any such matters required by the UNC Derogations Guidance Document (pages 5-8).

7.2.3 (a) requires further clarification, TS will check the meaning of the word 'member', she believes it should refer to parties rather than member.

7.2.6 TS confirmed this needs to be restructured slightly into more of a step-by-step process. In a scenario where the derogations need more information, this paragraph needs a clause that includes a feedback loop to the Proposer.

In summary there are three things to consider here:

1. If there is a rejection, what process is followed
2. If the derogations need more information, expand 7.2.6 to say what needs to be done
3. If the derogation satisfies the criteria, move to 7.2.7

7.2.8 refers to if additional information or analysis is required

TS suggested that a process flow diagram, to bring the UNC Derogations Guidance Document and the Legal Text in line with each other would be a benefit and aid Workgroup review of Legal Text.

7.2.9 is where the vote for implementation would occur. Suggested that (a) should be a suitable window and it goes to the next 'relevant' UNC Panel meeting. If it is a 15-day consultation that would mean it goes to the next panel meeting at short notice which might not be appropriate considering all the documentation that will need to be considered.

SM said that if UNC Panel accept the derogation and then debate on its duration, the outcome of that could impact the benefit and asked if, as a UNC Panel member, are they in a position to vary or change that window?

TS confirmed that there will be signposts along the way but there will be a start and end date that is reasonable and can be justified; UNC Panel will determine against the tests in the Legal Text and the Guidance Document whether that timeframe is reasonable.

7.2.10 If panel approve to implement – Joint Office will notify the applicant; all parties and Ofgem of the decision including the scope, and nature of the derogation.

7.2.10 (c) Where the derogation is not approved the notification will include the reason for the determination. This would be captured in the Final Report which would be published.

7.2.11 a) this paragraph will require amendment, to 'following further discussion in agreement with Joint Office and the Proposer.

7.2.12 The Party may withdraw an application as long as the derogation has not been utilised.

In relation to at what point the derogation can be withdrawn. TS suggested this paragraph may need to be split into two:

- a) Application classed as withdrawn
- b) Derogation classed as closed

7.2.13 the same party can have more than one derogation active at any one time.

7.2.14 this is the superseding (2nd application) where an application has been submitted previously and submitted by the same applicant.

7.3 Appeal

A Party can appeal to the Authority to approve or not approve.

TS added further clarification that anyone can appeal a decision to the Authority, not just a UNC Party.

When questioned, TS confirmed she will check the wording used for the grounds for appeal.

7.4 Impact of UNC Derogation

A discussion was held with regards to any sanctions being put in place if the Party does not comply with UNC Code. TS confirmed this is covered in 7.5.2.

When SM asked how UNC Panel identify if there has been a breach with Code, KE asked if the Governance framework that is already in place sufficient to identify a breach.

SM asked, as UNC Panel are approving the derogation, who is responsible the derogation is complied with? TS suggested that part of that would be around Performance Assurance Committee (PAC) reporting and that she believes of that, information would come to UNC Panel from other sources (CDSP; PAC or any other party notification).

KE confirmed that PAC did raised some concerns, and they have been asked to attend this workgroup.

SM added that whereas UNC Panel approve the derogation, they do not manage the derogation during it lifetime.

7.5 UNC Derogation Reporting and Cessation

SM questioned the wording used in 7.5.2. TS felt uncomfortable having nothing but if defined too tightly it would be too restricting. SM suggested the wording 'as a result of being made aware' is used.

Annex B-1

States what the derogation Use Case is, this needs to refer to net zero innovation.

4. Develop Workgroup Report

Development of the Workgroup Report will be addressed at the next meeting planned for 04 August 2021 (potentially subject to change).

5. Next Steps

KE summarised:

- Workgroup to consider extending the report to panel date at the 04 August 2021 Workgroup meeting.
- The next Workgroup meeting will begin drafting the Workgroup Report.

6. Diary Planning

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

Subject to the agreement by Panel of an extension, Workgroup meetings will take place as follows:

Time / Date	Venue	Workgroup Programme
10:00 Wednesday 04 August 2021	Via Microsoft Teams	Standard Governance Workgroup Agenda <ul style="list-style-type: none"> • Derogation Innovation Modification

Action Table (as of 06 July 2021)

Action Ref	Meeting Date	Minute Ref	Action	Owner	Status Update
0601	02/06/21	2.0	Workgroup to consider if parts of the UNC referring to ancillary documents regarding TPIs, such as NeXAs, should be exempt from derogations.	Northern Gas Networks (TS)	Closed
0602	02/06/21	2.0	Joint Office to review how the process flow and timeline proposed under the Guidance Document would be aligned to current Joint Office processes.	Joint Office (KE)	Carried Forward
0603	02/06/21	2.0	Joint Office to liaise with Xoserve (Dave Addison/ Ellie Rogers) with a view of Xoserve attending the Workgroup meetings.	Joint Office (KE)	Carried Forward